

In the Matter                    of the Resource Management Act 1991

And                                    of an application under section 85 and clause 21 of the First  
Schedule of that Act

Between                            **Redmond Retail Limited**

   Applicant

And                                    **Ashburton District Council**

   Respondent

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**STATEMENT OF EVIDENCE OF NICOLA JOANNE RYKERS  
ON BEHALF OF HERITAGE NEW ZEALAND POUHERE TAONGA  
10 MAY 2019**

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## **INTRODUCTION AND BACKGROUND**

1. My full name is Nicola Joanne Rykers.
2. I am a Director of Locality Ltd, a company I established in 2016 to provide planning consultancy services. I am a sole practitioner. Prior to this role I held the position of Director of Urban Design and Engagement at the Central City Development Unit of the Canterbury Earthquake Recovery Authority (CERA) and was previously a Partner and Managing Principal of Boffa Miskell Limited, a planning, design and ecology consultancy.
3. I have a Bachelor of Regional Planning (Honours) degree from Massey University and I am a full member of the New Zealand Planning Institute. I have practiced in the planning profession for 30 years working on a broad range of projects that have included policy analysis and development, the preparation of environmental assessments and resource consents, and the provision of strategic planning advice to organisations and individuals on land use development.
4. I have read, understood and will comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that the opinions I have expressed represent my true and complete professional opinions. The matters addressed by my evidence are within my field of professional expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## **SCOPE OF EVIDENCE**

5. My evidence relates to the building known as Peter Cates Grain Store and the application made by Redmond Retail Limited to change the Ashburton District Plan.
6. The application requests the removal of the Peter Cates Grain Store from Appendix 12.1 "Schedule of Heritage buildings/items" and the associated notation "H9" from planning map U53. The application is made pursuant to section 85 of the Resource Management Act 1991. Section 85 allows a person with an interest in the land to challenge a district plan provision on the

grounds that the provision makes the land incapable of reasonable use; and places an unfair and unreasonable burden on any person who has an interest in the land. Throughout my evidence I will refer to the Peter Cates Grain Store as the Cates building.

7. In my evidence I will address the objectives, policies and rules of the Operative Ashburton District Plan (District Plan) which provide the context and scope for potential uses of the Cates building. These provisions were made Operative on 7 August 2014 and would have been discoverable by the applicant as part of any due diligence undertaken as part of the property purchase. I understand that the applicant took possession of the Cates building in February 2015.
8. In addition, my evidence will consider the following matters identified in the Minute of the Environment Court dated 14 March 2019:
  - 8.1. Under the district plan zoning, what uses can be made of the building?
  - 8.2. Is the site capable of any further development with the building remaining in situ?
  - 8.3. Whether demolition of the building extensions (1950s onwards) enhances reasonable use of the building?;
  - 8.4. What is the development potential of the site if the building were to be demolished or otherwise removed?
9. I rely on the evidence of Dr Christine Whybrew with respect to the heritage values associated with the Cates building, its categorisation by Heritage New Zealand Pouhere Taonga (Heritage New Zealand) and the appropriate approach when considering future uses for heritage buildings. I also rely on the evidence of Mr Fletcher in paragraphs 5.1 to 5.9 of his evidence where he describes the certificates of title and the status of the leased land adjoining the Cates building.
10. My evidence does not address matters related to building condition, the Building Act 2004, Building Standards, insurance or the cost of works related

to building improvements. All of these matters are outside my field of expertise.

11. I visited the site on 17 April 2019.

## **DISTRICT PLAN PROVISIONS**

### **Section 12: Heritage values and protected trees - context**

12. The Cates building is identified in Appendix 12-1: Schedule of Heritage Buildings/Items as a Group A heritage item. A Group A heritage item is considered to be of national or regional significance and its conservation and protection is provided for through the District Plan as a matter of high significance<sup>1</sup>.
13. The Cates building is located at 229 West Street, TS 193 Pt TS 194 Ashburton Town. The scheduled status applies to the whole of the building. I note that this differs from the Heritage New Zealand listing which applies only to the original building constructed in 1879.
14. Section 12 of the District Plan is concerned with historic heritage values and protected trees. The section recognises that historic heritage contributes to both the present and future environment by providing “a sense of place, identity and continuity for a community”<sup>2</sup>, it may also contribute to a pleasant environment or the character of an area as well as providing a record of human activity through time.<sup>3</sup> Reference is made to section 6(f) of the Resource Management Act 1991 which requires the Council to recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development as a matter of national importance.

