

OFFICER'S REPORT FOR: **Hearing Commissioners**
Lindsay Daysh (Chair)
Councillor Simon Edwards

SUBJECT: **Proposed District Plan Change 52 –**
Alignment of the District Plan with the New
Zealand Heritage List

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REPORT DATE: **26 March 2019**

HEARING: **16 April 2019**

EXECUTIVE SUMMARY

- (1) At its 9 October 2018 meeting, Hutt City Council ('Council') resolved to notify Proposed District Plan Change 52 ('the Proposed Plan Change'). The Proposed Plan Change seeks the following amendments to the list of heritage buildings and structures in Appendix Heritage 1 of the City of Lower Hutt District Plan ('the District Plan'):
- Addition of the following buildings to Appendix Heritage 1:
 - Nash House (14 St Albans Grove, Woburn);
 - The former Lower Hutt Central Fire Station (155-157 Waterloo Road, Hutt Central); and
 - The former Naenae Post Office (27 Hillary Court, Naenae).
 - Transfer of the following building and structure from Appendix Heritage 2 to Appendix Heritage 1:
 - The ANZAC Memorial Flag Pole (Petone Railway Station, Hutt Road, Petone); and
 - The former Petone Magistrate's Court (13 Elizabeth Street, Petone).
 - Removal of Dudley Cottage (formerly on Seaview Road - destroyed in fire) from Appendix Heritage 1.

- (2) In addition, the Proposed Plan Change would replace terms that are used in Chapter 14F which, due to amendments to legislation, are now out of date.
- (3) No new objectives, policies or rules, or amendments to existing objectives, policies or rules, are sought as part of the Proposed Plan Change.
- (4) The Proposed Plan Change was publicly notified on 16 October 2018 and submissions closed on 16 November 2018. Five submissions were received.
- (5) The summary of decisions requested by submitters was publicly notified on 25 January 2019 for further submissions. The further submission period closed on 29 January 2019. Four further submissions were received.
- (6) This report considers the submissions on the Proposed Plan Change as well as the further submissions.
- (7) In summary, the submissions seek the following decisions:
 - Approval of the Proposed Plan Change;
 - Amendment to the proposed entries in Appendix Heritage 1 to include reference numbers from the New Zealand Heritage List;
 - Addition of the Naenae Post Office (former) to Appendix Heritage 2, rather than Appendix Heritage 1;
 - Amendment of the proposed entry for the Naenae Post Office (former) to refer to legal description Pt Lot 1 DP 15073.
 - Correction of a reference in the Proposed Plan Change to *New Zealand Heritage Pouhere Taonga*, which should refer to *Heritage New Zealand Pouhere Taonga*.
 - Amendment to the introduction of *Chapter 14F: Heritage Buildings and Structures* to state that buildings and structures will only be listed in Appendix Heritage 2 with the express written consent of the property owner.
- (8) A key matter that is considered in this report is whether one of the submissions and the associated further submissions are within the scope of the Proposed Plan Change. Having obtained a legal opinion, it is my opinion that the submission and associated further submissions are outside the scope of the Proposed Plan Change, and should be rejected.
- (9) I recommend that the Proposed Plan Change is approved, with the amendments shown in Appendix B of this report.

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1. INTRODUCTION

1.1. Content of this report

- (10) This report is prepared under section 42A of the Resource Management Act 1991 ('the RMA'). It discusses and makes recommendations on the decisions requested in submissions on *Proposed District Plan Change 52: Alignment of the District Plan with the New Zealand Heritage List* ('the Proposed Plan Change').
- (11) This report includes:
- This introduction to the Proposed Plan Change;
 - A summary of the background, statutory framework and scope of the Proposed Plan Change;
 - A list of submitters and further submitters;
 - A discussion and recommendations on the scope of submissions and further submissions;
 - An assessment of the issues raised and decisions requested in submissions and further submissions; and
 - My recommendations on the submissions, further submissions and decisions requested.

1.2. Statement of Experience

- (12) My name is Nathan Geard. I hold a Bachelor of Science majoring in Geography from the University of Canterbury. I am an associate member of the New Zealand Planning Institute.
- (13) I have 11 years of experience in planning, including regional council and city council planning. My work experience includes the processing of resource consent applications and development of resource management policies.
- (14) I have been employed by Hutt City Council since November 2014. I was initially employed as a Resource Consents Planner for six months. My main tasks were the processing of resource consent applications and responding to public enquiries on resource management issues. Since June 2015 I have been employed as an Environmental Policy Analyst. My main role is reviewing and developing planning provisions for the District Plan.
- (15) Prior to working at Hutt City Council, I was employed by the West Coast Regional Council as a Resource Consents Officer for six years. My main tasks were the processing of resource consent applications and responding to enquiries on resource management issues.
- (16) I have read, and am familiar with, the Code of Conduct for Expert Witnesses in the current Environment Court Practice Note (2014). I have complied with the Code and will follow it when presenting evidence. I also confirm that the matters addressed in this report are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. BACKGROUND, STATUTORY FRAMEWORK AND SCOPE OF THE PROPOSED PLAN CHANGE

(17) The background, statutory framework and scope of the Proposed Plan Change are set out in the Introduction of the Section 32 Evaluation as follows:

1. *Proposed District Plan Change 52 ('the proposed Plan Change') updates Chapter 14F - Heritage Buildings and Structures of the Operative City of Lower Hutt District Plan ('the District Plan'), by adding three heritage buildings to Appendix Heritage 1, moving 2 heritage features (one buildings and one structure) from Appendix Heritage 2 to Appendix Heritage 1 and removing one building (which has been destroyed by fire) from Appendix Heritage 1. Outdated references relating to heritage will be updated by way of minor amendments. Subsequent District Plan Map alterations reflect these changes.*
2. *The protection of historic heritage from inappropriate subdivision, use and development is identified as a matter of national importance under section 6 (f) of the Resource Management Act 1991 ('the RMA' or 'the Act') and Council has a duty to recognise and provide for these matters of national importance.*
3. *The District Plan identifies and protects Heritage Buildings and Structures in Chapter 14F. The Chapter contains two lists of heritage buildings and structures:*
 - *Appendix Heritage 1 contains all buildings and structures that have been identified by Heritage New Zealand Pouhere Taonga ('Heritage New Zealand') in the New Zealand Heritage List ('the Heritage List') for their historical or cultural significance.*
 - *Appendix Heritage 2 lists buildings and structures that have been identified by Council as making a notable contribution to local heritage but are not listed by Heritage New Zealand.*
4. *Chapter 14F also contains issues, objectives, policies and rules that provide for the protection of the heritage buildings and structures identified in Appendix Heritage 1 and Appendix Heritage 2.*
5. *While the Heritage List compiled by Heritage New Zealand identifies historic places of significant value, it does not provide any legal protection. Legal protection can only be achieved through listing in the District Plan, so that the effects of land use and development can be managed.*
6. *The objective of this proposed Plan Change is to provide appropriate protection for all heritage buildings and structures within Lower Hutt that have been identified by Heritage New Zealand as contributing to New Zealand's heritage.*
7. *To achieve this objective, the proposed Plan Change seeks to update the list of buildings and structures in Appendix Heritage 1 (and subsequently the District Plan Maps), by adding, moving and removing items, as appropriate, and making them subject to the*

existing objectives, policies and rules of Chapter 14F of the District Plan.

8. *Under section 86B (3) of the Resource Management Act, a rule (or in this case, the Appendices subject to the rules) in a proposed plan that protects historic heritage has immediate legal effect on notification.*
9. *Currently there are two buildings and structures that are listed by Heritage New Zealand, and one building that has been nominated and is anticipated to be listed, which are not protected in the District Plan.*
10. *Two buildings are currently listed in Appendix Heritage 2 of the District Plan but should correctly be listed in Appendix Heritage 1 to reflect that they have been added to the Heritage List since the last update of the District Plan. The transfer of these two buildings from Appendix Heritage 2 to Appendix Heritage 1 does not result in any changes to the actual degree of protection because the same objectives policies and rules apply to buildings and structures in both appendices.*
11. *One building listed in Appendix Heritage 1 has been destroyed by fire and should therefore be removed from Appendix Heritage 1.*
12. *The heritage buildings to be added to Appendix Heritage 1 are:*
 - *Nash House at 14 St Albans Grove, Woburn;*
 - *The former Lower Hutt Central Fire Station at 155-157 Waterloo Road, Hutt Central; and*
 - *The former Naenae Post Office at 27 Hillary Court, Naenae.*
13. *The heritage features to be moved from Appendix Heritage 2 to Appendix Heritage 1 are:*
 - *The ANZAC Memorial Flag Pole at the Petone Railway Station, Hutt Road, Petone; and*
 - *The former Petone Magistrate's Court at 13 Elizabeth Street, Petone.*
14. *The heritage building to be removed from Appendix Heritage 1 is Dudley Cottage (Seaview Road, Petone).*
15. *The proposed Plan Change does not propose changes to the objectives, policies or rules of Chapter 14F.*
16. *A number of terms and references used in Chapter 14F are outdated and the proposed Plan Change replaces these with the up to date terms and references. These changes are made as minor amendments under Clause 20A of Schedule 1 of the Resource Management Act 1991 and are therefore not covered by this evaluation.*
17. *This report provides an overview of the changes proposed in the proposed Plan Change and the reasons for these changes. Section 32 of the RMA is concerned with the extent to which the objective of*

the proposed Plan Change is the most appropriate way of achieving the purpose of the RMA, and whether the proposed Plan Change is the most appropriate way to achieve that objective. The scale and level of evaluation within this report is proportionate to the scale of the proposed Plan Change.

- (18) More information on the background, statutory framework and scope of the Proposed Plan Change is included in the Section 32 Evaluation.

3. LIST OF SUBMITTERS AND FURTHER SUBMITTERS

- (19) The following table lists the parties who have made submissions and/or further submissions on the Proposed Plan Change. The submission and further submission numbers in this table refer to the numbers given to submissions and further submissions in the *Summary of Submissions and Further Submissions*, included as Appendix A of this report.

