

In the Environment Court
Christchurch Registry
I mua i te Kooti Taiao o Aotearoa

Under the Resource Management Act 1991

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

Between **Redmond Retail Limited**
ENV-2018-CHC-198

Applicant

And **Ashburton District Council**

Respondent

And **Nigel Gilkison**

Interested Party

And **Michael Hanrahan**

Interested Party

And **Heritage New Zealand Pouhere Taonga**

Interested Party

And **Julie Luxton/Historic Places Mid-Canterbury**

Interested Party

And **Maxine Watson**

Interested Party

Evidence of Stewart William Fletcher

Date: 3 May 2019

Andrew Schulte (andrew.schulte@cavell.co.nz)
Counsel for respondent



AJS-635532-117-512-V1-e

The BNZ Centre
Level 3, 111 Cashel Mall
PO Box 799, Christchurch
T: +64 3 379 9940 F: +64 3 379 2408

1 Introduction and Qualifications

- 1.1 My full name is **Stewart William Fletcher**.
- 1.2 I am a Consultant Planner and have been practicing as a Planner for approximately 20 years. I have a Bachelor of Resource Studies from Lincoln University and am a full member of the NZ Planning Institute and also a member of the Resource Management Law Association.
- 1.3 I have worked in a number of planning roles and have operated my own consultancy for the past 8 years.

2 Expert Witness Practice Note

- 2.1 I have read, and agree to comply with, the Code of Conduct for Expert Witnesses as required by the Environment Court's Practice Note 2014. In providing this affidavit all of the opinions provided are within my expertise and I have considered and I have not omitted to consider any material facts known to me which might alter or qualify the opinions I express.
- 2.2 In preparing this evidence I have read all documentation provided as part of the section 85 application.

3 Scope of Evidence

- 3.1 The purpose of this evidence is to assist the Environment Court in their consideration of the application.
- 3.2 An application has been lodged under section 85 of the Resource Management Act 1991 ('the Act') to uplift the heritage status on a site registered in the Ashburton District Plan. The substance of the application is that the provisions of the District Plan make the land incapable of reasonable use and places an unfair and unreasonable burden on the landowner. A series of reasons have been provided at paragraph 35 of the application.
- 3.3 As per the minute of the Environment Court dated 14 March 2019 the issue to be resolved is whether the continued listing of the Cates Grain Building in the heritage schedule of the Ashburton District Plan makes the land incapable of reasonable use and places an unfair and unreasonable burden on any person who has an interest in the land. The minute also details those questions the court will need to consider, as at paragraph 4 of the minute. This evidence provides background information for the site, such as the

applicable provisions of the Ashburton District Plan, and then details my expert opinion as to those 8 bullet points where within the scope of my expertise.

- 3.4 In reviewing the evidence of Mr David Harford he has not taken the same approach as myself and has not addressed all of those points listed in the minute as needing to be considered. This may be because the other points have been covered off in other persons' evidence. On this basis, I have also considered and, where appropriate, commented on those matters raised in Mr Harford's evidence.
- 3.5 I have read the application, as submitted to the Environment Court, and all evidence submitted by the representatives of the applicant. I have also read the submissions on the application. I have visited the site previously and in preparation of this evidence I re-familiarised myself with the site on 15 April 2019 including both inside and outside of the building. I note during the site inspection Ms Baird was also in attendance. During the inspection she commented that the building has not significantly deteriorated since her previous inspection.
- 3.6 I processed the original applications seeking to demolish the building (LUC15/0006) and to relocate the building (LUC17/0128) on behalf of the Ashburton District Council.
- 3.7 This application is unusual in that it seeks to enable the demolition of a heritage building through section 85 of the Act. Consequently, it is important to understand the implications for what is required in assessing the application. This starts with understanding the heritage values of the building, particularly when considering the ramifications of the change sought but, in my opinion, there is agreement that the building warrants having a heritage classification. Likewise, there appears to be little gained in assessing the effects from the removal of the classification and consequent demolition of the building. What is required is to assess the burdens of the District Plan provisions including building classification and subsequent objectives, policies and rules and to then determine whether that burden is unreasonable.
- 3.8 I finally note that a continued theme through this evidence is two fold. The applicant appears to consider that to not be able to demolish the building places an unreasonable burden on the applicant. The other heritage provisions which require resource consent for alterations and additions have not been questioned, only the ability to demolish. Secondly, significant emphasis has been made by the applicant regarding building consent

requirements such as earthquake strengthening. I consider that the heritage rules need to be considered as a whole in determining the level of burden and while I acknowledge there are Building Act requirements, they are not requirements through the District Plan. It is the provisions of the District Plan that I consider I must focus upon through my evidence.