### **Section 5: Business A Zone Description**

15. The site is zoned Business A in the District Plan. The Business A Zone applies to the inner commercial area and the suburban shopping centres of

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<sup>1</sup> Ashburton District Plan, Section 12.6.1, page 12-9

<sup>2</sup> Ashburton District Plan, Section 12.1 Introduction, 5<sup>th</sup> paragraph, bullet points 2, 3 and 5, page 12-1

<sup>3</sup> Ashburton District Plan, Section 12, page 12-1

Ashburton, as well as the core retail and commercial centres in the larger townships in the district.

16. The Ashburton Town Centre is defined in the District Plan as:

*for the purpose of the Business Zone rules, the Ashburton Town Centre is the area of Business A zoned land contained generally within the area bounded by Mona Square North, Park Street, Wills Street, William Street, Cass Street, Moore Street, and State Highway 77/Kermode Street.*

17. The Cates building falls within this geographic precinct and is therefore subject to particular rules that apply to the Town Centre and not the suburban commercial centres. This is relevant to the extent that some rules applying to the Town Centre are more liberal than those applying to suburban commercial centres where commercial development may potentially adversely affect adjoining residential areas.
18. The primary function of the Business A Zone is described<sup>4</sup> as providing for the local retail and service needs of the community. The Zone provides for comparison retail shopping, residential, visitor accommodation, community and commercial activities. The Zone description describes a desire to maintain a diversity of activities within Ashburton's town centre to encourage the continued vitality, pleasantness and convenience of its commercial centre, as well as encouraging the efficient use of existing infrastructure and buildings.
19. The Zone description acknowledges that many trips to and from the commercial centre of Ashburton will involve private vehicles, however retailing activities that are strongly vehicle oriented are discouraged and there is an emphasis on maintaining an environment that is accessible, safe and convenient for pedestrians.

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<sup>4</sup> Ashburton District Plan, Section 5: Business Zones, 5.3.1 Business A, page 5-6

## Section 5: Business A Zone Objectives and Policies

20. The objectives and policies for the Business A Zone relevant to consideration of future use of the Cates building include:

*Objective 5.1: Business Area Development and Effects*

*Growth, maintenance and consolidation of business areas, provided that adverse effects on the environment are avoided, remedied or mitigated.*

*Policy 5.1A*

*Maintaining and enhancing the function, integrity, convenience and viability of the inner commercial areas of Ashburton, Methven and Rakaia, and small villages.*

*Policy 5.1E*

*Avoiding an accumulation of activities which together would generate significant pedestrian activity on State Highway 1, in order to prevent pedestrian/vehicle conflicts and maintain safety.*

21. Objective 5.1 is about an enduring Business A Zone where business activity is maintained, grown or consolidated. This is qualified by a need to manage adverse effects on the environment. Policy 5.1A set out those matters which provide the foundation for achieving Objective 5.1 being convenience, integrity, viability and function. I am not sure what is meant by integrity in this context, but assume it relates to the nature of activities appropriate to a town centre or Business A environment.
22. With respect to adverse effects, Policy 5.1E identifies concerns related to an accumulation of pedestrian generating activities on State Highway 1, which should be avoided. I note that the block of land where the Cates building is located (being the block of land bound by State Highway 1, Havelock Street, Park Street and Burnett Street West) does not currently contain an accumulation or concentration of high pedestrian generating activities which would limit the range of future activities suitable for the Cates building. Regardless, the matter of access for vehicles and/or pedestrians to sites on State Highway 1 is a matter that requires careful management. This concern would apply to both an existing building and a new development.

