

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2019] NZEnvC 015

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND of an appeal pursuant to s 120 of the Act

BETWEEN VIEW WEST LIMITED

Appellant

(ENV-2017-AKL-000151)

AND AUCKLAND COUNCIL

Respondent

Court: Environment Judge J A Smith, considered on the papers
Environment Commissioner ACE Leijnen
Environment Commissioner WR Howie

Date of Decision: 5 February 2019

Date of Issue: 5 February 2019

FINAL DECISION OF THE ENVIRONMENT COURT

- A: Consent was granted by decision [2018] NZEnvC 237 for the demolition of the St James Hall Building at 31 Esplanade Road, Mount Eden, also known as the Sunday School hall (**the hall**) subject to conditions.
- B: In accordance with directions of the Court for the circulation of conditions, the Court confirms the final conditions as those attached as **A**.



- C: These final conditions are issued as a matter of urgency given the Court's ongoing concern as to safety on the site, particularly in light of a recent fire on the site, and partial demolition of the building at the direction of Council officers.
- D: Costs are reserved. Directions have already been made as follows in respect of those:
- (a) any application for costs is to be filed by 15 February 2019;
 - (b) any response within ten working days;
 - (c) any reply within five working days thereafter.

REASONS

Introduction

[1] By decision [2018] NZEnvC 237 this Court made an order granting resource consent for the demolition of St James Hall Building at 31 Esplanade Road, Mount Eden, Auckland. Although generally approving of the conditions, it noted some modifications in respect of those conditions particularly relating to preserving heritage fabric as suggested by the applicant, View West.

Further action

[2] Subsequently, on 30 December 2018 the hall suffered serious fire damage, and due to immediate safety concerns engineers appointed by the Council recommended demolition of the building remnants. For reasons that are unclear, Council officers required the retention of certain parts of the structure, notwithstanding the Court's decision or the engineering report received by the Council.

[3] The Civic Trust, in a memorandum forwarded to the Court, suggests that this was "pursuant to consent issued under emergency powers, based on a determination by Council's engineer, Mr Radley, that there was an imminent threat to public safety and the hall should be demolished as soon as practicable".¹ I annexe the memorandum of Council dated 24 January 2019 (attached as **B**) which contains a number of significant

¹ Memorandum from Council to the Court dated 24 January 2019, [3.1]



comments, including:

3.2 On 31 December 2018, the Council carried out works recommended by the engineer and demolished most of the Hall. Ms Fogel, the Council's expert heritage witness, was present during the demolition and asked whether it would be possible for the vestibule and front annexes of the Hall (facing Esplanade Road as shown in photograph 1 in Attachment A) to be retained for heritage purposes. It was agreed that this part of the building could be retained, subject to further inspection for stability in the new year.

3.3 On 7 January 2019, Mr Radley [a senior structural engineer from Tonkin and Taylor] and Ms Fogel carried out a site visit to inspect the remaining part of the Hall. Following this visit, Mr Radley recommended that the following further actions should be carried out:

- (a) remove debris from the vestibule roof (as shown in photograph 2);
- (b) remove the northern leaf of the arch at the rear of the remaining part of the Hall (as shown in photograph 3);
- (c) leave demolition rubble against part of the demolished side wall until archaeological work is completed;
- (d) remove the small remnant part of the wall projecting from the vestibule on the Hall's southern side (as shown in photographs 4 and 5); and
- (e) adequately secure the site with a safety fence.

[4] It is unclear what status this recommendation has, or under what powers the Council has been acting.

Current position

[5] The Court issued Directions on 30 January 2019 having received memoranda from both the Council and View West. That is annexed hereto and marked **C**. The Court made directions requiring View West to file draft conditions for the demolition consent by 5.00pm on Friday 1 February 2019 and indicated that it considered there were ongoing safety issues on the site and the conditions would be finalised on the papers.

[6] The memorandum has been filed, with conditions of consent attached.