- 3.9 To this end, in reviewing the reasons for the plan change being sought, as specified at paragraph 35 of the application, I consider that the first three bullet points which follow paragraph 35 are of limited applicability as they do not relate to the burdens of the District Plan.
- 3.10 I do understand and recognise that the District Plan and Building Act do have combined implications for the application site and one cannot completely ignore the provisions of the Building Act and instead I suggest care is required.

4 Proposal

- 4.1 A Plan Change is sought, through the provisions of section 85 of the RMA to uplift the Ashburton District Plan heritage classification of a building at 229-241 West Street, Ashburton.
- 4.2 The application only seeks the uplifting of the classification and approval has not been sought for any other activities as part of this. The application, as lodged with the Environment Court, provides reasoning for the change and also details the consenting history with associated documents.
- 4.3 The building has been identified as a Category A building in the Ashburton District Plan and a Category II building by Heritage New Zealand (Number 1807). The applicant seeks the full removal of the District Plan classification from the site.
- 4.4 While there is one building on the site, different parts of the building were constructed at different times. The District Plan does not specify if the heritage classification applies to all or part of the building and instead only specifies "Peter Cates Grain Store", followed by the legal description for the site. It is recognised that the rear part of the building is a more recent addition but for the purposes of this assessment it has been assessed that the classification applies to all buildings on the site. The reasons for this are detailed later in my evidence.
- 4.5 The application and corresponding process is unusual, in my opinion, as there is no debate that the building is a heritage structure and deserving of such status. What is instead sought is the complete removal of that status

due to the applicants considered restrictions on the use of the site and resultant intention to demolish the structure.