23. The Explanation and Reasons for Objective 5.1<sup>5</sup> and its associated policies emphasise the importance of Ashburton’s town centre having a broad range of commercial, professional and administrative activities. Repeating the themes in the Zone description, the Explanation and Reasons state that “the Plan aims to encourage the continued vitality, pleasantness and convenience” of commercial centres. Particular mention is made that a feature of commercial centres is “their important role in the attractiveness and identity of the towns”. The Explanation and Reasons go on to describe that part of vitality and pleasantness is making efficient use of resources. This can include the ongoing occupation and redevelopment of existing sites<sup>6</sup>. Accordingly, the District Plan equally supports retention of buildings and redevelopment. I also note the connection made in the Explanation and Reasons between the identity of a town and its pleasantness. As noted in paragraph 14 above, Section 12 of the District Plan, identifies that heritage is an important component of identity. It does contribute to pleasantness and character, as well as providing a connection to the economic and social activities of the past. In the context of Ashburton town centre the retention of a heritage building is therefore an important consideration and provides values that could not be achieved with a new building.

*Objective 5.2: Qualities of Business Areas*

*Business areas that are pleasant places to visit and work within.*

*Policy 5.2A*

*Maintaining and enhancing the existing form and character of retail areas in terms of building height, setback, coverage and where appropriate, the provision of display windows and verandas.*

24. The Cates building has long been part of the urban fabric of Ashburton and has a distinctive form and character. Maintenance of the building would therefore positively contribute towards achievement of Policy 5.2A. It is relevant to note that the policy only requires display windows and verandas

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<sup>5</sup> Ashburton District Plan, Section 5: Business Zones, 5.4 Explanation and Reasons, page 5-10

<sup>6</sup> Ashburton District Plan, Section 5: Business Zones, 5.4 Explanation and Reasons, paragraph 5, page 5-10

“where appropriate”. Accordingly, it is not a fatal planning issue for the town centre if the building is retained and there are no display windows or verandas. I also note that Policy 5.1E concerning the minimisation of high pedestrian generating activities on State Highway 1, would further suggest that windows and verandas in this location are not essential features.

## **Section 12: Historic Heritage Values and Protected Trees – Objectives and Policies**

25. The objectives and policies for Historic Heritage have equal application as the objectives and policies of the Business A and include:

### *Objective 12.1: Historic Heritage*

*To protect significant historic heritage in the District, including historic buildings, places and areas, waahi tapu sites and areas and archaeological sites, from adverse effects of subdivision, land-use and development.*

### *Policy 12.1C*

*To use methods and rules in the District Plan to protect historic heritage listed in the heritage schedule from adverse effects of land-use, subdivision and development.*

### *Policy 12.1E*

*To encourage the use of protected buildings while ensuring that their valued features are not impaired or destroyed.*

### *Policy 12.1F*

*To promote public awareness and support for the conservation of historic heritage in the District.*

### *Policy 12.1G*

*To encourage owners to retain historic heritage values through considering a range of mechanisms, including opportunities for alternative uses of the site or building, provision of development incentives or reductions in rating for*



*properties where historic heritage values are protected through a legal mechanism.*

26. Objective 12.1 requires protection of historic heritage from adverse effects of land use or development. Accordingly, the objective requires consideration as to when subdivision, land-use or development becomes adverse. Not all change is adverse and in my opinion, whilst potential redevelopment of the Cates building may involve alteration, replacement or removal of structural components of the building, this does not automatically constitute an adverse effect. This is because some compromise or loss of particular features or values may be necessary in order to achieve more fundamental goals. These could relate to of the retention of particular parts of the heritage building, its status as a landmark or the values related to its social and historical associations. Accordingly, the objective does not require a building to be retained or replicated exactly as it is today in order to recognise and protect heritage values.
27. Heritage protection commonly requires a wide-ranging consideration of alternative uses and the adaptation of a building may require prioritisation of the retention of some features over others. Policy 12.1G encourages owners to consider a range of mechanisms and opportunities and signals a willingness by Council to consider a broader range of activities than may otherwise apply to a non-heritage building in the same zone.
28. In this policy context, I consider that the range of potential activities that could be considered for the Cates building is potentially very broad. This is a consequence of its location within the Ashburton Town Centre, Business A Zone and those heritage policies encouraging landowners to consider a range of opportunities.
29. Policy 12.1C concerns the importance of identifying heritage buildings in the District Plan. I refer to the evidence of Dr Whybrew where she explains the role of District Plans in heritage conservation. While Heritage New Zealand has a role in identifying buildings of heritage importance, it is District Plans which manage and regulate the protection of buildings. Accordingly, District Plans are an essential component of heritage management in New Zealand