Submission Number	Name of Original Submitter	Support/Oppose
DPC52/1	Historic Places Wellington	Support
DPC52/2	Heritage New Zealand Pouhere Taonga (HNZPT)	Support in part
DPC52/3	Andy Mitchell	Support
DPC52/4	Neil McGrath	Not stated
DPC52/5	Emily Innes	Support
Further Submission Number	Name of Further Submitter	Original Submission referred to – Support/Oppose
<i>DPC52F/1</i>	<i>Max Shierlaw</i>	<i>DPC52/1 – Oppose DPC52/2 – Oppose DPC52/3 – Oppose DPC52/4 – Support DPC52/5 – Oppose</i>
<i>DPC52F/2</i>	<i>Philip and Michelle Barry</i>	<i>DPC52/4 – Support</i>
<i>DPC52F/3</i>	<i>Heritage New Zealand Pouhere Taonga (HNZPT)</i>	<i>DPC52/4 – Oppose</i>
<i>DPC52F/4</i>	<i>Historic Places Wellington</i>	<i>DPC52/4 – Oppose</i>

4. SCOPE OF SUBMISSIONS

- (20) In deciding whether the decisions requested by submitters and further submitters are accepted or rejected, Council needs to consider:
- Whether a submission/further submission is within the scope of the plan change; and

- Whether the submission/further submission meets the requirements of Schedule 1 of the RMA.
- (21) The following sections include discussions on whether the submissions and further submissions are valid, with my recommendations on the matter.

4.1. Whether the submission of Neil McGrath (DPC52/4) is within scope

- (22) Under clause 6 of Schedule 1 of the RMA, any person may make a submission on a proposed change to a district plan. The only exceptions relate to people who could gain an advantage in trade competition through the submission. However, when considering submissions on a proposed change to a district plan, Council needs to consider whether a submission is within the scope of the proposed change.

- (23) This consideration is relevant for the submission of Neil McGrath (DPC52/4).

- (24) In his submission, Mr McGrath requests that the following statement be added to the Introduction of *Chapter 14F: Heritage Buildings and Structures* of the District Plan ('Chapter 14F'):

The District Plan will only list buildings and structures in Appendix Heritage 2 with the express written consent of the property owner.

- (25) As this request does not relate to any of the amendments that are proposed by the Proposed Plan Change, it does not appear to be within the scope of the Proposed Plan Change.

- (26) Further submissions on the submission of Mr McGrath make comment on this matter:

- Max Shierlaw (*DPC52F/1*) states:
 - Hutt City Council have previously resolved that any property listed should only be done with the consent of the property's owner.
- Phillip and Michelle Barry (*DPC52F/2*) state:
 - The purpose and effect of the submission of Mr McGrath is to reflect a Council resolution from 10 July 2012, which aligns with the purpose of the Proposed Plan Change.
 - The submission of Mr McGrath is within the scope of the Proposed Plan Change and it is entirely appropriate and proper for it to be included in the Proposed Plan Change along with the other proposed changes.
- HNZPT (*DPC52F/3*) state:
 - The submission point made by Mr McGrath may result in significant implications for identifying and protecting the City's heritage.
 - The decision sought by Mr McGrath is on content of the District Plan that is not addressed by the Proposed Plan Change.
- Historic Places Wellington (*DPC52F/4*) state:
 - The submission of Mr McGrath relating to the conditions upon which any such future addition should be made is not relevant to the Proposed Plan Change.
 - The addition requested by Mr McGrath is a significant proposal on which consultation is appropriate.

(27) In preparing this report I have requested a legal opinion from DLA Piper on whether the submission of Mr McGrath is within the scope of the Proposed Plan Change (Appendix C of this report).

(28) Following a discussion on the legal tests for whether a submission is within the scope of a proposed plan change, the legal opinion gives the following assessment on the submission of Mr McGrath:

11 *PC52 is clearly a very limited plan change, relating only to the addition and removal of [six] individual properties, and updating of the language in the Plan to reflect current naming conventions. The change proposed by Mr McGrath concerns a policy decision by the Council as to when the Council will list a building in the Plan as having heritage features. It is a fundamental restriction or constraint on the listing of heritage buildings for protection under the Act. It is likely to raise a range of further issues from both those who oppose and support heritage protection. It fundamentally changes and expands the focus of this plan change.*

12 *In our view, the change to the status quo is primarily confined to the [six] buildings where changes in heritage status have been made. Accordingly, Mr McGrath's submission is outside that status quo change.*

(29) Given this legal opinion, it is my opinion that the decision requested by Mr McGrath is outside the scope of the Proposed Plan Change. As a result, I recommend that the decision requested in the submission be rejected.

(30) However, should Council decide that the submission of Mr McGrath is within the scope of the Proposed Plan Change, the issues raised and decision requested in Mr McGrath's submission are discussed in section 5.2 of this report, with a further recommendation.

4.2. Whether the further submissions to the submission of Neil McGrath (DPC52/4) are within scope

(31) Four further submissions were received on the submission of Neil McGrath (DPC52/4):

- Max Shierlaw (DPC52F/1) and Philip and Michelle Barry (DPC52F/2), further submissions in support of the submission of Mr McGrath; and
- HNZPT (DPC52F/3) and Historic Places Wellington (DPC52F/4), further submissions in opposition to the submission of Mr McGrath.

(32) If it is determined that the submission of Mr McGrath is outside the scope of the Proposed Plan Change (as discussed in section 4.1 of this report), it would logically follow that any further submissions on Mr McGrath's submission are also outside the scope.

(33) As discussed in section 4.1 of this report, it is my opinion that the submission of Mr McGrath is outside the scope of the Proposed Plan Change. Therefore, I consider the further submissions of Mr Shierlaw (as it relates to the submission of Mr McGrath), Mr and Mrs Barry, HNZPT and Historic Places Wellington to be outside the scope of the Proposed Plan Change as well, and I recommend that the decisions requested in these submissions be rejected.

(34) However, if it is decided that these further submissions are within the scope, the issues raised and decisions requested in the further submissions are discussed in sections 5.2, and 5.3 of this report, with further recommendations.

4.3. Whether the further submission of Historic Places Wellington (DPC52F/4) should be accepted

(35) A further submission was received from Historic Places Wellington on 29 January 2019 (DPC52F/4). The further submission was on the submission of Neil McGrath (DPC52/4).

(36) Under clause 8A of Schedule 1 of the RMA, a person who makes a further submission must serve a copy of the further submission on the person who made the submission to which the further submission relates no later than five working days after the further submission was provided to Council. In addition, a further submission must be in the prescribed form, being Form 6 of the *Resource Management (Forms, Fees, and Procedure Regulations 2003)*.

(37) Mr McGrath and Mr Shierlaw have advised Council staff that Historic Places Wellington did not provide a copy of their further submission to Mr McGrath until 8 February 2019, which is eight working days after the further submission was provided to Council. Mr McGrath also pointed out that the further submission of Historic Places Wellington is not in the prescribed form.

(38) With regard to the further submission not being provided to Mr McGrath within five days of providing it to the Council, I consider that, while it is not ideal for timeframes for submissions and further submissions to be breached, it is not unusual for a submission/further submission to be accepted despite a breach of these timeframes.

(39) Under section 37 of the RMA, Council may waive a failure to comply with a timeframe for the serve of documents if it has taken into account:

- The interests of any person who, in its opinion, may be directly affected by the waiver;
- The interests of the community in achieving adequate assessment of the effects of a proposal; and
- Its duty under section 21 of the RMA to avoid unreasonable delay.

(40) For the further submission of Historic Places Wellington, the interests of the other submitters and further submitters need to be taken into account, particularly the interests of Mr McGrath, as well as the interests of the wider community in achieving an adequate assessment of the effects of the Proposed Plan Change. In my opinion the breach of the timeframe by Historic Places Wellington for the service of a further submission (a breach of three days) is only minor a breach, no other submitters or further submitters have been disadvantaged by the breach, and the breach has had no impact on the assessment of the effects of the Proposed Plan Change. In addition, the progress of the Proposed Plan Change has not been delayed as a result of the breach of this timeframe.

(41) With regard to whether the further submission from Historic Places Wellington is in the prescribed form, the further submission of Historic Places Wellington includes most of the information from the prescribed form. However, it does not include information on:

- Whether they are a person representing a relevant aspect of the public interest or a person who has an interest in the Proposed Plan Change that is greater than the interest of the general public; and
 - Reasons to support that they either represent a relevant aspect of the public interest or that they are a person who has an interest in the Proposed Plan Change that is greater than the interest of the general public.
- (42) In my view, while Historic Places Wellington have not indicated in their further submission that they represent a relevant aspect of the public interest, they are a heritage advocacy group that has been established in the Wellington region for a number of years. Advocacy groups are generally accepted as representing an aspect of the public interest for which they advocate.
- (43) In sections 4.1 and 4.2 of this report, I come to the conclusion that the submission of Mr McGrath and associated further submissions (including the further submission of Historic Places Wellington) are not within the scope of the Proposed Plan Change, and recommend that the decisions requested should be rejected.
- (44) However, if it is determined that they are within in scope, in my opinion, the further submission of Historic Places Wellington should be accepted for the following reasons:
- The breach in timeframe is only minor;
 - While they submission doesn't state that Historic Places Wellington represent a relevant aspect of the public interest, they are a known heritage advocacy group; and
 - No other parties would be disadvantaged by enabling the further submission in the process.
- (45) I note that the further submission of Historic Places Wellington comments on the further submission of Max Shierlaw (*DPC52F/1*). As a further submission can only be on an initial submission, and not on another further submission, the parts of the further submission from Historic Places Wellington that respond to the submission of Mr Shierlaw should not be accepted.

5. ASSESSMENT OF SUBMISSIONS AND RECOMMENDATIONS ON DECISIONS REQUESTED

- (46) The following sections discuss the issues that are raised in the submissions and further submissions and the decisions that are requested by submitters and further submitters. These sections also include my recommendations on the decisions requested. These recommendations are summarised in section 6 of this report.

5.1. Support for protection of heritage values

- (47) Historic Places Wellington (DPC52/1), HNZPT (DPC52/2), Andy Mitchell (DPC52/3) and Emily Innes (DPC52/5) either support the Proposed Plan Change as a whole or specific amendments of the Proposed Plan Change. These submissions also include information on the heritage values of the buildings and structures that would be impacted by the Proposed Plan Change.
- (48) HNZPT gives further reasons for their support, stating that *"The heritage objectives and provisions of the District Plan provide a framework for the protection of these*

scheduled heritage buildings and structures from inappropriate subdivision, use and development, including their demolition.” HNZPT also state that the addition of new heritage items to Appendix Heritage 1 and 2 will ensure that they are offered the same protection under the District Plan from inappropriate subdivision, use and development.