[7] Given the memorandum of Council, which indicates at paragraph 4.2 (**Annexure B**) that there is no heritage fabric remaining, and our concerns as to ongoing safety issues on the site, we are satisfied that the conditions of consent should allow the urgent but orderly demolition and removal of the balance of the building to render the site as safe as possible as soon as possible. To this end we agree that the conditions of consent



achieve this objective.

[8] In addition to the memorandum already filed by the Council we have received commentary from Civic Trust. It considers that there has been a change of circumstances, given the fire in respect of the building, but it explicitly does not suggest that it seeks to convene a re-hearing on the basis of a change in circumstances. It suggests that the Council may wish to do so, and that appropriate archaeological authorities from Heritage New Zealand may be required. We make no further comment on these issues as they are not raised in any appeal or application to this Court.

[9] The Court has considered the question as to whether there has been a change of circumstances sufficient to reconsider the full demolition of the building. In our view the subsequent fire has placed the building in an even more precarious position than when the decision was issued, and this has clearly been recognised by the emergency powers exercised by the Council. We are unclear of the basis upon which the demolition to achieve full safety on the site was not undertaken. However, that is not the subject of an appeal or issue before the Court at this stage.

[10] Suffice to say, the Court has already given consent to demolition, and if anything, the circumstances warrant the removal of rubble and the full demolition of the site as soon as possible. We note that even the current situation is subject to a whole series of recommendations by the relevant engineer, and the site remains in a dangerous state at this time. We assume the fencing is an attempt to keep people out and we have already commented on the efficacy of this approach in our primary decision.

[11] No application for re-hearing has been made, and in any event is most unlikely to be successful under the circumstances currently described.

Safety

[12] We remain highly concerned at the actions of the Council in perpetuating the safety issues on the site, notwithstanding the Court decision and the advice from the engineer from Tonkin and Taylor to render the site safe. We consider that the site, on the photographic and other evidence that we have seen, remains unsafe; and the demolition rubble and the balance of the building's structure should be removed as soon as possible to render the site safe.



Outcome

[13] We consider that the Demolition Management Plan condition should provide for objection by the Council within **five working days**. Such concerns must be related to the conditions of consent, not wider/Heritage issues.

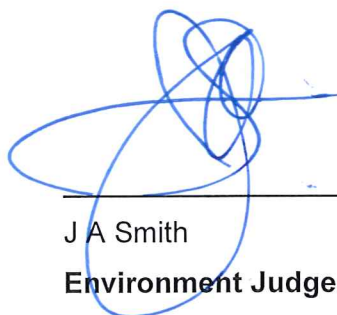
[14] Similarly, we conclude that Auckland Transport should have a similar **five working days** to raise concerns with the Transport Plan, given it affects public roads.

[15] Both are constrained discretions and should not interfere with the orderly completion of works.

[16] Subject to two changes, we agree with the appellants that the conditions of consent will enable this to be done in a proper, nevertheless urgent, manner given the current state of the building. Accordingly, we make the final orders in accordance with **A** annexed hereto. The minor changes to Conditions 7 and 8(r) are included.

[17] This concludes the matter subject only to the issue of costs, for which the Court has already made directions requiring any applications to be filed by **5.00pm, Friday 15 February 2019**. Any reply ten days thereafter and a final reply, if any, five days after that.

For the court:



J A Smith
Environment Judge



Under section 108 of the RMA, consent is granted, subject to the conditions detailed below, to authorise the demolition of the former Sunday School Hall (**Hall**), a Category B scheduled Heritage Building, located at 31 Esplanade Road, Mt Eden (**Site**), under Rule D17.4.1(A1) of the Auckland Unitary Plan (Operative in Part).