5 Site and Surrounding Area

5.1 The site is located at 229-241 West Street in Central Ashburton.

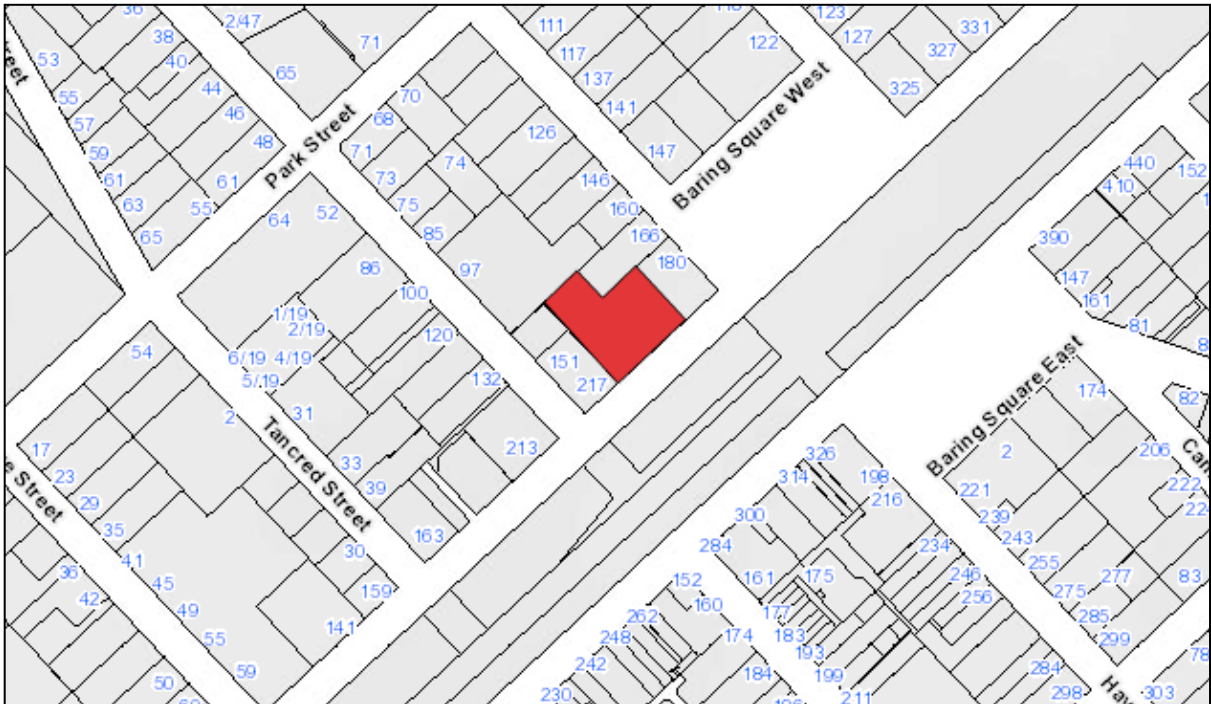


Figure 1: Site Location Plan

- 5.2 The site includes the building in question and also an open area on the north east of the site (the lease area). The details of the structure have been described by Ms Baird.
- 5.3 The site is legally described as Lease 43857 (underlying title Lot 2-3 DP81368 - Certificate of Title CB47A/1218), Section 193 Town of Ashburton (Certificate of Title CB15K/1325) and Section 194 Town of Ashburton (Certificate of Title CB20K/251). The total area of the site is 2,530m².
- 5.4 Copies of the titles are appended to this evidence as Appendix 1. The position of the legal parts of the site are identified below:



Figure 2: Title Locations

- 5.5 Titles CB15K/1325 and CB20K/251 have no interests registered on them, beyond mortgages, and there are no other matters to note except that CB20K/251 has no legal road connection from either West Street or Burnett Street. Currently this is of little consequence as the building straddles the two titles but if there were no buildings, and no action was taken to address this, the rear allotment could be become landlocked.
- 5.6 As per above, Lease 43857 occupies part of a wider certificate of title. The lease area is 1014m² while the title area, as a whole, is 2028m². The information included in the application specifies that there is a 21 year lease on this area which will expire in 2021 depending on any exercise of rights of renewal. A copy of the lease is attached to this evidence as Appendix 2.
- 5.7 The heritage classification does not apply to the lease area.
- 5.8 It is noted in the evidence of Mr Harford that the legal arrangement of the site is uncertain given the lease arrangement, particularly with regards to access arrangements. For the purpose of my evidence I have treated the site as consisting of and including the three parts. The reason for this is that the three parts of the site currently operate together. The car parking

area is operated in association with the building and also one of the two access points to the building is from the parking area. This side access point appears to be the more commonly utilised access.

5.9 To understand the legal arrangement further the location of the certificate of title / lease area is illustrated below. Part of the title is occupied by the Ashburton Public Library and the remainder is the lease area. The Ashburton District Council is the underlying owner of the title and has leased the relevant portion of the title to the applicant as per the attached lease document (Appendix 2).



Figure 3: Lease Area and Underlying Title

5.10 The surrounding area consists of a variety of activities. Within the block of the site activities consist of the following:

West Street Frontage

- 229 West Street – Application site
- 241 West Street – Application site car park
- 267 West Street – Ashburton Public Library

Burnett Street Frontage

- 71 Burnett Street – Residential dwelling

- 73 Burnett Street – Commercial Offices
- 75 Burnett Street – Architectural Office / Commercial Offices
- 85 Burnett Street - Dentist
- 97 Burnett Street - Retail
- 129 Burnett Street – Warehousing / Storage
- 123 Burnett Street (Cnr Burnett & West) – Commercial Offices

Havelock Street Frontage

- 166 Havelock Street – Ashburton Public Library
- 152 Havelock Street – Commercial Offices
- 146 Havelock Street – Rural Supplier / Retail
- 126 Havelock Street – Rural Supplier / Retail (same tenant as 146)
- Havelock Street – Former Church Hall / Commercial Gym
- Havelock Street (cnr Park Street) – Church

Park Street Frontage

- 68 Park Street - Dwelling
- 70 Park Street – Carpark associated with church and community centre
- 74 Park Street – Church / Community Centre

5.11 The wider area includes:

- State Highway 1;
- Business Offices;
- Restaurants;
- Retail Activities;
- Real Estate Agents;
- Reserves;

- The Main Trunk Railway Line;
- Car Parking Areas.
- The Council Offices; and
- Medical Facilities.