and the scheduling of buildings in District Plans is fundamental to enabling the adaptive use and conservation of heritage buildings to be achieved. The objectives, policies and rules in District Plans establish the framework for assessing alternative uses and modification to scheduled buildings and in my experience most district plans establish consenting pathways which encourage the consideration of alternative uses and modification of heritage buildings with a more flexible activity status. A more onerous activity status is applied to the demolition of buildings, which is generally considered to be a final and the least preferred step in heritage management.

30. The identification of heritage buildings in the District Plan also provides a starting point for achievement of Policy 12.1F which is concerned with the promotion of public awareness and support for the conservation of historic heritage.
31. I also refer to Policy 12.1B which sets out the criteria Council considers when determining whether to identify a building or item in Schedule 12.0 of the District Plan. I assume that the Cates building met a sufficient number of these criteria when assessed at the time the District Plan was prepared. I will not analyse these matters but rely on the evidence of Dr Whybrew to explain the heritage values and significance of the Cates building.

#### **Business A Zone: Activities and Standards**

32. In paragraphs 33 to 38 below I list the Permitted activities within the Business A Zone and the definitions for those activities. These include:
33. Residential activities -- means the use of land and buildings by people for the purpose of permanent living accommodation, including all associated accessory buildings, leisure activities and the keeping of domestic livestock. For the purposes of this definition, residential activity shall include emergency and refuge accommodation, and the use of holiday homes which is not commercial.
34. Visitor accommodation - means the use of land and buildings for short-term, commercial, living accommodation where the length of stay for any one

visitor is not greater than 4 months at any one time. Visitor accommodation may include some self-contained or centralised services or facilities, such as food preparation, dining and sanitary facilities, conference, recreation and bar facilities, and associated parking areas for the use of those staying on the site.

35. Community activity - means the use of land and buildings for the primary purpose of health, welfare, care, safety, education, culture and/or spiritual wellbeing, but excludes recreational activities. A community activity includes educational facilities, hospitals, doctors' surgeries and other health professionals, churches, halls, libraries, community centres, police stations, fire stations, courthouses, probation and detention centres.
36. Recreational activity - means the use of land and buildings for the primary purpose of recreation and entertainment by the members of more than one household unit. This does not include commercial recreational activities where a fee is paid to use facilities i.e. a commercial bowling alley but does include community sports facilities where a membership fee may be paid.
37. Retail activity up to a maximum gross floor area of 500m<sup>2</sup> per tenancy - means the use of land or buildings for displaying or offering goods for sale or hire to the public and includes, but is not limited to, food and beverage outlets, small and large scale retail outlets, trade suppliers, yard based suppliers, second-hand goods outlets and food courts.
38. Commercial activity - means an activity involving the payment of fees for hire or reward. Commercial Activity includes the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment, or services, and includes, but is not limited to, shops, markets, showrooms, and restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas; but excludes passive recreational, community activities, home occupations, and farming activities. This includes a business providing personal, property, financial, household, and private or business services to the general public. It also includes recreational activities where a fee is paid

to use facilities i.e. a commercial bowling alley. It does not include community sports facilities where a membership fee may be paid.