Conditions of consent

1. The following definitions apply to these conditions:
 - (a) **Church** means: the St James Church located on the northern part of the Site.
2. A suitably qualified engineer shall oversee the demolition of the Hall in a way that ensures the safety of workers, the general public, the owners and occupiers of neighbouring properties and the Church, and avoids damage to neighbouring properties and the Church. The supervising engineer may at any time at his or her discretion (which may be in contravention of the other conditions of this consent) require any works if the engineer considers it is appropriate in the interests of the safety of workers, the general public, the owners and occupiers of neighbouring properties and the Church, and / or to avoid damage to any property, including the Church.
3. This consent (or any part thereof) shall not commence until such time as the following charges, which are owing at the time the Environment Court's final decision is released, have been paid in full:
 - (a) All fixed charges relating to the receiving, processing and granting of this resource consent under section 36(1) of the Resource Management Act 1991 (**RMA**).
 - (b) All additional charges imposed under section 36(5) of the RMA to enable the Council to recover its actual and reasonable costs in respect of this application, which are beyond challenge.
4. The consent holder shall pay any subsequent further charges imposed under section 36 of the RMA relating to the receiving, processing and granting of this resource consent within 20 days of receipt of notification of a requirement to pay the same, provided that, in the case of any additional charges under section 36(5) of the RMA that are subject to challenge, the consent holder shall pay such amount as is determined by that process to be due and owing, within 20 days of receipt of the relevant decision.



5. The consent holder shall pay the Council an initial consent compliance monitoring charge of \$845 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs that have been incurred to ensure compliance with the conditions attached to this consent.
6. Due to the public safety concerns pertaining to the Hall, this consent should be implemented as soon as reasonably practicable and all actions required in these conditions that are to be carried out prior to demolition should be undertaken as expediently as possible.

Demolition Management

7. A Demolition Management Plan (**DMP**) must be prepared and sent to the Council's Team Leader Compliance & Monitoring – Central at least five (5) working days prior to the commencement of demolition (but not including site preparation and investigations). If the Council has not communicated any changes it requires to the DMP to meet these conditions, within five (5) working days of lodgement of the DMP with the Council, the demolition may take place in accordance with the submitted DMP.
8. The DMP shall address the following aspects of the demolition process:
 - (a) Details of the site manager, including their contact details (phone, email, postal address);
 - (b) An action plan for unforeseen circumstances, including a communication tree;
 - (c) The communication plan for immediate neighbours and the Church users for the purpose of informing those parties of the demolition process and any key events associated with the project that will assist them to understand and plan for the demolition process and address safety matters;
 - (d) The demolition methodology as described in condition 10;
 - (e) The supervision of the demolition works by a suitably qualified engineering professional;
 - (f) Measures that will be taken to protect adjacent properties and the Church from damage during demolition of the Hall;
 - (g) Archaeological supervision of the demolition works;



- (h) Hours of work, and sequencing of the demolition process;
- (i) Measures to be adopted to maintain the Site in a tidy condition in terms of disposal / storage of rubbish, storage and loading of materials and similar construction activities;
- (j) Measures for waste management which include designated sites for refuse bins, and for recycling bins for glass, plastic and cans storage and collection in accordance with the Council's waste reduction policy;
- (k) Design, detail and installation of protective site hoardings so that the Site can be made secure for public safety purposes;
- (l) Noise management;
- (m) Dust management;
- (n) A parking management plan for construction related traffic. Parking shall be contained within the Site where possible;
- (o) Provide a designated location for loading / working areas;
- (p) Provide a wheel wash facility within the Site to clean thoroughly all vehicles prior to exiting the Site to prevent mud or other excavated material from being dropped on to the street network. In the event that such deposition does occur, it shall immediately be removed by the consent holder;
- (q) Address the transportation and parking of oversize vehicles ; and
- (r) Provide traffic management plan(s) in compliance with the latest edition of the NZTA 'Code of Practice for Temporary Traffic Management' document. The traffic management plan(s) shall be submitted to Auckland Transport (**AT**) prior to lodgement as part of the DMP for comment, and feedback from AT shall be included with the submitted plans and any reasons why recommendation from AT have not been included. If, after five (5) working days, AT has not provided feedback on the traffic management plan(s), the consent holder's traffic management plan(s) shall form part of the DMP as lodged.

The DMP shall be implemented thereafter throughout the demolition period.