5.12 In understanding the characteristics of the surrounding area it is also noted that the Ashburton District Council has commenced a public consultation process with regards to the relocation of the Council Service Centre and Public Library. In the long term this may result in changes to, or the relocation of, the existing library adjoining the site. This may also affect any future arrangements regarding the lease portion of the site.

5.13 It is also recognised that the site has been identified by Heritage New Zealand Pouhere Taonga as a Category 2 building and that also, as the building was constructed prior to 1900, the property is an archaeological site.

5.14 At the time of my most recent site inspection the site included signage advertising it for sale or lease. I attempted to garner further information regarding this but, as at the time of preparing this evidence, I was unable to locate the site listing either for sale or lease on the Property Brokers Website, Realestate.co.nz or Trademe.

5.15 I have attached, as Appendix 3, a copy of a Land Information Memorandum (LIM) for the site which was obtained in 2014. It is assumed the LIM was obtained by a potential purchaser. This assists in understanding the detailed history of the site and information that would be provided to a potential landowner upon the request of a LIM.

6 Previous Consents

6.1 It is my understanding that the applicant took possession of the site on 27 February 2015.

6.2 Cates Grain & Seed Ltd C/- CJ Redmond Ltd lodged a resource consent application to demolish the building on 22 January 2015. The application was processed on a publicly notified basis, submissions were received, a hearing was held and the application was declined. The applicant has provided a copy of the decision on the application. The decision was appealed by the applicant, but that appeal was subsequently withdrawn following mediation. I processed the resource consent application following

the notification of the application. The appeal was withdrawn on 8 March 2018.

- 6.3 On 18 December 2017 Redmond Retail Ltd lodged a resource consent application to relocate the building. It was determined that the application should be processed on a notified basis. The applicant subsequently formally withdrew the application on 5 July 2018. The actual public notification of the application did not occur and no substantive decision was made on whether or not to approve the resource consent. I also processed the application. The applicant has provided a copy of the notification assessment I prepared as part of the application for the plan change.
- 6.4 The Court then received the application for the plan change on 25 September 2018.

7 Ashburton District Plan

- 7.1 The Ashburton District Plan was made operative on 25 August 2014. The provisions were operative at the time of the applicant's possession of the property and also the District Plan was made operative after the Canterbury Regional Policy Statement (RPS), which became operative on 15 January 2013. In this regard the Ashburton District Plan provisions are required to be consistent with the RPS and accordingly I have not undertaken further analysis of the provisions of the RPS as part of my evidence.
- 7.2 The site is located within the Business A zone in the Ashburton District Plan. This zone covers the inner commercial area of Ashburton and provides principally for small scale retail activity. There are a variety of zonings in the surrounding area including Open Space A to the south east, Residential A to the north west and Business B to the south west.
- 7.3 A copy of the relevant planning map (U53) together with the planning maps of the town centre commercial area (U52, U59 & U60) are attached as Appendix 4.
- 7.4 The format of the District Plan includes different chapters for the zones together with other chapters that apply across all zones. For example, there is a chapter for Business Zones (Chapter 5) and a chapter for Heritage Values and Protected Trees (Chapter 12).
- 7.5 Prior to discussing the various provisions of the District Plan I note there has been some discussion as to the extent to which the heritage classification applies. The part of the building I understand to be of historic importance is the front original structure. While this part of the building is the part of

historic value I am of the opinion that the classification applies across the whole building including the more recent additions. The reason for this is that if alterations were to be undertaken, such as to the rear newer building, the relationship between the parts of the structure needs to be managed so as to minimise impacts on the historic structure. For example, the demolition of the rear, newer, building could necessitate the construction of a wall at the rear of the historic structure. Appropriate consideration needs to be given to how this is undertaken hence the need for the structure to be classified as a whole. The District Plan listing could be improved to better clarify those parts of the building of greater importance but I do not consider that the listing of the whole structure rather than only part of the building makes a significant difference to the application of the Plan provisions.

