



**Philip Milne**  
Barrister  
Waterside Chambers  
PO Box 15121 Miramar  
Wellington 6243  
[philip.milne@waterfront.org.nz](mailto:philip.milne@waterfront.org.nz)

Christine McCarthy  
President  
Architectural Centre  
Wellington 6147

19 November 2018

Dear Christine,  
as requested, I have reviewed the letter you have written to Andrew Coleman, Chief Executive, Heritage NZ, dated 11 November 2018 regarding financial risk and heritage orders.

I confirm that I agree with your summation. In particular, I agree that if Heritage NZ applied for and was granted a heritage order, it would have no direct liability of costs associated with the site. The only potential liability would be if the Environment Court made an order pursuant to section 198. That provision imposes quite a high threshold (*incapable of reasonable use*) and still allows the Heritage Authority the option of withdrawing the Order rather than purchasing the land concerned.

*(b) the applicant has tried but been unable to enter into an agreement for the sale of the estate or interest in the land subject to the heritage order or requirement at a price not less than the market value the land would have had if it were not subject to the heritage order or requirement; and*

*(c) the heritage order or requirement renders or will render the land in respect of which it applies, incapable of reasonable use,—*

*the Environment Court may make 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](#).*

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Philip Milne', with a horizontal line underneath.

Philip Milne Barrister and Independent RMA Commissioner