9. The methodology for demolition of the Hall shall be prepared by a suitably qualified engineering professional and provide for (in order of priority):
 - (a) the safety of workers, the general public, owners and occupiers of neighbouring properties and the Church; and
 - (b) avoidance of damage to the neighbouring properties and the Church.
10. The consent holder shall at all times control any dust in accordance with the 'Good Practice Guide for Assessing and Managing Dust', Ministry for the Environment (November 2016).
11. All demolition, earthworks and construction works shall be restricted to the hours between 7.30am to 6.00pm Monday to Saturday (unless, in the opinion of the engineer, work is required outside of these times to address an immediate public safety issue). No such works shall occur on Sundays or public holidays.
12. Noise arising from construction works shall comply with the Auckland Unitary Plan construction noise standard E25.6.27.
13. Sediment control shall be established in accordance with Auckland Council publication GD05. The consent holder shall ensure that at all times all stormwater runoff from the Site is managed and controlled to ensure that no silt, sediment or water containing silt or sediment is discharged into stormwater pipes, drains, channels or soakage systems.

Advice notes

1. *The applicant needs to obtain all other necessary consents and permits, including those under the Building Act 2004, and comply with all other relevant Council Bylaws. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015 regulations, relevant Bylaws, and rules of law).*
2. *The scope of this resource consent is defined by the application made to Auckland Council and all documentation supporting that application.*
3. *The initial monitoring charge is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs,*



inspections, in excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge or charges as they fall due. Such further charges are to be paid within one month of the date of invoice. Only after all conditions of the resource consent have been met, will the Council issue a letter confirming compliance on request of the consent holder.

- 4. A copy of this consent shall be held on site at all times during the establishment and demolition phase of the activity.*
- 5. An authority to modify or destroy an archaeological site is required from Heritage New Zealand Pouhere Taonga under section 44 of the Heritage New Zealand Pouhere Taonga Act 2014. It is the consent holder's responsibility to apply for and obtain this authority prior to demolition commencing.*
- 6. The consent holder is requested to notify the Council, in writing, of their intention to begin works, a minimum of seven days prior to commencement. Such notification should be sent to the Resource Consent Monitoring Team Leader (email: rcmadmin@aucklandcouncil.govt.nz or fax: 353 9186) and include the following details:*
 - name and telephone number of the project manager and the site owner*
 - site address to which the consent relates*
 - activity to which the consent relates*
 - expected duration of works.*



B

BEFORE THE ENVIRONMENT COURT
AUCKLAND

ENV-2017-AKL-000151

I MUA TE KŌTI TAIAO
TĀMAKI MAKAURAU ROHE

IN THE MATTER	of the Resource Management Act 1991 (RMA)
AND	
IN THE MATTER	of an appeal pursuant to section 120 of the RMA
BETWEEN	VIEW WEST LIMITED
	Appellant
AND	AUCKLAND COUNCIL
	Respondent
AND	CIVIC TRUST AUCKLAND
	Section 274 Party

MEMORANDUM OF COUNSEL ON BEHALF OF AUCKLAND COUNCIL
Dated 24 January 2019

 **Simpson Grierson**
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MAY IT PLEASE THE COURT

1. INTRODUCTION

- 1.1 We continue to act for Auckland Council (**Council**) in respect of this appeal.
- 1.2 The hearing of this appeal took place on 26-30 November and 6 December 2018.
- 1.3 On 14 December 2018, the Court issued its decision allowing the appeal and granting resource consent for the demolition of the St James Hall (**Hall**) at 31 Esplanade Road, Mount Eden, subject to appropriate consent conditions (**Decision**).
- 1.4 On 30 December 2018, the Hall suffered serious fire damage, and due to immediate safety concerns was largely demolished by the Council on 31 December 2018.
- 1.5 The purpose of this memorandum is to update the Court and parties on events that have taken place at the Hall during the holiday period and the Hall's current physical state. Given the significant change in circumstances since the Court issued its Decision, the Council also proposes a possible way forward in respect of progressing this matter and respectfully seeks the Court's directions.

