

BEFORE THE INVERCARGILL CITY COUNCIL HEARINGS COMMISSIONER

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for land use consent (RMA/2025/115) to
demolish the former Briscoe and Company Building at 104–106
Dee Street, Invercargill, a Category 2 Historic Place on the New
Zealand Heritage List / Rārangī Kōrero

BY **104 DEE STREET PARTNERSHIP**

Applicant

CLOSING LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANT: 19 OCTOBER 2026

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MAY IT PLEASE THE COMMISSIONER:

INTRODUCTION

1. These submissions close the applicant's case following the hearing on 15 October 2026. They are confined mainly to matters raised by Mr Barsby at the hearing. The applicant otherwise relies on its evidence and the submissions presented at the hearing.
2. The application comes to you with the support of the reporting officer. In her addendum dated 17 September 2026, written after she had Mr Barsby's brief, Ms Skuse changed her recommendation from decline to grant. She concludes that the proposal is not inconsistent with the objectives and policies of the District Plan; that reasonable alternatives have now been evaluated to an appropriate level for decision-making; and that consent can be granted subject to conditions (addendum at [6]–[7], [67]–[68]).
3. Ms Irvine, the applicant's heritage expert, considers alternatives have now been thoroughly examined. Heritage New Zealand Pouhere Taonga has accepted that demolition may now be the last resort, and elected not to appear. Mr Halligan supports the application. Mr Barsby is the only expert who maintains that alternatives have not been adequately explored.
4. The applicant has never disputed that demolition will have significant and irreversible effects on historic heritage. The question is not whether that loss matters. It is whether, for a fire-gutted building under a Dangerous and Insanitary Building Notice that no-one can fund to retain, demolition with the mitigation now offered is the appropriate outcome. In my submission the evidence shows it is.

The propping options were not ignored three years ago

8. Mr Barsby suggested the applicant should have addressed temporary propping of the façades three years ago. The criticism is unfair. Options 4 and 5 in the Lewis Bradford memorandum of 13 January 2025 and the Rhodes report of 6 December 2024 were to retain, temporarily secure and weather-protect one or both façades (Lane evidence at [17]). Options 6 and 7 share that intent. They are a pared-back, theoretical-minimum version, prepared to answer Mr Barsby's own queries.
9. Earlier still, in late 2023, Ms Lee sent Heritage New Zealand's propping advice to engineer John Goble to explore cheaper options such as timber strong-backs, and approached local builders. Some refused to work on the building because they considered it unsafe (Lee evidence at [67]–[68]). Ms Lee also obtained a second engineering opinion on Ms Irvine's suggestion ([47]–[48]).
10. What has changed since 2023 is the level of detail. It changed because Origin Heritage and the s 42A report asked for more, and the applicant responded each time. That is the iterative process working, not a failure of it.

Criticism of costings but no alternative offered

11. Mr Barsby criticised the Option 6 and 7 estimates as single-line figures and as surprisingly high. Mr Griffiths has since produced the underlying elemental estimates, corrected two minor table errors (the totals are unaffected), and confirmed his façade rates against Harley Chambers, Invercargill Central, Coxhead House and the Southland Times building (Griffiths supplementary evidence, response to [37]–[39]).
12. Mr Barsby provided no estimate of his own. His comparisons with the Dunedin Town Hall and Cargill's Castle (brief at [40]) are expressed only as proportions of the Option 6 figure, without scope, quantities, condition, procurement or programme. Mr Griffiths could not test them for that reason, and nor can you.
13. Mr Barsby's estimating experience is in masonry restoration packages (brief at [9]–[10]). Options 6 and 7 involve far more than masonry: external and internal propping, foundations for the propping system, mould remediation, careful hand demolition around retained fabric, weather protection, and ten years of monitoring and maintenance. A masonry subcontract comparison does not capture that scope.
14. Even taken at its highest, the criticism does not change the outcome. Ms Skuse accepted that even if the costs were lower, the question is whether it is reasonable to require retention at all (addendum at [38]). Halve the Option 7 total and the applicant would still need over \$1.1 million to prop a façade with nothing behind it, on a five-year design life (Lane summary at [7]–[8]), with no-one to pay for it.