- (49) Mr Mitchell and Ms Innes make particular reference to supporting the addition of the former Naenae Post Office to Appendix Heritage 1.
- (50) I recommend that these submissions are accepted with regard to their general support for the Proposed Plan Change. More specific requests from these submitters are discussed sections 5.4 to 5.6 of this report.

5.2. Amendment to the Introduction of Chapter 14F

- (51) In sections 4.1 and 4.2 of this report I recommend that the submission of Neil McGrath (DPC52/4) and related further submissions be rejected as, in my opinion (supported by a legal opinion of DLA Piper), they are outside the scope of the Proposed Plan Change. However, in case it is determined that they are within the scope, this section discusses the issues raised and decision requested in the submission and further submissions, and gives a further recommendation.
- (52) Mr McGrath (DPC52/4) requested that the following statement be added to paragraph (c) of the Introduction of Chapter 14F:

The District Plan will only list buildings and structures in Appendix Heritage 2 with the express written consent of the property owner.

- (53) Four further submissions were received on the submission of Mr McGrath:
- Max Shierlaw (DPC52F/1) supports the submission of Mr McGrath, and requests further amendments regarding the proposed entries for Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office (these requests are discussed in section 5.3 of this report);
 - Philip and Michelle Barry (DPC52F/2) support the submission of Mr McGrath.
 - HNZPT (DPC52F/3) and Historic Places Wellington (DPC52F/4) oppose the submission of Mr McGrath.
- (54) Mr McGrath and the further submitters in support of his submission make the following points:
- On 10 July 2012, Council resolved that “the District Plan will only list heritage buildings with the express written consent of the property owner, apart from New Zealand Historic Places Trust listed buildings.”
 - The inclusion of the 10 July 2012 resolution in the District Plan is long overdue.
 - The Proposed Plan Change is the first opportunity to incorporate the 10 July 2012 resolution in the District Plan.
 - The Lower Hutt community has clearly expressed the view that a heritage listing should be voluntary.
 - It is in the best interests of all citizens that the resolution is included in the District Plan through the Proposed Plan Change.
 - This would be similar to the existing condition in the District Plan regarding Notable Trees, which provides that regardless of a tree’s recognised valued, that

it will not be protected by the District Plan without the consent of the property owner.

(55) The further submitters who oppose the submission of Mr McGrath make the following points:

- The 10 July 2012 resolution is not legally binding on present Council, nor is it policy that Council is required to take into account in decision-making. The resolution has no affect except as an expression of the situation at the time it was made.
- The 10 July 2012 resolution included an important exception for properties listed by Heritage New Zealand Pouhere Taonga.
- The submission of Mr McGrath does not align with the statutory and policy context.
- The requested amendment may result in significant implications for identifying and protecting heritage.
- It would be inappropriate to bind present and future Council by including the statement in the introduction;
- The RMA specifically requires councils to identify heritage values in their area and provide appropriate protection and process around weighing heritage values in decision making about permitting activities by property owners. It is not possible to contract out of that requirement either by council decision or property owner;
- The effect of listing a heritage property in Appendix Heritage 2 is to ensure a sensible, cautious evaluation of heritage values in deciding to allow or disallow an activity to proceed. Property owners are not exempt from these requirements as implemented by Council. There is no absolute property right to conduct activity. To include the statement proposed would be to unduly fetter decisions to add buildings to Appendix Heritage 2, thus providing property owners with a veto over Council decisions that are more properly made on a case-by-case basis.

(56) The Council resolution from 10 July 2012 (referred to in the submission of Mr McGrath) affirmed a recommendation from a District Plan Subcommittee meeting of 12 December 2011. The resolution states:

That Council affirms the District Plan Subcommittee's decision made at its meeting on 12 December 2011 that the District Plan will only list heritage buildings with the express written consent of the property owner, apart from New Zealand Historic Places Trust listed buildings.

(57) This resolution was made in response to a report from Council officers to the District Plan Subcommittee on Council's options for a review of heritage protection provisions in the District Plan. However, it was not a formal decision to change the District Plan.

(58) For Council to make a decision to change the District Plan, the proposed change needs to go through the formal process described by Schedule 1 of the RMA. Under section 32 of the RMA, as part of the formal process Council is required to evaluate whether any proposed objectives are the most appropriate way to achieve the purpose of the RMA, and whether the proposed provisions (which would include which buildings are identified in the District Plan) are the most appropriate way to achieve the

objectives. It would be inappropriate to make any amendment to the District Plan that has not been evaluated under section 32 of the RMA and that has not been publicly notified.

- (59) Despite Council's direction from the 10 July 2012 resolution, the existing approach of the District Plan is not to only list heritage buildings with the express written consent of a property owner. This approach would only be able to be amended as part of a formal plan change process, including an evaluation under section 32 of the RMA.
- (60) In addition, in my view there is little value in adding the statement to the Introduction of Chapter 14F as including the statement in the Introduction would not legally bind Council if/when it considers adding additional buildings to the Appendices of Chapter 14F in the future.
- (61) For these reasons, I recommend that the decision requested in the submission of Mr McGrath and the further submissions of Mr and Mrs Barry and Mr Shierlaw be rejected, and that the decision requested in the further submissions of HNZPT and Historic Places Wellington be accepted.
- (62) This recommendation is not a statement of my position on voluntary versus involuntary protection of heritage buildings in the District Plan. That is an issue that should be investigated, evaluated and consulted on fully as part of a separate plan change. Council intends to undertake a future investigation on the appropriate District Plan approach for the protection of historic heritage to meet its statutory obligations under the RMA. The issue of voluntary versus involuntary protection should be investigated and evaluated as part of that future process.
- (63) I note that the further submission of Mr Shierlaw requests further amendments to the Proposed Plan Change other than those requested in the initial submission of Mr McGrath. These requests are discussed in section 5.3 of this report.

5.3. Only protecting Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office with the consent of the owners of the properties

- (64) Max Shierlaw (*DPC52F/1*) supports the submission of Neil McGrath (DP52/4 and opposes the submissions of Historic Places Wellington (*DPC52/1*), HNZPT (*DPC52/2*), Andy Mitchell (*DPC52/3*) and Emily Innes (*DPC52/5*). In his further submission, Mr Shierlaw requests that Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office are not added to Appendix Heritage 1 without the consent of the owners of the properties.
- (65) However, further submissions can only be made in support or opposition to a submission already made. The further submission of Mr Shierlaw requests additional decisions that go further than the decisions requested by the initial submitters. For this reason, I recommend that decision requested in the further submission of Mr Shierlaw be rejected.

5.4. Adding New Zealand Heritage List numbers to new entries in Appendix Heritage 1

- (66) HNZPT (*DPC52/2.2* to *DPC52/2.5*) requests that the relevant reference numbers from the New Zealand Heritage List ('the NZHL') be included for the entries that would be added to Appendix Heritage 1 by the Proposed Plan Change. These are the entries for the ANZAC Memorial Flagpole, Nash House, the former Lower Hutt Central Fire Station and the former Petone Magistrate's Court.

- (67) The NZHL identifies significant and valued historical and cultural heritage places of New Zealand, and is maintained by HNZPT. The NZHL also includes information on the heritage values of the places that are on the list.
- (68) Each heritage place on the NZHL is given a reference number. The reference number makes it easier for people to find information on a particular heritage place through the HNZPT website (<http://www.heritage.org.nz/the-list>).
- (69) Ideally, all entries in Appendix Heritage 1 would include the NZHL reference number. However, given the limited scope of the Proposed Plan Change and submission of HNZPT, Council is only able to consider adding the NZHL reference number to the entries for the four structures referred to in the submission. While adding the reference number to these entries would enable users of the District Plan to more easily find the information on the NZHL for these four structures, it could lead to confusion given that the majority of structures identified in Appendix Heritage 1 would not have their NZHL reference number included in the Appendix. A plan user could get the impression that these four structures are more significant or have a higher level of recognition in the NZHL. In my opinion, it would be more appropriate for the NZHL reference numbers to be added for all heritage places that are identified in Appendix Heritage 1 through a more comprehensive review of Chapter 14F. For this reason, I recommend that the request from HNZPT to include the NZHL reference numbers in new entries in Appendix Heritage 1 be rejected.

5.5. Adding the former Naenae Post Office to Appendix Heritage 2 rather than Appendix Heritage 1

- (70) HNZPT (DPC52/2.7) states that while the former Naenae Post Office has been nominated for the NZHL, it has not yet been added to the list. HNZPT request that the entry for the former Naenae Post Office be added to Appendix Heritage 2, rather than Appendix Heritage 1 (as proposed by the Proposed Plan Change) as this would be consistent with the existing approach of the District Plan.
- (71) Historic Places Wellington (DPC52/1), Andy Mitchell (DPC52/3) and Emily Innes (DPC52/5) all submitted in support of the proposed amendment to include the former Naenae Post Office in Appendix Heritage 1.
- (72) Chapter 14F of the District Plan identifies heritage structures, buildings and areas in two appendices:
- *Appendix Heritage 1:* For structures, buildings and areas that are identified in the NZHL; and
 - *Appendix Heritage 2:* For structures and buildings that are not identified in the NZHL, but have been identified as making a notable contribution to local heritage.
- (73) The objectives, policies and rules of Chapter 14F apply equally to structures, buildings and areas in Appendix Heritage 1 and Appendix Heritage 2. As a result, the management of the heritage values of a structure, building or area under the District Plan is the same regardless of whether it is identified in Appendix Heritage 1 or identified in Appendix Heritage 2.
- (74) However, given that the approach of the District Plan is to identify structures, buildings and areas from the NZHL in Appendix Heritage 1, and the former Naenae Post Office

is not yet listed in the NZHL, adding the former Naenae Post Office to Appendix Heritage 2 would be more consistent with the existing approach of the District Plan.

- (75) If the former Naenae Post Office is added to Appendix Heritage 2 and is then added to the NZHL at a future date, Council could transfer the entry for the former Naenae Post Office from Appendix Heritage 2 to Appendix Heritage 1 through a future plan change.
- (76) For these reasons, I recommend that the request of HNZPT to add the former Naenae Post Office to Appendix Heritage 2 instead of Appendix Heritage 1 be accepted.

