



the architectural centre inc.
PO Box 24178 Wellington

11 November 2018

Andrew Coleman
Chief Executive
Heritage NZ
andrew.coleman@heritage.org.nz

Tēnā koe Andrew

1. We understand from others that Heritage NZ (HNZ) has not given notice of a requirement for a heritage order (HO) for the Wellington Teachers Training College at Karori (W TTC) due to a perception that doing so will expose HNZ to undue financial risk. We dispute this conclusion.
2. There are two provisions in the Resource Management Act concerning heritage orders which explicitly refer to financial matters: s198 and s191(3)(a) (and the provisions for parallel Board of Inquiry and Environment Court processes i.e. RMA ss149P, 149U, 198E, 198K).

Section 198 Environment Court may order land taken, etc

3. Section 198 applies when a land owner has been unable to sell the land subject to a requirement or a heritage order at a market price, and they assert that the requirement or heritage order renders the land incapable of reasonable use. One possible outcome of s198 is that the Court makes "*an order giving the heritage protection authority **the option** of either withdrawing the requirement or causing the heritage order to be removed, as the case may be, or taking the land under the Public Works Act 1981*" (RMA s198(1)) (emphasis added).
4. Because the Court **must** give the HPA the option of withdrawal there is no possible financial risk. If it was determined by the Court that the heritage order rendered the land incapable of reasonable use, the HPA could withdraw the requirement at no financial cost.
5. This interpretation is explicitly made in *B.S. Roberts & Otrs v Western Bay of Plenty District Council*:

*"it does not follow that a heritage order will necessarily lead to acquisition ... even where the criteria of section 198(1) are met, the requiring authority has the option of removing the requirement as opposed to taking the land. Therefore, it cannot be said that compensation to the land owner will necessarily follow."*¹

¹ *B.S. Roberts & Otrs v Western Bay of Plenty District Council* (A163/2006) at [40](2)-[40](3)

Section 191(3)(a) Recommendation by territorial authority

6. Section 191 prescribes how a territorial authority (TA) determines a recommendation in relation to a HPA's notice of requirement (NoR) for a heritage order. The TA may recommend a heritage order (with or without conditions) or that the requirement be declined. The TA may include any condition that it considers appropriate, including:

"a condition that the heritage protection authority reimburse the owner of the place for any additional costs of upkeep of the place required as a result of the making of the heritage order" (s191(3)(a)).

7. There is no obligation for the heritage protection authority (HPA) to agree to a heritage order with conditions. There is no financial liability resulting from not taking up such an encumbered HO. The HPA can withdraw a requirement or a HO at anytime.
8. Section 191(3)(a) relates to the additional costs of upkeep as a result of the making of the heritage order, not as a result of giving notice of requirement.
9. Section 191(3)(a) is distinct from an appeal related to the refusal by an HPA to give consent to a proposal to do something on the land subject to a requirement or heritage order. That situation is addressed in s195, where the Court *"may confirm or reverse the decision appealed or modify the decision in such manner as the court thinks fit"* (s195(3)(c)). There is no financial risk to the HPA associated with s195.
10. Section 191(3)(a) has been in the RMA since it was enacted in 1991, and this section does not appear to have prevented HNZ from carrying out its Heritage New Zealand Pouhere Taonga Act s13(1)(i) function *"to act as a heritage protection authority"* in the past.
11. We also note that the HPA (like a Requiring Authority for a designation) decides whether or not the TA's recommendation is appropriate. If the HPA rejects the TA's recommendation then the HPA must give reasons. The HPA's decision is subject to appeal.

Conclusion

12. If it is that concern regarding financial risk has been the determining factor causing HNZ to not protect the WTTC, then we are of the view that HNZ is incorrectly relying on events of an unknown magnitude that have not yet occurred, and that may not occur, to prevent HNZ acting in accordance with its statutory functions under HNZA s13(1)(i).
13. Additionally, the Architectural Centre is of the view that if either s198 or s191 financial sections are called on by either the Environment Court decision or a council hearing panel's recommendation, and are of a magnitude which are beyond HNZ resources, they can be mitigated by withdrawing the requirement or HO. Nothing in this letter, of course, addresses normal legal costs which HNZ regularly accepts when it is involved in court proceedings.
14. Consequently we believe that any case for financial risk to HNZ giving notice of a requirement for a heritage order on WTTC is both overstated and premature. Financial risk is not a valid reason for inaction in relation to the urgent need to protect the WTTC.

We consider this matter to be one of the utmost urgency. We understand that the interiors of the WTTC are currently being demolished. Further delay will see the demolition of another heritage site under HNZ's watch.

Nāku iti noa, nā



Christine McCarthy
President, Architectural Centre
arch@architecture.org.nz

- cc. Hon. Grant Robertson, MP, Wellington Central
- cc. James Blackburne, Chair, Historic Places Aotearoa
- cc. Richard Bentley, Save the Karori Campus Group
- cc. Ian Bowman, Chair, ICOMOS NZ
- cc. Philip Hartley, Chair, Docomomo
- cc. Stefan Corbett, Manager, Heritage Policy, Ministry for Culture and Heritage
- cc. Shaun Killerby, Advisor, Parliamentary Commission for the Environment