

## Demolition of Canterbury's heritage buildings – what are the rules?

**As controversy continues to surround the demise of Christchurch's heritage buildings following the 2011 earthquakes, Anderson Lloyd Partner Owner Mark Christensen provides clarity around the rules and regulations associated with demolishing these structures.**

Many of Christchurch's listed and significant heritage buildings have been demolished since the 2011 earthquakes. By February 2014, 43 percent of central Christchurch heritage buildings listed with the New Zealand Historic Places Trust had been pulled down.

Demolition of the Majestic Theatre on Manchester Street went ahead in March, despite city councillors voting for an urgent meeting with the Christchurch Central Development Unit (CCDU) to seek withdrawal of the demolition notice granted under Section 38 of the Canterbury Earthquake Recovery Act.

The Majestic Theatre was protected in the City Plan as a Group Two Heritage Building. However CCDU says it took into account views of the city councillors and the Historic Places Trust in issuing the notice, saying restoration could have cost in excess of \$18 million.

While it is widely believed that a classification by the New Zealand Historic Places Trust protects a building, this is not the case. The New Zealand Historic Places Trust is required to grant or decline archaeological consents for pre-1900 buildings. However, whether a heritage building can be demolished is governed by the Resource Management Act (RMA), which allows buildings to be listed in a district plan for them to be protected.

The situation in Canterbury is more complicated than this because of the Canterbury Earthquake Recovery Act 2011. Section 38 of the Act gives CERA's Chief Executive power to carry out or commission demolition. Under this section, CERA may give notice to a building owner that demolition work must be carried out. The owner must respond within 10 days saying they intend to carry out the works, or that CERA may commission the demolition on their behalf.

Building owners may also apply to CERA for a Section 38 notice to demolish their building. In February, CERA declined an application by the owner of the heritage-listed Public Trust building on Oxford Terrace because it did not meet the Act's criteria. What criteria the Chief Executive must use in deciding on whether or not to issue a demolition notice, however, is far from clear. CERA's website says the power is to be exercised for 'dangerous buildings', but how that is assessed and whether there may be other possible reasons is not stated in the Earthquake Recovery Act.

The Christchurch City Council has issued CERA an exemption from the requirements of the Building Act 2004 so that any demolitions by the Authority may be undertaken without a building consent. In addition, Canterbury Earthquake Recovery Minister Gerry Brownlee has directed a change to the City Plan which allows demolition of a building undertaken by CERA to be a permitted activity not requiring consent under the RMA.

So, if the Canterbury Earthquake Recovery Act was not in force, what are the normal rules under the RMA for obtaining consents to demolish heritage buildings?

There are two cases illustrating the stringent tests that apply under the RMA and which produced different results. This is due to recognition by the Environment Court that where the building owner has put considerable expenditure and effort into looking at viable alternatives to demolition, and no such alternatives exist, then demolition may occur.

The first example relates to the Ashburton Railway Station, demolition of which required resource consent under the Ashburton District Plan. The application was originally rejected by the council, but appealed to the Environment Court.

The Ashburton Railway Station was built in 1917 to the design of renowned architect Sir George Troup. It is registered as a Category Two Historic Place. The owner argued they had tried to keep the building preserved and in productive use, and that at least some of this expenditure should be recouped by demolishing the old structure and constructing new commercial premises. To attract a tenant in its current state, earthquake strengthening in the region of \$1 million would be required.

The Ashburton Heritage Trust was formed in 2008 in an attempt to save the station from demolition, and hoped to purchase it if funds could be obtained. There were prolonged negotiations between the owner, council and the Trust in the hope of finding an economically-viable use for the building. It was finally agreed between the parties that all options had been exhausted, and a joint memorandum was signed to that effect.

On that basis, the Court overturned the council's decision and granted consent for demolition to proceed.

The second case concerns the Harcourts Building in central Wellington, classified as Category One under the Historic Places Act and listed as a heritage building under the Wellington City Plan.

In February 2013 the Wellington City Council issued the owner with a notice that deemed the building as earthquake-prone and requiring either strengthening or demolition. The building had been assessed as meeting 17 percent of the New Building Standard (NBS). While the Building Act 2004 requires strengthening to at least 33 percent, the owner's position was that it needed to be closer to 100 percent in the current market.

Fearing for their safety, the remaining tenants had recently vacated the building after the 2012 earthquake. The owner argued the building was unlettable, uninsurable and a financial burden. They also maintained that all reasonable alternatives to demolition had been explored and these were commercially unsustainable.

Although the Court did consider that the building was unable to support itself financially, or make an acceptable return on investment, this was not a reason to justify demolition. The building was found to have significant heritage and amenity value.

The Court acknowledged concerns about setting a precedent but emphasised that every application has to be assessed on its merits and measured against the provisions of the RMA and relevant district plan. In this case, the district plan required alternatives to be exhaustively excluded before demolition is justified.

The Court was not satisfied the owner had explored alternative usage options to the level required, and consent to demolish was declined. The owner appealed to the High Court on questions of law, with the decision being released last week.

The High Court has said the Environment Court must reconsider the application as the Resource Management Act does not require such a high standard for demolition – rather, heritage buildings can be demolished in “appropriate” circumstances.

The High Court also said the Environment Court failed to give proper consideration to public safety if the Harcourts building remains as is, and should have taken into account the realistic possibility that the building could be left for more than 13 years.

It is clear there is much dissatisfaction (not least from the Christchurch City Council and the Historic Places Trust) with the lack of consultation involved in CERA's issuing of Section 38 demolition notices. Confusion also surrounds the criteria used by CERA when deciding whether or not to issue these notices.

This can be contrasted with the stringent requirements and likelihood of wider consultation when dealing with demolition of heritage buildings listed in district plans under the RMA, even in light of the recent High Court decision. Given that more than three years have passed since February 2011, it might well be argued that it's time CERA's powers to issue demolition notices should be curtailed in favour of the normal RMA process.

At the very least, some clarity about how and when the Section 38 notices can be issued would be helpful.