5.6. Incorrect legal description for the former Naenae Post Office and incorrect reference to New Zealand Heritage Pouhere Taonga

- (77) HNZPT (DPC52/2.7 and DPC52/2.8) identifies two errors in the Proposed Plan Change, and requests that these errors are amended.
- (78) The errors are as follows:
- The entry of the Proposed Plan Change for the former Naenae Post Office gives the legal description of the property as PT LOT 5 DP 24038. The legal description for the property should be PT LOT 1 DP 15073 and Section 1 SO 24113.
 - The Proposed Plan Change shows that references to the New Zealand Historic Places Trust (the former name of HNZPT), would be replaced with references to *Heritage New Zealand Pouhere Taonga*. However, in some places the Proposed Plan Change has replaced this term with *New Zealand Heritage Pouhere Taonga*.
- (79) I can confirm that these are errors, and recommend that the decisions requested by HNZPT to correct these errors be accepted.

6. SUMMARY OF DECISIONS REQUESTED AND RECOMMENDATIONS

- (80) The following tables summarise:
- The decisions requested in submissions;
 - The further submissions that support or oppose the submissions; and
 - My recommendations on the decisions requested.
- (81) The reasons for my recommendations are discussed in sections 4 and 5 of this report.

DPC52/1 – Historic Places Wellington	
Request of Submitter	
(82)	Historic Places Wellington [DPC52/1.1 to DPC52/1.5] requests that the Proposed Plan Change be fully implemented.
(83)	Max Shierlaw [DPC52F/1.1] opposes the submission, and requests that Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office are not added to Appendix Heritage 1 without the consent of the owners of the properties.
Recommendation	

- (84) I recommend that the decision requested by **Historic Places Wellington [DPC52/1.1 to DPC52/1.5]** be accepted in part, in that the Proposed Plan Change be fully implemented but with the amendments sought by HNZPT (DPC52/2), including the amendment that the entry for the former Naenae Post Office be added to Appendix Heritage 2 rather than Appendix Heritage 1.
- (85) I recommend that the decision requested by **Max Shierlaw [DPC52F/1.1]** be rejected.

DPC52/2 – Heritage New Zealand Pouhere Taonga (HNZPT)

Request of Submitter

- (86) **HNZPT [DPC52/2.1 to DPC52/2.8]** requests that the Proposed Plan Change is adopted as proposed, with the following amendments:
- Add the former Naenae Post Office to Appendix Heritage 2, rather than Appendix Heritage 1;
 - Add the reference number from the NZHL to the proposed entries for the ANZAC Memorial Flagpole, Nash House, the former Lower Hutt Central Fire Station, and former Petone Magistrate's Court;
 - Correct the legal description for the proposed entry for the former Naenae Post Office;
 - Correct the reference to *New Zealand Heritage Pouhere Taonga*, which should refer to *Heritage New Zealand Pouhere Taonga*.
- (87) **Max Shierlaw [DPC52F/1.2]** opposes the submission, and requests that Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office are not added to Appendix Heritage 1 without the consent of the owners of the properties.

Recommendation

- (88) I recommend that the decisions requested by **HNZPT [DPC52/2.1 to DPC52/2.8]**, including the requested amendments, be accepted in part, but that the NZHL reference numbers are not added to the entries for the ANZAC Memorial Flagpole, Nash House, the former Lower Hutt Central Fire Station, and former Petone Magistrate's Court.
- (89) I recommend that the decision requested by **Max Shierlaw [DPC52F/1.2]** be rejected.

DPC52/3 – Andy Mitchell

Request of Submitter

- (90) **Andy Mitchell [DPC52/3.1]** requests that Amendment 6 of the Proposed Plan Change (regarding adding an entry for the former Naenae Post Office to Appendix Heritage 1) be approved.

- (91) **Max Shierlaw [DPC52F/1.3]** opposes the submission, and requests that Nash House, the former Lower Hutt Fire station and the former Naenae Post Office are not added to Appendix Heritage 1 without the consent of the owners of the properties.

Recommendation

- (92) I recommend that the decision requested by **Andy Mitchell [DPC52/3.1]** is accepted in part, in that I recommend that an entry for the former Naenae Post Office be added to the appendices of Chapter 14F, but that it is added to Appendix Heritage 2, rather than Appendix Heritage 1.
- (93) I recommend that the decision requested by **Max Shierlaw [DPC52F/1.3]** be rejected.

DPC52/4 – Neil McGrath

Request of Submitter

- (94) **Neil McGrath [DPC52/4.1]** requests that the following statement be added to paragraph (c) of the Introduction of Chapter 14F:

The District Plan will only list Buildings and Structures in Appendix Heritage 2 with the express written consent of the property owner.

- (95) **Max Shierlaw [DPC52F/1.4]** supports the submission, and requests that Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office are not added to Appendix Heritage 1 without the consent of the owners of the properties.
- (96) **Philip and Michelle Barry [DPC52F/2.1]** support the submission.
- (97) **HNZPT [DPC52F/3.1]** and **Historic Places Wellington [DPC52F/4.1]** oppose the submission.

Recommendation

Scope

- (98) I recommend that the decisions requested by **Neil McGrath [DPC52/4.1]**, **Max Shierlaw [DPC52F/1.4]**, **Philip and Michelle Barry [DPC52F/2.1]**, **HNZPT [DPC52F/3.1]** and **Historic Places Wellington [DPC52F/4.1]** be rejected as the initial submission, and therefore the further submissions, are outside the scope of the Proposed Plan Change.

Issues Raised in Submission

- (99) However, if it is determined that the submission and related further submissions are within scope, I recommend that the decisions requested by **Neil McGrath [DPC52/4.1]**, **Max Shierlaw [DPC52F/1.4]**, **Philip and Michelle Barry [DPC52F/2.1]** be rejected for the reasons given in sections 5.2 and 5.3 of this report.
- (100) I further recommend that the decisions requested by **HNZPT [DPC52F/3.1]** and **Historic Places Wellington [DPC52F/4.1]** be accepted for the reasons given in

section 5.2 of this report.

DPC52/5 – Emily Innes

Request of Submitter

- (101) **Emily Innes [DPC52/5.1]** supports the Proposed Plan Change and requests that the changes of the Proposed Plan Change are approved, especially with regard to the former Naenae Post Office.
- (102) **Max Shierlaw [DPC52F/1.5]** opposes the submission, and requests that Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office are not added to Appendix Heritage 1 without the consent of the owners of the properties.

Recommendation

- (103) I recommend that the decision requested by **Emily Innes [DPC52/5.1]** is accepted in part, in that I recommend that the Proposed Plan Change should be approved, but that the entry for the former Naenae Post Office is added to Appendix Heritage 2, rather than Appendix Heritage 1.
- (104) I recommend that the decision requested by **Max Shierlaw [DPC52F/1.5]** is rejected.

Appendix A – Summary of submissions and further submissions, with officer’s recommendations

SUMMARY OF SUBMISSIONS AND FURTHER SUBMISSIONS, WITH OFFICER'S RECOMMENDATIONS

DPC52/1 Historic Places Wellington - Felicity Wong					
Sub. Ref.	Amendment & Provision	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
1.1	General	Support	The submitter fully supports the provisions and thinks that the Hutt City District Plan should align with the Heritage New Zealand listings.	To fully implement District Plan Change 52.	Accept in part, in that the Proposed Plan Change be fully implemented but with some amendments sought by Heritage New Zealand Pouhere Taonga (DPC52/2).
1.2	Amendment 2 (Nash House)	Support	The submitter provides some historic background and supports the listing of the Nash House in the District Plan.		
1.3	Amendment 3 (former Lower Hutt Central Fire Station)	Support	The submitter provides some architectural background and supports the listing of the former Lower Hutt Fire Station in the District Plan.		
1.4	Amendment 6 (former Naenae Post Office)	Support	The submitter provides some architectural and historic background and supports the listing of the former Naenae Post Office in the District Plan.		
1.5	Amendments 1 and 8 (ANZAC Memorial Flagpole) and Amendments 4 and 7 (former Petone Magistrate's Court)	Support	The submitter supports the upgrade of the ANZAC Memorial Flagpole and the former Petone Magistrate's Court to Appendix Heritage 1.		
DPC52F/1 Max Shierlaw					
Sub. Ref	Original Sub. Ref. referred to	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation

F1.1	1.1 to 1.4	Oppose	<p>The submitter states:</p> <ul style="list-style-type: none"> • The Lower Hutt community has clearly expressed the view that a heritage listing should be voluntary; and • The Council has previously resolved that properties should only be listed with the consent of the owner of the property. 	That Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office are not listed without the consent of the owners of the properties.	Reject.
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DPC52/2 Heritage New Zealand Pouhere Taonga - Caroline Rachlin					
Sub. Ref.	Amendment & Provision	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
2.1	General	Support	<p>The submitter refers to section 6(f) and section 74(2)(b)(iia) of the RMA and to Objective 15 of the Greater Wellington Regional Policy Statement.</p> <p>The submitter considers that the addition of new heritage items to the heritage schedule of the District Plan will ensure that these significant heritage places are identified and offered the same protection from inappropriate subdivision, use, and development that is provided to buildings and structures that are currently identified in the District Plan.</p> <p>While not seeking to add additional heritage items through this submission, the submitter supports a comprehensive review of Council's Heritage Policy and the heritage provisions of the District Plan.</p>	That the proposed plan change is adopted as proposed, subject to the amendments sought elsewhere in the submission.	Accept.