What "reasonable" requires

15. Policy HH-P5(2) is to "investigate and evaluate all reasonable means" of restoration, adaptation, re-use and relocation as alternatives to demolition. The word "reasonable" does real work. The policy asks for investigation proportionate to the decision, not every conceivable option costed to construction-estimate precision. BUS1Z-P15(1) is similar: it encourages owners to *consider* restoration and adaptive re-use.
16. The applicant has had seven options, from full retention to a bare make-safe, designed by a chartered structural engineer and costed by a registered quantity surveyor. Further detailed investigation (intrusive testing, developed design, contractor pricing) would cost money the applicant does not have, to answer a question no-one is in a position to act on. As Mr Griffiths puts it, further investigation follows if and when someone chooses to develop the site.
17. A standard of investigation that can only be met by spending the money needed to prove a building cannot be saved is not a reasonable standard. Ms Skuse agrees the investigation has reached the level appropriate for decision-making (addendum at [40], [67]).

No-one can fund Mr Barsby's alternatives

18. The evidence of who could pay is uncontested:

- o the partnership is two private individuals; Ms Lee is 66, retired, and has no borrowing capacity for a project of this kind (Lee at [60]–[61]);
 - o the insurance is indemnity only, the insurer assessed the building as a net negative asset, and the policy funds demolition, not retention (at [40]–[42], [66]);
 - o heritage funding applications were declined or the funds were too small (at [52]–[56]);
 - o the building was marketed by Bayleys from January 2024 with no written offers; the only interest was conditional on a cleared site for car parking (at [57]–[59]); and
 - o the building has earned no rent since September 2023 and costs the owners money every month (at [69]–[72]).
19. Mr Barsby does not dispute any of this (brief at [56]). His alternatives assume a funder, and there is none in evidence.
20. That matters to the decision. Declining consent will not produce façade retention. It will produce the status quo: a gutted shell behind containers and fencing on a prominent CBD corner, continuing to deteriorate and to obstruct Dee Street (Lee at [75]; Halligan submission). That outcome serves neither the heritage provisions nor the Business 1 zone. Ms Skuse accepts the building in its current state has become a barrier to the revitalisation the zone seeks (addendum at [50], [52]).

The Dangerous and Insanitary Building Notice applies to the whole building

21. Mr Barsby said the notice applies only to the inside of the building. That is wrong. The notice of 16 November 2023 required the owners to monitor the fire-affected façade to prevent collapse, maintain hoardings to protect the public, and reopen the footpath and road reserve with suitable protection (Lee at [34]). Those are requirements about the façades and the street.
22. Kensington Consulting assessed the building as dangerous under s 121 and insanitary under s 123 of the Building Act 2004, and Lewis Bradford agreed (Lane evidence at [17]). The hazard is masonry falling onto the streets (Lane summary at [4]). Council's traffic management placed the northbound Dee Street lane inside the collapse fall zone (Lee at [28]).
23. Mr Barsby's own written evidence assumes this. He describes propping the façades to remove the dangerous classification "and hence remove the container, fencing and hoarding" (brief at [16]). Options 6 and 7 were designed for exactly that purpose: to secure the façades so the cordons on the public footpaths can be removed (Lane summary at [5]). His oral statement cannot stand with his own brief.

Conditions

24. The applicant and Ms Skuse have reached agreement on the conditions, sent separately.

Conclusion

26. The Briscoes Building was gutted by fire in September 2023 and has stood under a Dangerous and Insanitary Building Notice for nearly three years. Seven alternatives have been designed and costed. No-one can fund any of them. The reporting officer, the applicant's heritage expert and Heritage New Zealand have each come to accept demolition. Mr Barsby's remaining objection is to the level of costing detail, not to what the costings show.
27. With heritage recording, salvage (where practicable), interpretation, vacant site management, contaminated land controls and a covenant securing the design of any replacement building, the applicant respectfully asks that consent be granted on the conditions recommended by Ms Skuse, as amended and agreed post the hearing.

Dated 19 October 2026



Clare Lenihan Counsel for the Applicant