2. THE DECISION AND PROPOSED CONSENT CONDITIONS

- 2.1 The Court allowed the Appellant's appeal and granted consent for the demolition of the Hall, subject to appropriate consent conditions being approved by the Court. These included conditions for the salvaging of heritage material and the payment of a bond condition for the strengthening of the St James Church (**Church**). The Court was then to either reconvene the hearing, or deal with the matter on the papers.
- 2.2 The Appellant circulated draft consent conditions on 21 December 2018 (with the exception of the bond condition and bond amount, which were to be provided separately at a later date).

3. THE HALL'S CURRENT CONDITION FOLLOWING THE DECISION

- 3.1 On 30 December 2018, the Hall caught fire and suffered serious damage to its interior, leaving the exterior shell of the Hall standing. Immediately following the fire, the stability of the Hall was assessed by emergency staff and Mr Radley, a senior structural engineer from Tonkin & Taylor. It was Mr Radley's view that due to the fire damage to the Hall, and the close proximity of the property on the Hall's



southern boundary, there was an imminent threat to public safety and the Hall should be demolished as soon as practically possible.

- 3.2 On 31 December 2018, the Council carried out works recommended by the engineer and demolished most of the Hall. Ms Fogel, the Council's expert heritage witness, was present during the demolition and asked whether it would be possible for the vestibule and front annexes of the Hall (facing Esplanade Road as shown in photograph 1 in **Attachment A**)¹ to be retained for heritage purposes. It was agreed that this part of the building could be retained, subject to further inspection for stability in the new year.
- 3.3 On 7 January 2019, Mr Radley and Ms Fogel carried out a site visit to inspect the remaining part of the Hall. Following this visit, Mr Radley recommended that the following further actions should be carried out:
- (a) remove debris from the vestibule roof (as shown in photograph 2);
 - (b) remove the northern leaf of the arch at the rear of the remaining part of the Hall (as shown in photograph 3);
 - (c) leave demolition rubble against part of the demolished side wall until archaeological work is completed;
 - (d) remove the small remnant part of the wall projecting from the vestibule on the Hall's southern side (as shown in photographs 4 and 5); and
 - (e) adequately secure the site with a safety fence.
- 3.4 On 11 January 2019, the Council installed a safety fence to secure the site. The fence extends onto the footpath on Esplanade Road and the property on the southern side. Council officers have advised that a decision as to whether the fencing can be removed (or the fencing perimeter reduced) will be made after the further structural assessment of the remaining part of the Hall takes place, and after other demolition rubble is cleared from the site.
- 3.5 Counsel for the Council understands that once the matters in paragraph 3.3(a)-(d) have been carried out, a further investigation to determine the stability of the remaining part of the Hall will be carried out.

4. POSSIBLE NEXT STEPS

- 4.1 The Court held in its Decision that the "safe deconstruction" of the Hall before its demolition:²

...might mean that some of the heritage fabric of the building could be retained and conditions might be proposed to allow that fabric to be held

1 Photographs of the remaining part of the Hall attached to this memorandum were taken by Ms Fogel.
2 The Decision, at [126].



in appropriate conditions until it can be re-incorporated in a building if possible. We agree that this does not mitigate for the loss of heritage values but might preserve some heritage fabric for re-incorporation in a future redevelopment and thus be considered as a benefit at that time.