2.2	Amendments 1 and 8 (ANZAC Memorial Flagpole)	Support in part	The submitter considers the inclusion of the ANZAC Memorial Flagpole in Appendix Heritage 1 to be consistent with the structure of the Heritage Appendices and provides some background on the Heritage New Zealand listing.	Retain the proposed addition of the Anzac Memorial Flagpole as shown (and associated removal from Appendix Heritage 2), subject to an amendment to also include the HNZPT List Number 9438 within the listing description.	Accept in part. However, I recommend that the List Number for the ANZAC Memorial Flagpole is not added to the entry.
2.3	Amendment 2 (Nash House)	Support in part	The submitter supports the addition of Nash House to Appendix Heritage 1 because this recognises the significance of the building and provides for protection under the District Plan. The submitter provides some background information on the Heritage New Zealand listing and the history of the building.	Retain the proposed addition of Nash House to Appendix Heritage 1 and Planning Map C4, subject to an amendment to also include the HNZPT List Number 7742 within the listing description.	Accept in part. However, I recommend that the List Number for Nash House is not added to the entry.
2.4	Amendment 3 (former Lower Hutt Central Fire Station)	Support in part	The submitter supports the addition of the former Lower Hutt Fire Station to Appendix Heritage 1 and provides some background information on the Heritage New Zealand listing and the architectural values of the building. The submitter considers that the inclusion provides for protection under the District Plan.	Retain the proposed addition of the Lower Hutt Central Fire Station (former) to Appendix Heritage 1 and Planning Maps C4 and D4, subject to an amendment to also include the HNZPT List Number 9319 within the listing description.	Accept in part. However, I recommend that the List Number for the former Lower Hutt Central Fire Station is not added to the entry.
2.5	Amendments 4 and 7 (former Petone Magistrate's Court)	Support in part	The submitter considers the inclusion of the former Petone Magistrate's Court in Appendix Heritage 1 to be consistent with the structure of the Heritage Appendices and provides some background on the Heritage New Zealand listing.	Retain the proposed addition of the Petone Magistrate's Court (former) as shown to Appendix Heritage 1 (and associated removal from Appendix 2), subject to an amendment to also include the HNZPT List Number 9439 within the listing description.	Accept in part. However, I recommend that the List Number for the former Petone Magistrate's Court is not added to the entry.

2.6	Amendment 5 (Dudley Cottage)	Support in part	The submitter supports the removal of the listing from Appendix 1, given the place no longer exists. The submitter reminds that pre-1900 sites are subject to the requirements of the Heritage New Zealand Pouhere Taonga Act 2014, which may include the need for an archaeological assessment.	Retain the removal of the Dudley Cottage heritage item from Appendix Heritage 1 and Planning Map C5.	Accept.
2.7	Amendment 6 (former Naenae Post Office)	Support in part	<p>The submitter considers the inclusion of the former Naenae Post Office. The submitter confirms that the building has been nominated and is considered a good candidate for entry onto the NZ Heritage List. The submitter provides some background on the heritage values of the building and considers that the inclusion provides for protection under the District Plan.</p> <p>The submitter notes that as the place is not currently on the NZ Heritage List, for consistency it should be inserted into Appendix Heritage 2, and that the listing description is amended to refer to the correct legal description for the site.</p>	<p>Retain the proposed addition of Naenae Post office (former) to the Heritage Schedules and Planning Map E3, subject to an amendment to:</p> <ul style="list-style-type: none"> • Re-position the scheduling of this heritage building item into Appendix Heritage 2. • Amend the legal description column for this proposed scheduled heritage by deleting the proposed legal description Pt Lot 5 DP24038 and replacing it with Pt Lot 1 DP 15073 and (abbreviated wording as required to) incorporate Section 1 Survey Office Plan 24113. 	Accept.
2.8	Replacement of Terms - Chapter 14F Introduction and Appendix Heritage 1	Support in part	The submitter supports the replacement of outdated terms but notes that in the Introduction 'Heritage New Zealand Pouhere Taonga' is incorrectly referred to as 'New Zealand Heritage Pouhere Taonga' and seeks correction for clarity and	Retain the replacement of terms but ensure that where Heritage New Zealand Pouhere Taonga is inserted in full, that it is inserted as Heritage New Zealand Pouhere Taonga.	Accept.

			certainty		
DPC52F/1 Max Shierlaw					
Sub. Ref	Original Sub. Ref. referred to	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
F1.2	2.1, 2.3, 2.4 and 2.7	Oppose	<p>The submitter states:</p> <ul style="list-style-type: none"> • The Lower Hutt community has clearly expressed the view that a heritage listing should be voluntary; and • The Council has previously resolved that properties should only be listed with the consent of the owner of the property. 	That Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office are not listed without the consent of the owners of the properties.	Reject.

DPC52/3 Andy Mitchell					
Sub. Ref.	Amendment & Provision	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
3.1	Amendment 6 (former Naenae Post Office)	Support	The submitter considers that the Naenae Post Office with its clock tower is the iconic architectural feature of Naenae's modernist shopping mall and that being sold into private ownership has increased the risk and highlights the immediate vulnerability of the building.	To action the recommended amendment, enacting heritage protection for this iconic Naenae building and its clock tower.	Accept in part, in that the entry for the former Naenae Post Office is added to the appendices of Chapter 14F, but that it is added to Appendix Heritage 2, rather than Appendix Heritage 1.

DPC52F/1 Max Shierlaw					
Sub. Ref	Original Sub. Ref. referred to	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
F1.3	3.1	Oppose	The submitter states:	That the former Naenae Post Office is	Reject.

			<ul style="list-style-type: none"> • The Lower Hutt community has clearly expressed the view that a heritage listing should be voluntary; and • The Council has previously resolved that properties should only be listed with the consent of the owner of the property. 	not listed without the consent of the owners of the property.	
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DPC52/4 Neil McGrath					
Sub. Ref.	Amendment & Provision	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
4.1	14F Heritage Buildings and Structures Introduction, Paragraph (c)	Not stated	<p>The submitter refers to a 2012 Council resolution in which Council affirms "...that the District Plan will only list heritage buildings with the express written consent of the property owner, apart from New Zealand Historic Places Trust listed buildings."</p> <p>The submitter argues that PC 52 is the first opportunity to incorporate this Council determination in the District Plan rules about heritage.</p> <p>The submitter considers that it is now timely and proper for the following statement to be added to Paragraph (c) of the Introduction in Chapter 14F Heritage Buildings and Structures: "The District Plan will only list buildings and structures in Appendix Heritage 2 with the express written consent of the property owner."</p> <p>The submitter considers this to be</p>	To add the following statement to Paragraph (c) of the Introduction in Chapter 14F Heritage Buildings and Structures: "The District Plan will only list Buildings and Structures in Appendix Heritage 2 with the express written consent of the property owner."	Reject.

			similar to the existing condition in the District Plan regarding Notable Trees.		
DPC52F/1 Max Shierlaw					
Sub. Ref	Original Sub. Ref. referred to	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
F1.4	4.1	Support	<p>The submitter states:</p> <ul style="list-style-type: none"> • The Lower Hutt community has clearly expressed the view that a heritage listing should be voluntary; and • The Council has previously resolved that properties should only be listed with the consent of the owner of the property. 	<ul style="list-style-type: none"> • That submission DPC52/4 is allowed. • That Nash House, the former Lower Hutt Fire Station and the former Naenae Post Office are not listed without the consent of the owners of the properties. 	Reject.
DPC52F/2 Philip and Michelle Barry					
Sub. Ref	Original Sub. Ref. referred to	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
F2.1	4.1	Support	<p>The submitter states:</p> <ul style="list-style-type: none"> • The inclusion of the Council's resolution dated 10 July 2012 in the District Plan is long overdue, and that it is in the best interests of all citizens that the resolution is included in the Plan through Proposed District Plan Change 52; • The submission of Mr McGrath is not a submission to change the District Plan, and that its purpose and effect is to reflect the resolution of the Council in the District Plan; 	That submission DPC52/4 is allowed.	Reject.

			<ul style="list-style-type: none"> The submission of Mr McGrath aligns with the purpose of Proposed District Plan Change 52; and The submission of Mr McGrath is within scope and it is entirely appropriate and proper for it to be included in the Proposed Plan Change along with the other proposed changes. 		
DPC52F/3 Heritage New Zealand Pouhere Taonga					
Sub. Ref	Original Sub. Ref. referred to	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
F3.1	4.1	Oppose	<p>The submitter states:</p> <ul style="list-style-type: none"> The submission of Mr McGrath does not align with the statutory and policy context and may result in significant implications for identifying and protecting the City's heritage and The submission is on content of the District Plan that is not addressed by the Proposed Plan Change. 	That submission DPC52/4 is disallowed.	Reject. However, if it is determined that the further submission is within the scope of the Proposed Plan Change, I recommend that the decision requested is accepted.
DPC52F/4 Historic Places Wellington					
Sub. Ref	Original Sub. Ref. referred to	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
F4.1	4.1	Oppose	<p>The submitter states:</p> <ul style="list-style-type: none"> As there is currently no proposal to include any building in Appendix Heritage 2, the submission by Mr McGrath 	That submission DPC52/4 is disallowed.	Reject. However, if it is determined that the further submission is within the scope of the Proposed Plan Change, I recommend that the decision requested is accepted.

			<p>relating to the conditions upon which any such future addition should be made is not relevant to the present consultation. Therefore, it should not be considered at this time.</p> <ul style="list-style-type: none"> • The Council resolution of 10 July 2012 is not legally binding on present Council nor is it policy that Council is required to take into account in decision-making. The resolution has no affect except as an expression of the situation at the time it was made. • In any event, the Council resolution of 10 July 2012 included an important exception for properties listed by Heritage New Zealand Pouhere Taonga. • The addition of a clause to the Introduction of <i>Chapter 14F Heritage Buildings and Structure</i> is a significant proposal on which consultation itself is appropriate. It would be inappropriate to bind present and future Council by randomly including that statement through the current Proposed Plan Change. • Historic Places Wellington takes the view that the Resource Management Act specifically requires Councils to identify heritage values in their area and provide appropriate protection and process around weighing 		
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			<p>heritage values in decision making about permitting activity by property owners. It is not possible to contract out of that requirement either by Council decision or property owner. The effect of listing a heritage property on Appendix Heritage 2 is to ensure a sensible, cautious evaluation of heritage values in deciding to allow or disallow activity to proceed. Property owners are not exempt from these requirements as implemented by the Council. There is no absolute property right to conduct activity. To include the statement proposed would be to unduly fetter decisions to add buildings to Appendix Heritage 2, thus providing property owners with a veto over Council decisions that are more properly made on a case by case basis.</p> <ul style="list-style-type: none">• HPW seeks the following decision: to reject the proposal to amend the conditions upon which Council may decide to list a specific building in Appendix Heritage 2. That is reject the proposal be Mr McGraph and to retain the conditions as currently expressed.		
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DPC52/5 Emily Jane Innes					
Sub. Ref.	Amendment & Provision	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
5.1	Amendment 6 (former Naenae Post Office)	Support	The submitter supports the amendment because the Naenae Post Office is a very important and much-loved building with much significance to Naenae and the Lower Hutt community as well as to NZ history and NZ architecture in general. The submitter considers that its iconic modernist design stands out in Hillary Court as a landmark and that it has been the heart of Naenae, physically and symbolically for 60 years.	That Council will make the amendments proposed as outlined in Plan Change 52, especially with regards to adding the Naenae Post Office to the list of heritage buildings in Appendix 1 of the District Plan.	Accept in part, in that the Proposed Plan Change is accepted, but that the entry for the former Naenae Post Office is added to Appendix Heritage 2, rather than Appendix Heritage 1.
DPC52F/1 Max Shierlaw					
Sub. Ref	Original Sub. Ref. referred to	Support / Oppose	Reason/Comment	Decision Requested	Officer's Recommendation
F1.5	5.1	Oppose	The submitter states: <ul style="list-style-type: none"> • The Lower Hutt community has clearly expressed the view that a heritage listing should be voluntary; and • The Council has previously resolved that properties should only be listed with the consent of the owner of the property. 	That the former Naenae Post Office is not listed without the consent of the owners of the property.	Reject.