7.6 These are the two relevant chapters in considering the application. These are the Business Zones Chapter (Chapter 5) and the Heritage Values and Protected Trees Chapter (Chapter 12). Relevant parts of the chapters are detailed below and the application of those provisions are discussed later in my evidence. There will be other chapters of the Plan, such as the chapters on noise and signage, which may apply to a specific proposal but I do not consider them relevant for the purposes of assessing this application. The same applies for the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the attached LIM includes a statement from the listed land use register identifying the site as having contained a HAIL listed activity).

7.7 Chapters 5 and 12 are discussed as follows:

Business Zones Chapter

7.8 The District Plan zone description for the Business A zone is as follows:

"5.3.1 Business A

Although providing for a range of accommodation, community and commercial uses, the Business A Zone provides principally for small scale retail activity. This zone covers the inner commercial area of Ashburton (Kapuka) and the suburban shopping centres of Ashburton (Kapuka), whose primary function is to provide for the local retail and service needs of the surrounding community. It also provides for the core retail and commercial centres of Rakaia, Methven and Mt Somers, Hinds (Hekeao), Mayfield (Te Puke Tai) and Chertsey.

The Business A Zone represents the focal point of the District's small-scale shops, which provide opportunities for comparison or "browsing" within

environments that are intended to be pedestrian friendly. In addition, this Zone provides for residential, visitor accommodation, community and commercial activities. This diversity of activities aims to encourage the continued vitality, pleasantness and convenience of the District's Business A Zone and encourage efficient use of existing infrastructure and buildings.

In central Ashburton (Kapuka), shop-top apartments (residential activities above retail and commercial activities) rather than detached residential units will be encouraged. Residential activities will not be promoted at ground level to ensure the strong retail character of the town centre is retained. If managed effectively, this mix of activities can retain the vibrancy of the town centre as permanent residents will utilise local services and can assist in keeping the area 'alive'; whereby there is continual activity created by both the retail and residential elements. Although it is acknowledged that many trips to and from the commercial centre of Ashburton (Kapuka) will likely involve private vehicles, retailing activities that are strongly vehicle oriented are discouraged from the Business A Zone in that location. The emphasis is on maintaining and enhancing an environment that, whilst accessible, is safe, attractive and convenient for the pedestrian.

....."

7.9 Permitted Activities are listed in the District Plan (Rule 5.8.2) and include the following:

- Residential Activities;
- Visitor Accommodation;
- Community Activities
- Recreational Activities (excluding shooting ranges);
- Retail Activity (excluding service stations) other than where specified as a Controlled, Discretionary or Non-Complying Activity, provided that the maximum gross floor area of any individual retail tenancy shall not exceed 500m²; and
- Commercial Activities.

7.10 In understanding the above, relevant District Plan definitions include:

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.

Retail Activity

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.

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.

7.11 The Business zone also includes a series of Site and Zone Standards which any development also has to comply with. Relevant Site Standards (Section 5.9) include:

- Maximum building height 15m
- No Buildings shall be set back from road boundaries
- No internal setback requirements
- No maximum site coverage
- A verandah adjoining the road boundary shall be provided.
- The road frontage, at ground floor level, shall include windows which cover 65% of the wall area.
- Limitations as to the use of vacant sites;
- Residential and visitor accommodation shall be at the first floor level and above.

7.12 The evidence of Mr Harford suggests the maximum permitted site coverage is 75%. This is incorrect because the Site Standard for building coverage (5.9.4(a)) specifically excludes the Ashburton Town Centre where no maximum shall apply. The Ashburton Town Centre has been defined in the Plan as follows:

Ashburton Town Centre

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 Streets.

7.13 The site is within the town centre area and accordingly the exception applies. Therefore, there is no maximum site coverage standard for the site.

7.14 Relevant Zone Standards (Section 5.10) include:

- Controls on lighting;
- Offensive processes are not permitted;

7.15 The above provides a base understanding of the Business A zone which is relevant in determining the potential use of the site. The application of these provisions is considered later in my evidence.

Heritage Values and Protected Trees Chapter

7.16 Two of the allotments, being part of the site, have been identified as containing a heritage structure (District Plan ID No 9). Accordingly, the provisions of Section 12 of the District Plan apply.