- 4.2 The fire destroyed the Hall's interior, and further to the demolition that has already occurred, its heritage fabric cannot be recovered.
- 4.3 As a result, counsel for the Council has sought Ms Fogel's expert views in respect of this remaining part of the Hall. Ms Fogel considers that there is heritage value remaining in this part of the Hall because it still retains some key Gothic Revival style features (such as a steeply pitched roof and pointed arch windows) and the early concrete construction method is still clearly evident. The overall form of the entrance remains intact, including the classroom spaces flanking the foyer that reflect the original Sunday School use. Most importantly, the remaining part of the Hall still has a strong visual presence on the street and it maintains the ongoing heritage relationship with the Church and tells the "story" of this pair of buildings.
- 4.4 Ms Fogel considers that there is very little if anything that could be salvaged from the remaining part of the Hall, and held in appropriate conditions (either on or off the site) until it could be possibly re-incorporated in a building. As this is the case, because of the significant change in circumstances and given the importance of the Court's findings on the recovery of the Hall's heritage fabric, we respectfully consider that consent conditions be progressed (including a condition for the payment of a bond amount relating to the strengthening works to the Church) that include the retention or "recovery" of the remaining part of the Hall in-situ, and its possible future re-use.
- 4.5 We respectfully consider that there is merit in this approach for two reasons. Firstly, any concerns the Court had regarding safety, particularly in terms of the proximity of the Hall's walls in relation to the property on the southern boundary of the site, have now been addressed. There is no longer any urgency (nor necessity) in proceeding with the demolition of the Hall's walls.
- 4.6 Secondly, it is no longer possible to recover heritage material from the Hall as proposed by the Court in its Decision. However, given the ongoing historic heritage values of the remaining part of the Hall (and subject to any further engineering assessment to determine its stability) there is merit in considering consent conditions that relate to this remaining part. This approach provides an opportunity for the maintenance of the heritage values of the remaining part of the Hall through its possible adaptive re-use or re-incorporation, while still enabling the balance of the Hall site to be redeveloped.



4.7 On this basis, we respectfully consider that there may be merit in progressing this matter as follows:

- (a) the Council is to provide the Court and parties with any further updates regarding the remaining part of the Hall by Monday 4 February 2018;
- (b) following any updates from the Council, the Court is to arrange a judicial telephone conference with the parties to consider next steps. Should the Court agree with the Council's approach proposed in this memorandum, the setting of a timetable for the Council to prepare and circulate to the parties a revised set of consent conditions relating to the Hall site can be discussed at the judicial telephone conference; and
- (c) the Court direct that the current timetable in the Decision be replaced with any updated timetable.

DATED at Auckland this 24th day of January 2019



W S Loutit / R J O'Connor
Counsel for Auckland Council



Attachment A – Photographs of the remaining part of the Hall

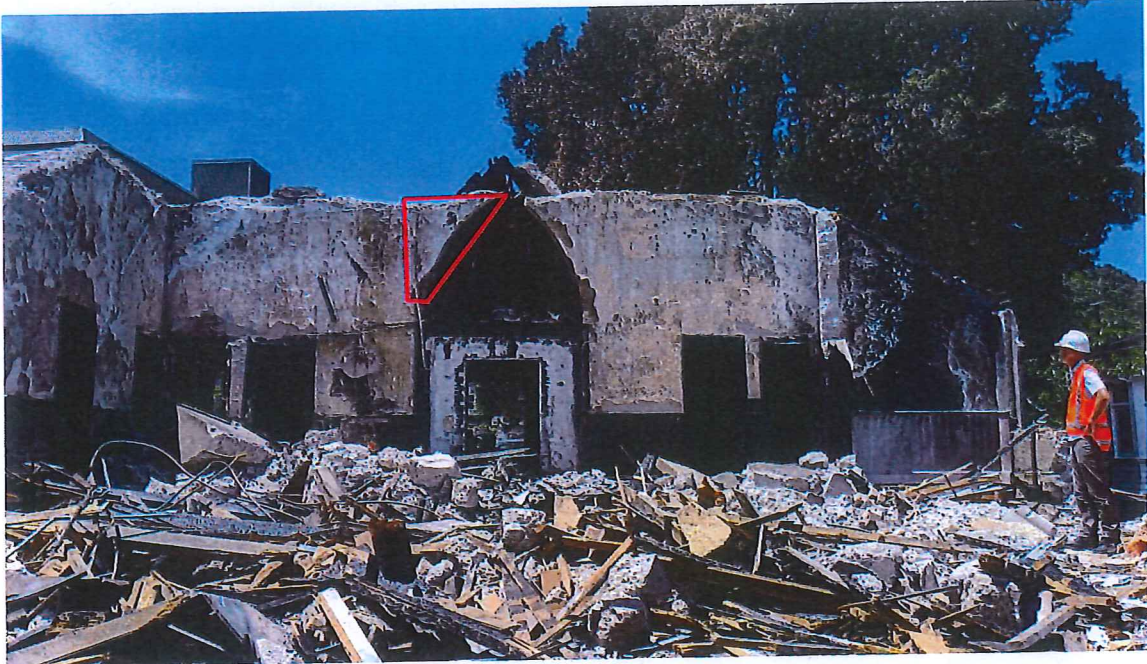


Photograph 1: Vestibule and front northern annex facing Esplanade Road.