Appendix B – Recommended amendments

This appendix shows Chapter 14F with the amendments of the Proposed Plan Change and recommended amendments in response to submissions.

- The amendments of the Proposed Plan Change are underlined and ~~struck through~~.
- The recommended amendments and corrections in response to submissions are double-underlined and ~~double struck through~~.

14F Heritage Buildings and Structures

Introduction

A range of buildings and structures exist throughout the City that make a contribution to the heritage of the City. The contribution they make can relate to the era in which they were constructed, association with a person of importance in the community or the event they commemorate. The buildings and structures may be individually important or significant because of their contribution to a group.

The Act places importance on the retention of heritage in a number of ways. Within Part II, Sections 5, 6, 7, and 8 have aspects referring to heritage. These provisions place heritage within the fundamental purpose and principles of the Act. Part VIII of the Act refers to heritage orders and provides the mechanism for creating and administering both heritage protection authorities and heritage orders. The Act also outlines the procedures for the involvement of ~~the New Zealand Historic Places Trust~~ New Zealand Heritage Pouhere Taonga ~~Heritage New Zealand Pouhere Taonga~~ in the resource and building consent processes.

~~The New Zealand Historic Places Trust~~ New Zealand Heritage Pouhere Taonga ~~Heritage New Zealand Pouhere Taonga~~ has responsibilities with respect to historic places and areas, waahi tapu and waahi tapu areas and archaeological sites. ~~The Historic Places Act 1993~~ The Heritage New Zealand Pouhere Taonga Act 2014 details the statutory framework and provides a registration process.

Provision has been made in the Plan for those buildings and structures contributing to the heritage of the City in three ways -

- (a) Objectives, policies, rules and design guides have been developed for buildings in Jackson Street, Patrick Street/Adelaide Street and Riddlers Crescent. For Jackson Street these appear in the Petone Commercial Activity Area and those for Patrick Street/Adelaide Street and Riddlers Crescent are in the Historic Residential Activity Area.
- (b) There are a number of buildings and structures in the City that are registered by ~~the New Zealand Historic Places Trust~~ New Zealand Heritage Pouhere Taonga ~~Heritage New Zealand Pouhere Taonga~~. ~~The Trust~~ New Zealand Heritage Pouhere Taonga ~~Heritage New Zealand Pouhere Taonga~~ has also registered the Workers' Dwelling Act houses in Patrick Street as a Historic Area. Those properties registered by ~~the Trust~~ New Zealand Heritage Pouhere Taonga ~~Heritage New Zealand Pouhere Taonga~~ are listed in Appendix Heritage 1.

- (c) There are a number of other individual buildings and structures that have been identified as making a notable contribution to local heritage. These are listed in Appendix Heritage 2. For those buildings and structures listed in Appendix Heritage 1 and 2, rules have been developed relating to demolition and relocation, to manage work to the exterior facades and to provide the opportunity for a greater range of activities to be considered to assist in the retention of buildings.

14F 1 Issues, Objectives and Policies

14F 1.1 Retention of Heritage Values

Issue

To identify and seek to retain those aspects of the City's heritage reflected in individual buildings and structures, and in groups of buildings.

Objective

To ensure that the heritage values of identified heritage buildings and structures are not unnecessarily lost through demolition or relocation, or compromised by any additional work.

Policy

- (a) To protect the exterior of buildings and structures from inappropriate repairs, alterations or additions that adversely affect heritage values.
- (b) To ensure that where the demolition or relocation of listed heritage buildings and structures is proposed, a thorough assessment and determination is made of the need for that demolition or relocation and of the alternatives available.

Explanation and Reasons

Buildings and structures are an important element in the heritage values of the City. Buildings and structures identified include:

- (a) those with a distinct architectural style;
- (b) those associated with particular or important people in the city; and
- (c) groups of buildings with a particular character.

There are significant structures such as monuments, together with community, commercial, industrial and residential buildings. Generally it is the facade of buildings that contributes to the heritage of the City, through the visual impact of their style, architectural detail and cladding materials.

14F 1.2 Widening the Activity Base

Issue

The opportunity to retain heritage buildings may be limited by the range of activities that can take place in the building. It is appropriate to consider a wider range of activities providing the character and amenity values of neighbouring properties are not affected adversely by the new activity.

Objective

To allow a wider range of activities to assist in the retention of heritage buildings.

Policy

- (a) To allow a wider range of activities in identified heritage buildings providing the character and amenity values of neighbouring properties are not affected adversely by the activity.

Explanation and Reasons

There are financial costs associated with retaining and maintaining a heritage building. In many activity areas there are a range of activities that are permitted or can be considered as a resource consent. To further promote the retention and maintenance of heritage buildings it is appropriate to make provision for the consideration of any activity. In doing so, the adverse effects of the activity on the character and amenities of neighbouring properties would have to be evaluated.

14F 2 Rules

14F 2.1 Permitted Activity

- (a) Identified Heritage Buildings or Structures:

Any alteration, repair or modification of any building listed in Appendix Heritage 1 or 2 involving either-

- (i) Redecoration, repair or alterations which are internal and not visible from the road frontage; or
- (ii) Minor repair, alteration or maintenance to the exterior of a building or structure which do not require a building consent.

14F 2.2 Restricted Discretionary Activities

- (a) Any other alteration, repair or modification of any building or structure listed in Appendix Heritage 1 & 2.

14F 2.2.1 Matters in which Council has Restricted its Discretion and Standards and Terms

- (i) The Nature and Extent of the Works and the Necessity of those Works.
- (ii) The Effect of the Works on the Heritage Value of the Building or Structure.

Assessment will be made of the following relevant factors -

- The extent to which the original building will be adversely affected by the work.
- The extent to which the design and external appearance of the building will be adversely affected.
- The scale of the work in proportion to the original building.
- The compatibility of the style, materials and colouring of the new work and its integration with the original building.
- Restoration of heritage features that may have already been removed from the building.
- The extent to which the works comply with the guidelines in Appendix Heritage 3.

14F 2.2.2 Other Matters

All Restricted Discretionary Activities must comply with other relevant Permitted Activity Conditions

14F 2.3 Discretionary Activities

- (a) Any activity within a building or structure listed in Appendix Heritage 1 and 2, and not within the provisions of the Petone Commercial Activity Area or the Historic Residential Activity Area.
- (b) Demolition or relocation of part or all of a building or structure listed in Appendix Heritage 1 or 2.

14F 2.3.1 Assessment Matters for Discretionary Activities

- (a) The matters contained in section 104 and 105, and in Part II of the Act shall apply.

14F 3 Anticipated Environmental Results

- (a) Opportunity for a range of activities to be considered for identified heritage buildings.
- (b) Protection of buildings and structures from inappropriate additions and alterations.
- (c) Increased awareness of heritage values in the City.

Appendix Heritage 1

(i) Heritage Buildings and Structures registered by the New Zealand Historic Places Trust listed by Heritage New Zealand Pouhere Taonga

MAP NO.	LOCATION	BUILDING/STRUCTURE	HPT REGISTER NZ HERITAGE LIST	LEGAL DESCRIPTION
D4	51 Boulcott Street	The Glebe	Category 1	Lot 2 DP 91194
R9	8km south of Eastbourne, Pencarrow Head	Pencarrow Lighthouse	Category 1	Sec 3 Blk V Pencarrow SD
F2	73 Eastern Hutt Road	Christ Church, Taita	Category 1	Sec 554, Pt Sec 59 Hutt District
<u>A5</u>	<u>Hutt Road, Petone Railway Station</u>	<u>ANZAC Memorial Flagpole</u>	<u>Category 1</u>	<u>Pt Lot DP 10589</u>
B4	499-509 Hutt Road	Western Hutt Railway Station	Category 1	Lot 1 DP 66824
B4	38 Normandale Road	Hutt Minoh Friendship House	Category 1	Lot 1 DP 88473
B5	19 Patrick Street	House	Category 1	Sec 13 Blk II DP 5172
B5	22 Patrick Street	House	Category 1	Sec 10 Blk III DP 5172
A4	36 Riddlers Crescent	Collett House	Category 1	Lot 2 DP 10877
<u>C4</u>	<u>14 St Albans Grove</u>	<u>Nash House</u>	<u>Category 1</u>	<u>Lot 7 DP 8552</u>
B5	The Esplanade	Wellington Provincial Centennial Memorial (Petone Settlers Museum)	Category 1	Lot 2 DP 69217
<u>C4, D4</u>	<u>155-157 Waterloo Road</u>	<u>Lower Hutt Central Fire Station (former)</u>	<u>Category 1</u>	<u>Lot 2 DP 82046</u>
B5	43 Adelaide Street	House	Category 2	Sec 17 Blk II DP 5172
B5	54 Adelaide Street	House	Category 2	Sec 2 Blk VIII DP 5172
B5	4 Britannia Street	St. David's Church	Category 2	Pt Lot 14 Deeds Plan 109
B5	12 Britannia Street	St. Augustine's Church	Category 2	Pt Lot 5 DP 295
E8	24 Coast Road	Old Methodist Church and Cemetery	Category 2	Pt Sec 3 Wainuiomata District