7.17 To provide context, the District Plan identifies 119 different heritage sites. The District Plan identifies 24 of these as Group A listings and 94 as Group B (plus one site – Longbeach Estates – as containing various listings due to the site containing several buildings). Of the 119 sites 32 have also been identified / classified by the New Zealand Historic Places Trust (NZHPT).

7.18 A brief analysis of the town centre commercial area, as per District Plan Maps U52, U53, U59 and U60, identifies that the Business A & B zones contain a total of 8 heritage sites and of these 3 are Group A listings and 5 are Group B listings. A list of those sites is appended as Appendix 5.

7.19 The building has been identified as a Group A structure in the District Plan. Under section 12.6 (Reasons for Rules) guidance is provided as to the implications for the classification of structures:

12.6.1 Heritage Buildings / Items

The rules are based on a hierarchy of classification of heritage items within the District. The classification of each item has been based on local consultation and assessment of heritage resources, and the advice and, where applicable, registration category of the Historic Places Trust. The rules apply to both internal and external areas of the listed building/items.

The Group A heritage items are considered to be of national or regional significance. Their conservation and protection is provided for within the District Plan as of high significance and accordingly, any demolition of a Group A item is a non-complying activity.

- 7.20 Pages 12 – 18 and 12 - 19 (Appendix 12 – 1: Schedule of Heritage Buildings / Items) provides a useful table identifying the different status types for activities regarding heritage buildings. The table is reflective of the rules at section 12.7 of the Plan. A copy of the rules, full list of heritage structures and table is attached as Appendix 6.
- 7.21 In addition to the rules, site standards are also applied and are specified in Section 12.8 of the Plan. These standards generally specify how any works are undertaken such as reference to the ICOMOS (NZ) Charter 2010, works involving restoration to a sound condition of any existing building, redecoration work not effecting the historic heritage values of the element being redecorated and work generally matching the original in terms of quality, materials and detailing.
- 7.22 For the purposes of considering this application the most relevant provisions are the rules. The rules apply a series of status levels for an activity depending on its nature. This includes Permitted, Restricted Discretionary, Discretionary and Non Complying.
- 7.23 From the table, and corresponding rules, repairs and maintenance would be a permitted activity (subject to site standards) while alterations and additions would require a Restricted Discretionary activity consent. The applicant has previously sought resource consents to demolish the building and to relocate the building. Based on the Group A status of the building those are non-complying activities.
- 7.24 The rules are derived from and are supported by the Objectives, Policies and Assessment Matters. Relevant objectives and policies include:

12.3 Objectives and Policies

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 12.1A

To identify and record, in consultation with the Historic Places Trust, Arowhenua Runaka, historical societies within the District and the local community, significant historic heritage items in the District Plan.

Policy 12.1B

In determining items to record, the District Council will have regard to whether the site or item:

- is identified on the NZHPT register of historic places as a Category I or II historic place, historic area, wahi tapu or wahi tapu historic area;*
- has an historic association with a person or event of note, has strong public association for any reason, or provides a focus of community or local identity or sense of place;*
- has value as a local landmark over a length of time;*
- reflects past skills, style or workmanship which would make it of educational, historical or architectural value;*
- has the potential to provide scientific information about the history of the area; • is unique or rare, or a work of art;*
- retains integrity or significant features from its time of construction or later periods when important alterations were carried out;*
- forms part of a precinct or area of historic heritage value; • is representative of its class in relation to design, type, technology, use, or similar;*
- contributes to the distinctive characteristics of a way of life, philosophy, religion or other belief and/or is held in high esteem by a particular group or community;*
- is of importance to the Takata Whenua, and the appropriateness of making this information available to the general public;*
- has the potential to contribute information about the human history of the area or provides archaeological information.*

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 12.1D

To recognise and protect sites of significance to Takata Whenua, in a manner which respects and accommodates tikanga Maori.

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.

Policy 12.1H

To ensure the protection of heritage items listed in the schedule which are under threat from demolition, removal or major modification by the use of Heritage Protection Orders, as necessary, and in conjunction with other agencies where appropriate.

Policy 12.1I

To recognise the NZHPT as a consenting authority for all pre-1900 archaeological sites.