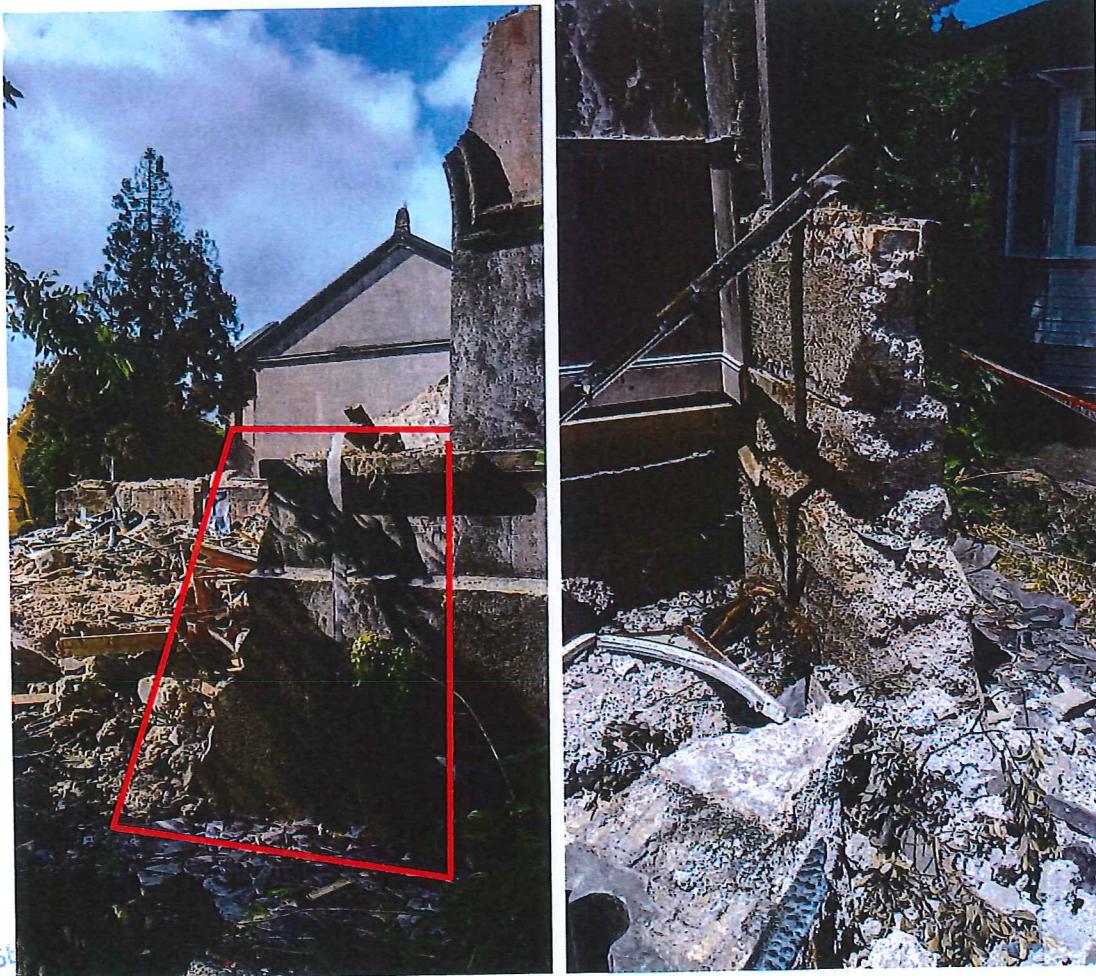


Photograph 2: Debris on the vestibule roof to be removed (view from 33 Esplanade Road).