<u>B5</u>	<u>13 Elizabeth Street</u>	<u>Petone Magistrate's Court (former)</u>	<u>Category 2</u>	<u>Pt Lot 143 DP 1232</u>
E4	16B Hamerton Street	Balgownie House	Category 2	Lot 2 DP 89487
E4	16B Hamerton Street	Balgownie Generator Building	Category 2	Lot 2 DP 89487
C4	149-151 High Street	Lower Hutt Post Office	Category 2	Lot 1 DP 90205
D4	705 High Street	Coppelle Cottage	Category 2	Lot 6 DP 8039
D4	132 Kings Crescent	Orr House	Category 2	Lot 1 DP 41913
C4	64 Knights Road	Offices	Category 2	Lot 2 DP 28029
F7, F8	Main Road (Wainuiomata School Grounds)	Wainuiomata Museum Building	Category 2	Pt Sec 2 Wainuiomata District
C8	Marine Drive, Days Bay	Days Bay Wharf	Category 2	-
C8	Marine Drive, Days Bay	Wellesley College	Category 2	Pt Sec 33 Harbour District
C8	603A Marine Drive, Days Bay	House	Category 2	Lot 1 DP 307236
C6	Marine Drive, Lowry Bay	Skerrett Boat Shed	Category 2	-
B8	111 Marine Parade	House	Category 2	Pt Lot 56 DP 1256
B8	Marine Parade	Rona Bay Wharf	Category 2	Lot 1 DP 30383
B9	283A Muritai Road	The Glen	Category 2	Lot 6 DP 15621
B9	287 Muritai Road	Glenwood	Category 2	Lot 1 DP 75547
B9	493 - 495 Muritai Road	Eastbourne Borough Council Omnibus Service Garage	Category 2	Lot 1 LT 328393
B5	2 Patrick Street	House - Young New Zealander	Category 2	Sec 22 Blk VIII DP 5172
B5	4 Patrick Street	House - Kia Ora	Category 2	Sec 20 Blk VIII DP 5172
B5	8 Patrick Street	House - Spero	Category 2	Sec 16 Blk VIII DP 5172
B5	10 Patrick Street	House - Domus	Category 2	Sec 14 Blk VIII DP 5172
B5	14 Patrick Street	House - Kia Ora	Category 2	Sec10 Blk VIII DP 5172
B5	16 Patrick Street	House - Design No. 3	Category 2	Sec 8 Blk VIII DP 5172
B5	18 Patrick Street	House - York	Category 2	Sec 6 Blk VIII DP 5172
B5	24 Patrick Street	House - Young New Zealander	Category 2	Sec 8 Blk III DP 5172
C4	60 Penrose Street	House	Category 2	Lot 2 DP 24290
C4, D4	49 Pretoria Street	House (The Crescent)	Category 2	Lot 1 DP 18312
C5, C6	43 Seaview Road	Ford Motor Co. Workshop	Category 2	Lot 1 DP 83488
<u>C5</u>	<u>Seaview Road</u>	<u>Dudley Cottage</u>	<u>Category 2</u>	<u>Pt Lot 5 DP 24038</u>
A5	66 Sydney Street	House (Price's Folly)	Category 2	Lots 7 & 8 DP 412
B5	The Esplanade	Iona Memorial Cross	Category 2	Lot 2 DP 69217
C4	75 Woburn Road	Gatehouse, Vogel House	Category 2	Lot 1 DP 22396
C3, C4	125 Western Hutt Road	Lochaber / Prospect College	Category 2	Sec 1 SO 37208
C3	760 Western Hutt Road	Casa Loma	Category 2	Lot 7 DP 54222
<u>E3</u>	<u>27 Hillary Court</u>	<u>Naenae Post Office (former)</u>		<u>PF Lot 5 DP 24038</u>

(ii) Heritage Areas registered by the New Zealand Historic Places Trust listed by Heritage New Zealand Pouhere Taonga

Patrick Street Workers' Dwellings Precinct, Petone

Described as those houses on Patrick Street and Adelaide Street constructed under the Workers' Dwelling Act:

Patrick Street Nos. 2, 4, 8, 10, 14, 16, 18, 19, 22, 24;

Adelaide Street Nos. 43, 54.

Jackson Street Historic Area, Petone

Described as those buildings located along both sides of Jackson Street, between the intersection with Victoria Street in the west and Cuba Street in the east.

Lower Hutt Civic Centre Historic Area

The Lower Hutt Civic Centre Historic Area has road boundaries to the south, west and north. These are clockwise Woburn Road, Queens Drive and Laings Road. To the east, Myrtle Street forms the boundary then continues around the Club grounds, and from there on, separates private property from Council-owned and church-owned land back to Woburn Road.

Appendix Heritage 2

Heritage Buildings and Structures

MAP NO.	LOCATION	BUILDING/STRUCTURE	LEGAL DESCRIPTION
B5	49 Adelaide Street	House - Design No. 3	Sec 15 Blk III DP 5172
B5	52 Adelaide Street	House - Domus	Sec 1 Blk VIII DP 5172
A5, B5	34 Bay Street	Bay Lodge Boarding House	Lot 26 & Pt Lot 27 DP 51
B5	52 Beach Street	Petone Labour Hall	Lot 70 DP 51
B5	1 Britannia Street	House	Lot 7 DP 80691
B5	4 Britannia Street	Presbyterian Manse	Pt Lot 14 Deeds Plan 109
B5	6 Britannia Street	Petone Community House	Lot 1 & Pt Lot 2 DP 295
B5	32 Britannia Street	House	Lot 1 DP 29647
B5	33 - 41 Britannia Street	Sacred Heart Church Facade	Lot 3 DP 51283
B5	40A Britannia Street	House	Lot 1 DP 12784
B5	54 Britannia Street	House	Lot 1 DP 50869
B4, B5	57 Britannia Street	House	Lot 6 DP 1363
B9	Burdan's Gate	Wahine Memorial	-
E8	103 Coast Road	August Cottage	Lot 3 DP 25757
E8	202 Coast Road	Cottage	Lot 4 DP 15751
R6	728 Coast Road	Jackson's Farm	Pt Sec 15 Wainuiomata Dist
R6	728 Coast Road	Jackson's Farm	Pt Sec 15 Wainuiomata Dist
B5	13 Elizabeth Street	Old Court House	Pt Lot 143 DP 1232
R6	Fitzroy Bay	Paiaka Wreck	-
D4	722 High Street	Anson House	Lot 4 DP 78049
E3	27 Hillary Court	Naenae Post Office (former)	Pt Lot DP 24038 Pt Lot 1 DP 15073 and Section 1 SO 24113
F8	68 Hine Road	Sinclair House	Pt Lot 2 & Lot 3 DP 20657
A5	Hutt Road	Anzac Flagpole	(Petone Railway Station)
A4	83-85 Hutt Road	Alfred Coles House	Pt Lots 3 & 4 DP 702
A4	95 Hutt Road	House (not motel units)	Lot 1 DP 12616
B4	105 -119 Hutt Road	Railway Settlement Houses	Lot 2 DP 67024
B4, A4	162 Hutt Road	Photocraft Studio	Lot 1 DP 552
B4	184 Hutt Road	Bay Villa	Lot 12 DP 2143

B4	186 Hutt Road	Bay Villa	Lot 13 DP 2143
B4	188 Hutt Road	Bay Villa	Lot 14 DP 2143
R3	Korokoro, Belmont Regional Park	Korokoro Dam	Pt Sec 3 Maungaraki Village
C4	Laings Road	Hutt City Council Administration Building	Pt Lots 4 - 9 & 16 DP 89, Lots 17 - 22 DP 89 & Lot 1 DP 12766
C4	Laings Road	Town Hall, Horticultural Hall	Pt Lots 1-3 DP 89, Lots 23 - 25 DP 89, Pt Sec 25 Hutt Dist. & Pt 4 DP 664
C4	Queens Drive	Little Theatre and Library Building	Pt Lots 32 - 38 DP 89, Pt Lot 4 DP 15844, Pt 1 DP 17883, Pt Sec 25 Hutt Dist, Pt Stream
A4	1 Maungaraki Road	House	Lot 2 DP 29729
C4	19 Myrtle Street	House	Lot 1 DP 65068
A5	13 Nelson Street	House	Pt Lot 14 DP 47 & Pt Sec 4 Hutt District
A5	15 Nelson Street	House	Pt Lot 14 DP 47 & Pt Sec 4 Hutt District
A5	19 Nelson Street	House	Pt Lot 12 DP 47 & Pt Sec 4 Hutt District
A5	22 Nelson Street	House	Lot 33 DP 47
A5	25 Nelson Street	House	Lot 1 DP 81017
A5	34 Nelson Street	House	Lot 2 DP 7869
A5	34A Nelson Street	House	Lot 1 DP 7869
A5	36 Nelson Street	House	Pt Lot 26 DP 47
A5	38 Nelson Street	House	Lot 1 DP 61067
A5	40 Nelson Street	House	Lot 25 DP 47
A5	42 Nelson Street	Methodist Church	Lot 24 DP 47 & Pt Lot 7 DP 6395
A5	56 Nelson Street	House	Lot 15 DP 79
A5	70 Nelson Street	House	Lot 15 DP 101
B4	121 Nelson Street	Drill Hall	Sec 1 SO 37671
B4	Normandale Road	Old Rock Horse Trough	Road Reserve
A4	38 Rakeiora Grove	House	Pt Lot 2 DP 25354
G2	81 Stokes Valley Road	Old Stokes Valley School House	Lot 1 DP 19539
A5	49 Sydney Street	House	Pt Lots 24 & 25 DP 321
A5	The Esplanade	Petone Rowing Club	Lot 2 DP 69217
A5	The Esplanade	Petone Wharf	Lot 3 DP 69217
A5	The Esplanade	T.S.Tamatoa	Lot 2 DP 69217
D7	153 Wainuiomata Rd	House	Lot 5 DP 19427
A5	Western Hutt Road/ Cornish St corner	Marble wall at the Woollen Mill site	Lots 28 & 29 DP 33346 and Pt Road
D4	313 - 319 Waiwhetu Rd	Epuni School	Sec 115 Epuni Hamlet
C4	61 - 69 Woburn Road	St James Church	Lot 2 DP 17883
C4	75 Woburn Road	Vogel House	Lot 1 DP 22396

Appendix Heritage 3

Design Guidelines

Riddlers Crescent, Hutt Road and Patrick Street, Adelaide Street, The Esplanade and Jackson Street

Introduction

The purpose of this appendix is to outline central conservation principles in order to assist owners in the design of alterations and additions to existing buildings and new buildings in the Historic Area.