39. Permitted activities must meet Zone Standards and Site Standards. Paragraphs 40 and 41 below provide a summary of those standards. These include:
40. Zone Standards relate to lighting, no offensive processes, compliance with Outline Development Plans and specific provisions relating to access in the Business E Zone and flood risk in the Business D Zone.
41. The relevant Site Standards for the Cates building site include the following:
- a) Height – maximum height of 15m in the Business A Zone.
  - b) Setback from streets – there is no setback from road boundaries required.
  - c) Setback from internal boundaries – no provision.
  - d) Maximum building coverage – no maximum shall apply.
  - e) Veranda – required for every building adjoining a road boundary or on being reconstructed or altered in any way.
  - f) Windows – where adjoining a road boundary, windows covering a minimum of 65% of the area of the ground floor walls for the purpose of the display of goods and services.
  - g) Outdoor storage – the outdoor storage of goods sited to the rear of buildings and screened from public view.
  - h) No vacant site can be used for storage, display or sale of goods.
  - i) No on-site car parking is required<sup>7</sup> except for residential activities.
42. Restricted activities are those listed as a permitted activity and which comply with relevant Zone standards, but not Site Standards.

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<sup>7</sup> 10.8 Sites Standards – Parking and Loading, 10.8.1 Minimum Parking Space Requirements b) and c)

43. Discretionary activities include retail activities exceeding 500m<sup>2</sup> gross floor area and service activities. Service activities means the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods, including panel beating and vehicle spraying. It also provides for service stations.
44. Non-complying activities include activities which do not comply with one or more of the relevant Zone Standards. Listed non-complying activities in the Business A Zone include a shooting range, a service station, an industrial activity, food and produce processing, meat processing, farming, forestry, mineral extraction and intensive livestock management. An industrial activity means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing or associated storage of goods.

#### **Heritage Rules – Activity Status for Alterations and Additions**

45. In addition, to the Business A Zone provisions, potential future uses of the Cates building would also need to address the Heritage provisions.
46. Alterations and additions to a scheduled heritage building is a restricted discretionary activity. This includes partial demolition, restoration and reconstruction as defined in the ICOMOS (NZ) Charter 2010. The relevant assessment matters include:
- a) Any immediate or cumulative effects of the proposal to the heritage building, object, property or place of special interest on Takata Whenua and District-wide historic heritage values (with regard to the reasons for its listing);*
- c) The purpose for which the site is to be used, and the alternatives available to the applicant, including the development of the site without affecting the heritage item, or the retention of the important features of the heritage item;*
- d) The effect on the property owner/occupier's enjoyment and practical use of the heritage item and the extent to which they would face unreasonable*

*restrictions on that enjoyment and/or use or unreasonable costs, as a result of consent being refused or conditions imposed.*

*e) The registration (if applicable) and the reasons for this registration of the heritage item under the Historic Places Act 1993;*

*f) The extent to which any alteration or addition is in sympathy with the original design and materials or is visibly differentiable as new work;*

*g) Any incentives available to the applicant to retain the building, place or object;*

*i) In the case of major additions, alterations, land disturbance or similar works, the provisions by the applicant of photographs or other information relating to the building, object, property or place prior to work commencing;*

*j) The importance (if any) of the land surrounding the heritage item;*

*k) The impact the proposal has on the integrity/value of the heritage resource;*

*l) The importance attributed to the heritage item by the wider community;*

*m) Consideration of the purpose of and need for the proposed works, particularly in relation to proposed infrastructure, servicing or utility works, including consideration of alternatives, functional constraints, and the wider benefits of a proposal.*

47. Whilst the list of assessment matters is comprehensive, the activity status for the resource consent is not onerous, and in my opinion, signals that the Council is concerned and interested to support alterations to a scheduled heritage building where an alternative use has been found. This is further supported by Policy 12.1E to encourage the use of protected buildings.

#### **Summary: Activities**

48. In summary, I consider that the list of permitted activities for the Cates building to be wide-ranging and this in turn keeps alive opportunities for adaptive reuse of the building. In addition, the number and nature of the Site

and Zone standards for the Business A Zone are relatively few and reasonably liberal. The site can be subject to 100% building coverage, and whilst there are rules for display windows and verandas, Policy 5.2A is very clear that these are only required “as appropriate”. Considering the heritage status of the building and its location on State Highway 1, where careful management of pedestrian flows is required, display windows and verandas could be argued as not being appropriate. A resource consent for non-compliance with these requirements is therefore unlikely to be a significant barrier to achieving a new use for the Cates building.