Photograph 3: Left hand arched leaf on gable end at rear of vestibule to be removed.



Photographs 4 and 5: Remnant of Hall's southern side wall is unsupported and is to be demolished.



**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under section 120 of the Act
BETWEEN VIEW WEST LIMITED
(ENV-2017-AKL-151)
Appellant
AND AUCKLAND COUNCIL
Respondent

Court: Judge JA Smith sitting alone pursuant to s 279 of the Act, on the papers
Submissions: BJ Tree/P Senior for View West Limited
WS Loutit/RJ O'Connor for Auckland Council
R Enright for Civic Trust (no submission)
Dated: 30 January 2019

DIRECTIONS OF THE ENVIRONMENT COURT

Introduction

[1] By decision number [2018] NZEnvC 237, this Court issued a decision granting the appeal and consent for the demolition of St James Hall at 31 Esplanade Road, Mt Eden. Draft conditions were generally approved but with modifications indicated in the decision and subject to further discussions between the parties.

[2] The core issue was whether or not the conditions should include potential salvaging of heritage fabric, including roof tiles, trusses, sarking and floorboards. However, the Court was concerned as to safety, and allowed the parties a further opportunity to see if the wording of conditions could be resolved.



Subsequent events

[3] On 30 December 2018, the hall suffered serious fire damage and, due to immediate safety concerns, was largely demolished on Council's instructions on 31 December 2018.

[4] For reasons that are unclear, Ms Fogel sought to retain the vestibule and front annexes of the hall for heritage purposes. A subsequent inspection on 7 January 2019 led the Council to make directions in relation to the retention of these items and other works, including:

- (a) removing debris from the vestibule roof;
- (b) removing the northern leaf of the arch at the rear of the remaining part of the hall;
- (c) leave demolition rubble against part of the demolished side wall until archaeological work is completed;
- (d) remove the small, remnant part of the wall projecting from the vestibule on the hall's southern side; and
- (e) adequately secure the site with a safety fence.

[5] It is acknowledged by the Council in their submissions to the Court:

- 4.2 The fire destroyed the hall's interior, and further to the demolition that has already occurred, its heritage fabric cannot be recovered.

[6] It now appears that the Council is seeking to revisit the decision of the Court in seeking to retain part of the structure, notwithstanding the Court's clear decision to the contrary. At paragraph [136] the decision stated: "We have concluded that the incorporation of parts of the wall into a new structure is not appropriate." The Council directions appear to directly contradict this and the Council now seeks consent conditions that include the retention or "recovery of the remaining part of the hall in situ, and its possible future re-use"¹.



¹ Council memorandum, paragraph [4.4]

[7] The Court has already issued its decision on retention of the walls and is functus officio as to the retention of walls.² More importantly, it appears the Council has decided to ignore the Court's decision and proceed in accordance with other powers to require certain elements to be retained. I can only confirm that the Court has already granted consent for the demolition of the building.

[8] Given that there is now no heritage fabric to be preserved (on the Council's own statement at paragraph [4.2]) then such conditions are unnecessary.

[9] In those circumstances, the Court should issue final consent subject to the conditions appended and marked A to its original decision but contemplating the deletion of conditions 12, 13, 14, 15, 17 and 18. On this basis, I agree with the submission of counsel for View West Limited that these draft conditions should be filed by **5.00pm, 1 February 2019**, with an explanation as to any difference to other parties.

[10] Given the limited issues now remaining, the Consent and conditions will be finalised on the papers as a matter of Urgency. The Court is still concerned about remaining safety issues on the site.

[11] Costs applications at paragraph [147] of the decision are amended to **15 February**, with other dates calculated accordingly.



JA Smith
Environment Judge

Issued: **30 JAN 2019**

² *Ngai Te Hapu v Bay of Plenty Regional Council*, [2018] NZHC 1710 (HC) Van Boheman J, paragraphs [24]-[30]