Conservation Principles

Conservation should follow the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value. Conservation processes include maintenance, stabilisation, repair, restoration, reconstruction, and adaptation. The main principles of the Charter include:

- (i) All work is to be documented.
- (ii) Important information which can be gained from the building materials should not be removed, destroyed or changed.
- (iii) Any conservation work is to be the minimum and reversible where technically possible.
- (iv) Any conservation work shall be identifiable on close inspection (date stamping for example) while visually and physically compatible with original material.
- (v) The aesthetic, historical, and physical integrity of the building must be respected.
- (vi) Conservation advice from appropriately trained and experienced building conservation professionals should be followed.
- (vii) The level of existing heritage values should not be reduced.

Selection of Conservation Processes

Where there is authenticity in original and significant later designs, conservation work should respect these designs through maintenance, repair, stabilisation, restoration, or compatible adaptation.

Where there is authenticity in materials, maintenance is appropriate. Repair and restoration are also acceptable using matching materials which are identified with discretely located date stamps.

Where there is authenticity in workmanship the aim of conservation is retention of significant material through maintenance and repairs using traditional skills or compatible new techniques.

Authenticity in setting requires the retention of the relationship of the setting with the structure.

Central Principles

Restoration

Restoration of missing parts is encouraged where there is a high level of authenticity of architectural design. Restoration of parts can only be carried out where there is conclusive evidence.

Repair

Repair is favoured over replacement, and repair using materials matching the texture, form, profile, strength, and colour is required. This applies to both the finish and substrate.

Repair ensures the retention of the maximum of historic material. The use of inappropriate substitute materials can compromise the architectural design of the house while using materials which are not compatible in strength and other physical characteristics can result in damage to the authentic material.

Additions

There should be a visual distinction between the authentic house and an addition, but be sympathetic in form, scale, cladding materials, proportions and colour, and should not comprise the majority of the house.

In order to retain the authenticity and historic integrity of the listed house, any addition should be distinguishable as being new work. Copying elements and details can lead to confusion between authentic and new work whereas a modern sympathetic addition can enhance the authentic house and make a significant contribution to modern architecture.

New Buildings

There should be a visual distinction between the authentic house and a new dwelling, but the new buildings should be sympathetic in form, scale, cladding materials, proportions and colour.

It is not intended that new buildings should copy the old. Replica buildings create confusion as to what is original, and what is new, debasing both. A new building should make a positive contribution to modern architecture while retaining the essential character of the area.

Style and Character

The main characteristics of the style and character of the house should be retained.

The architectural and aesthetic significance of a house is largely determined by its style, and will guide the design of modifications. The style of the house will be reflected in the design of symmetry (or lack of), materials, openings, roof forms, and details.

Patina

There should be respect for the patina of age of the house.

An old house should not look new. Patina is the natural weathering of the house materials over time, and can contribute significance to the house. Patina is not dirt.

Scale

Any modifications should respect the scale of the original house and significant later additions, and not be visually dominant.

Visual dominance of modifications will depend on the scale of the authentic listed house. For small scale houses even a small modification may radically alter its character.

Setting

The relationship of the house with the setting should be maintained. Following design guidelines for the areas concerned will ensure the setting is maintained.

Street Elevation

The street elevation should be modified least, and if possible not at all. Therefore the preferred elevation to be modified, if necessary, is a rear or secondary elevation. Where the house is located on a corner, two street elevations become significant, and should not generally be changed.

The street elevation is often the most important elevation of the house, where the distinctive character of the house is presented and which it is important to retain. In some instances it may not be appropriate to modify a listed house.

Appendix C – Legal opinion from DLA Piper



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Our ref: 1413453

18 February 2019

Nathan Geard
Environmental Policy Analyst
Hutt City Council
By email

Dear Nathan

WHETHER A SUBMISSION IS 'ON' A PLAN CHANGE

- 1 You have asked us to consider whether a submission by Mr McGrath (**submission**) on Plan Change 52 (**PC52**) is 'on' PC52.
- 2 We provide below our understanding of the background and information on the legal tests for whether a submission is 'on' a plan change. However, it is clear to us that the submission is not 'on' the plan change because it does not address the alteration to the status quo brought about by the plan change.
- 3 We recommend that the decision maker and submitter are advised that the submission (and further submissions) are not on the plan change, and the relief sought cannot accordingly be granted.

Plan Change 52

- 4 Hutt City Council (**Council**) notified PC52 in October 2018. PC52 seeks to:
 - 4.1 Amend the appendices and maps of the Heritage chapter of the District Plan to ensure that all buildings and structures that are listed in the New Zealand Heritage List are listed in Appendix Heritage 1 and 2 of the District Plan. This consists of eight changes to the list: three buildings being removed from the Appendix and five buildings being inserted.
 - 4.2 To replace terms that are used in the Heritage chapter which, due to amendments to legislation, are now out-of-date. Primarily this consists of updating references to Heritage New Zealand Pouhere Taonga.
- 5 PC52 does not review or propose changes to the objectives, policies and rules.

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Submission

6 Neil McGrath's submission (DPC52/4) sought that:

... the following statement be added to Introduction Paragraph (c) in Chapter 14F Heritage Buildings and Structures on page 15 of the Proposed District Plan Change 52 Document:

"The District Plan will only list Buildings and Structures in Appendix Heritage 2 with the express written consent of the property owner"

Legal tests for scope

7 The key legal principles for determining whether a submission is 'on' a plan change have been established by the High Court in a number of cases.¹ In *Palmerston North City Council v Motor Machinists Ltd*² the High Court referred to its earlier decision of *Clearwater Resort Ltd v Christchurch City Council*³ and confirmed that a two-limbed test must be satisfied:

7.1 The submission must address the proposed plan change itself, that is it must address the extent of the alteration to the status quo brought about by that change; and

7.2 It must also be considered whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the plan change process.

8 In considering the first limb of the *Clearwater* test, the High Court in *Motor Machinists* found that the submission must reasonably be said to fall within the ambit of the plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be 'on' the plan change.⁴

¹ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003, *Option 5 Inc v Marlborough District Council* (2009) 16 ELRNZ 1 (HC) and *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 (HC). See also the decision of the High Court in *Albany North Landowners v Auckland Council* [2016] NZHC 128 which indicates that in a whole of plan review such as the Proposed Auckland Unitary Plan as opposed to a relatively discrete plan change or variation, the scope for a submission to be on the plan is likely to be very wide.

² *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 (HC) at [80] to [82] and [91] (d) and (e).

³ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02.

⁴ *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 (HC) at [81].

- 9 In relation to the second limb of the *Clearwater* test, the High Court identified the risk that to override the reasonable interests of people and communities by a ‘submissional side-wind’ would not be robust, sustainable management of resources. Given the other options available, which include submitting an application for a resource consent, seeking a further public plan change, or a private plan change under Part 2 of the First Schedule to the Resource Management Act 1991 (RMA), the High Court in *Motor Machinists* was of the view that a precautionary approach to jurisdiction imposes no real hardship.⁵
- 10 In applying the established case law recently in *Te Tuma Kaituna 14 Trust v Tauranga City Council*⁶, the Environment Court referred with approval to its previous decision in *Bluehaven Management Limited v Western Bay of Plenty District Council*⁷. That case found that a submission which went beyond an alteration to the status quo as entailed in a plan change might still be in scope provided:
- 10.1 The plan change proposed some change to the management regime for the relevant activity; and
- 10.2 The evaluation report prepared for the plan change addresses, or should have addressed, the matter raised in submission.

Assessment

- 11 PC52 is clearly a very limited plan change, relating only to the addition and removal of eight individual properties, and updating of the language in the Plan to reflect current naming conventions. The change proposed by Mr McGrath concerns a policy decision by the Council as to when the Council will list a building in the Plan as having heritage features. It is a fundamental restriction or constraint on the listing of heritage buildings for protection under the Act. It is likely to raise a range of further issues from both those who oppose and support heritage protection. It fundamentally changes and expands the focus of this plan change.
- 12 In our view, the change to the status quo is primarily confined to the eight buildings where changes in heritage status have been made. Accordingly, Mr McGrath's submission is outside that status quo change.

Next Steps

- 13 You have asked us how to proceed if we consider that the submission is not 'on' PC52. In short, because the submission is not on PC52, it means the submission provides no scope for any amendment to the notified version of PC52. We set out briefly below the law on scope to make amendments to a notified plan change, and some recommendations for discussions with the decision maker and the submitter.

⁵ *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 (HC) at [78] and [82].

⁶ *Te Tuma Kaituna 14 Trust v Tauranga City Council* [2018] NZEnvC 21 at [26].

⁷ *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [58] to [60].

- 14 When making a decision on a plan change, the Council (or the decision maker with the appropriate delegations) is restricted in terms of the scope to make changes to the proposed Plan. The scope for amendment to a notified plan generally lies between the provisions of the notified version of the proposed Plan, and the relief sought in submissions on the proposed Plan. Any submission that provides scope must be a valid submission, i.e. it must be 'on' the plan change. According to the Courts, any amendment made to the proposed Plan must be a reasonably foreseen logical consequence of a valid submission.⁸
- 15 The rationale behind this approach relates to procedural fairness. Adequate notice and opportunity must be given to those who might seek to take an active part in the hearing if the proposed changes would not have been within the reasonable contemplation of the original reference.⁹
- 16 Accordingly, as the submission by Mr McGrath is not on PC52, it does not provide any scope to the Council to make the change sought either in the submission, or in any further submission that is not on PC52. There is no requirement that the submitter withdraw the submission.
- 17 In terms of actions from here, we recommend that:
- 17.1 The decision maker on PC52 be advised that our view is that the submission is not 'on' PC52, and therefore does not provide any scope for amendment to the notified version of PC52. After receiving that advice, the decision to not amend the plan as requested by the submission resets with the decision maker.
- 17.2 The submitter, and further submitters, be advised that their submissions are not 'on' PC52, as they extend beyond the narrow bounds of PC52, and therefore do not provide scope for any amendment to the notified version of PC52.
- 18 Please do not hesitate to contact us if you wish to discuss.

Yours sincerely



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⁸ *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [115].

⁹ *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 at [74].