7.25 Relevant Assessment Matters are as follows:

12.9.1 Heritage buildings / items

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);

b) Where a building is part of a group of buildings, any adverse effect on the integrity of building character in the vicinity or of the group;

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;

h) In the case of any place of cultural and spiritual significance to Takata Whenua, the response of the Takata Whenua to consultation;

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.

- 7.26 The above provides a base understanding of the Heritage rules which is fundamental in understanding the implications of the District Plan in the limitations placed on the development of the site. This information is considered against the application later in my evidence.

8 Building Consent Requirements

- 8.1 The plan change application documents place significant weight on the implications of the Building Act 2004. The suggestion through the application is that the District Plan requires the building to remain and this then leads to the need to comply with building consent requirements.
- 8.2 This evidence is to consider the implications of the District Plan and the burden it imposes but, as discussed, I acknowledge the link and corresponding implications that may be perceived through the combination of the two requirements. On this basis I provide brief comment on Building Consent requirements.
- 8.3 I am not an expert, nor do I have the necessary experience, with regards to building consent requirements. In order to better acquaint myself with the situation I have sought advice from Michael Wong who is the Ashburton District Council Building Services Manager. On the basis of his advice I understand alterations to an earthquake prone building are considered under section 133AT of the Building Act 2004. The Building Act requires:
1. The building's overall compliance with the Building Code (including other applicable clauses in addition to fire and accessibility, such as

structure) must not be less than what it was prior to the alteration taking place.

2. The whole building needs to be upgraded so that it complies as nearly as is reasonably practicable [ANARP] with the current Building Code clauses for fire and accessibility.
3. If the building being altered is earthquake prone and the alteration is a substantial alteration, section 133AT of the Building Act also requires the alteration to include the necessary seismic work so the building is no longer earthquake prone.

8.4 I understand that the third point means that the strengthening only has to get to 34% of the National Building Standard and that if a building owner cannot meet the requirements of the first two points the Council has discretion to accept less than 100% compliance of any alteration work subject to the meeting of certain criteria as follows:

- the alteration includes the necessary seismic work, and
- if the building were required to comply with the specified provisions, it would be unduly onerous for the owner in the circumstances, and
- the permitted non-compliance is no more than is reasonably necessary for the objective of ensuring that the building or part is no longer earthquake prone, and
- after the alteration, the building will continue to comply with all relevant provisions to the same extent as before the alteration.

8.5 It is also understood that if compliance as nearly as is reasonably practicable with the Building Code for fire and accessibility, or compliance to the same extent as before the alteration, would prevent the owner from being able to undertake the necessary structural work to make the building no longer earthquake-prone, the Building Act prioritises making the building no longer earthquake prone due to the associated life safety benefit. The benefits of complying to a lesser extent must outweigh the detriment, i.e. the benefit of the building no longer being earthquake prone would be realised. The relevant provisions of the Building Code referred to are those relating to fire and accessibility, and any others the building is subject to, i.e. structure.

8.6 A copy of the email correspondence between myself and Michael Wong, in obtaining the above understanding, is attached as Appendix 7.

8.7 On the basis of the above it is my opinion that care needs to be undertaken in assuming the level of works required in achieving necessary building

standards. Based on my lay persons perspective, while preliminary investigations have been undertaken and submitted as part of the application, a specific analysis, in consultation with the Council, would be required to develop an understanding of the level of work required to bring a building up to an appropriate standard. These building consent requirements would be applicable regardless of whether a building has heritage status. I am also cognisant that Councils application of requirements / standards may be different from an owner or tenants expectations, which may be higher, particularly following the Canterbury Earthquakes.

- 8.8 In addition to the above, regardless of any changes of use to the building, the building owner is also already required to comply with the requirements of the Building Act 2004. I understand the Building Act seeks to ensure earthquake prone buildings are identified, assessed, rated and remediated. Again, this is a requirement for all buildings and is regardless of any change of use etc. Therefore, earthquake strengthening of the building is likely to be required. In this regard I also note that a notice has been placed in the window of the building identifying the building as earthquake prone and (subject to various clauses) the owner of the building is required to carry out building work to ensure the building is no longer earthquake prone (34% NBS) by 6 March 2023.
- 8.9 It is my understanding that the Building Act provisions were generally the same at the time of the purchase of the Cates Building.