49. In my opinion, the future use of the Cates building need not be limited to permitted activities only. A permitted activity which does not meet the site standards would be a restricted discretionary activity, and with appropriate design and management the activity may remain suitable and any adverse effects able to be addressed.
50. I would also not discount some of the listed non-complying activities. For example, food and produce processing. I note that coffee roasteries are a form of food processing found within central business districts and similarly the Reefton Distilling Company has a working distillery, tasting bar and retail store in an original building in Reefton. Often these types of businesses seek buildings with an industrial character and a background story that adds value to their product appeal. Whilst non-complying, these types of activities may fulfil the Heritage objectives and policies, with minor effect on the Business A Zone environment. Accordingly, although a resource consent process would be required for some activities, this is not an insurmountable barrier to achieving an appropriate end-use for a heritage building.

**Is the site capable of any further development with the building remaining in situ?**

51. From a planning perspective the site can be further developed with the building remaining, to the extent that the development is related to alterations or up-grading to the building itself. The rules and relevant objectives and policies do not preclude this further development, and there are statutory pathways for consideration of the effects of the development on heritage values.

52. I do not consider it is necessary to consider the future use of the Cates building with the adjacent leased land.
53. If the lease expires in 2021 there is no guarantee this additional land will continue to be available. Although advantageous for continuing vehicle access and potential use of the building for storage purposes, not all future uses would require this vehicular access and this is not required by the rules. As for CB20K/251 becoming landlocked – I assume that there would be a legal mechanism available to ensure that the titles could not be separately transferred or leased and that there are commercial imperatives which would ensure that CB20K/251 was not left in a landlocked state. If the extensions to the Cates building were to be removed, it is possible that CB20K/251 could be offered to another adjoining land owner for purchase and amalgamation.

**Whether demolition of the building extensions (1950s onwards) enhances reasonable use of the building?**

54. I agree with the evidence of Mr Fletcher, that from a planning point of view, there is little difference in the development potential of the site between the two scenarios. The benefits or preference of keeping or removing the more recent additions is more dependent on the vision of the developer. If the more recent (1950s onwards) additions are removed this creates open space to establish a yard based retail activity or display area, a garden, outdoor café or storage area. It also provides access up the side of the Cates building to the rear.
55. I understand that the parties have previously agreed that it is the original Cates building which holds the significant heritage values and that the later additions have no heritage value at all. Accordingly, any developer wishing to create and use an outdoor space to the rear of the original Cates building is unlikely to confront a consenting barrier with an application which re-purposes parts of the site in conjunction with a proposal to retain the Cates building.



**What is the development potential of the site if the building were to be demolished or otherwise removed?**

56. If the Cates building were to be removed in its entirety the development potential of the site would be considerable. A building could be erected to cover 100% of the site with no provision for on-site car parking required.

**CONCLUSION**

57. The scheduling of significant heritage buildings in District Plans is an essential component of the heritage protection framework in New Zealand.
58. The Cates building is identified as a Group A heritage item in the District Plan. Group A heritage items are recognised for their national or regional significance, and the District Plan provisions provide for their conservation and protection. In my view the management framework of the District Plan anticipates and encourages a process whereby consideration of alternative uses occurs in the first instance, before a demolition proposal.
59. The Business A Zone provides for a wide range of activities as permitted activities, creating opportunities to consider alternative uses for the Cates building. In addition, there are other potentially suitable activities which although requiring a resource consent application, would be supported by policies within the District Plan which encourage uses where they fulfil the objective of retaining heritage buildings or values.
60. In my opinion the activity status for modifications to a scheduled heritage building is not onerous. Accordingly, although resource consents may be required to re-purpose the Cates building for a new activity, the District Plan provisions are supportive of alternative land uses that will achieve retention of heritage values.
61. Having regard to the overall package of provisions for heritage management in the Ashburton District Plan and the range of potential future uses that could be considered, in my opinion retention of the Cates building in

Appendix 12-1: Schedule of Heritage Buildings/Items is appropriate. This allows adaptive reuse of the building to be considered and enables the heritage values of the building to contribute to the character of the Ashburton Town Centre.

Nicola Rykers

Dated 10 May 2019