9 Resource Management Act 1991

- 9.1 The requirements of section 85 of the Act have been discussed through the application etc. In addition to that section, and the processes dictated by it, this does not take away from the requirements of section 6 of the RMA (Matters of National Importance).
- 9.2 The implications of section 6 are that, in considering this application, recognition and provision is required to be given to the protection of historic heritage from inappropriate subdivision, use and development as per section 6(f).
- 9.3 This needs to be considered as part of assessing any application to amend the Ashburton District Plan and is discussed later in my evidence.
- 9.4 On the basis of the above background information, detailed in sections 3 to 9, the various points, as specified in the Environment Court minute are considered and addressed as follows:

10 The Heritage Values Associated with the Building

10.1 The application site contains a heritage building which has been described in various reports associated with this application and is further detailed through the evidence of Ms Arlene Baird. I note that the evidence of Ms Baird focuses on the heritage component of the building. This is appropriate given the focus of this application process is on the heritage of the site and also that the characteristics of the wider building have been detailed through the various appendices to the application. The building was once part of a series of grain stores adjoining or adjacent to one another and the building is more readily recognised due to the curved roof structure.

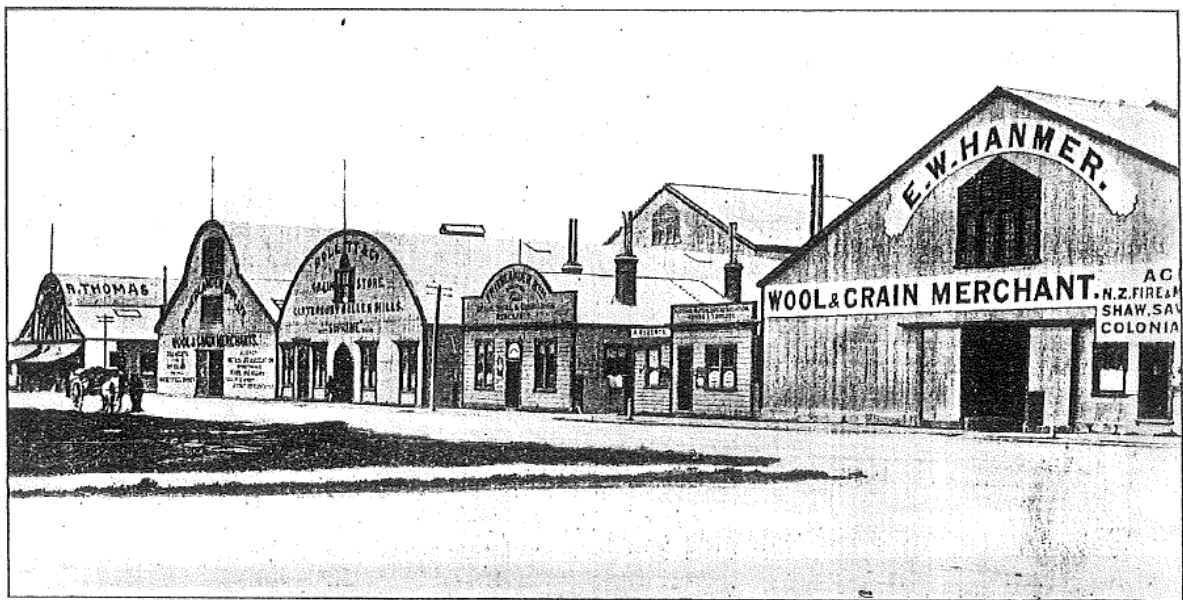


Fig 4. Historic Image of Site

10.2 I rely on the evidence of Ms Baird in understanding the heritage values of the site. Importantly, there appears to be no debate as to whether the qualities and characteristics of the building and site justify the imposition of a heritage classification through the Ashburton District Plan. The question, through the application, is whether that justifiable heritage classification imposes an unreasonable burden on the landowner.

11 What Constitutes a Reasonable Use of the Site

11.1 The concept of a reasonable use for the site stems from section 85(3B)(a) where consideration is given to whether the provisions of the District Plan make the site incapable of any reasonable use. Reasonable use is the first of the two tests in section 85(3B) and the two tests are conjunctive with both parts needing to be proven. A reasonable use, when considering this

site, should be something which is fair, appropriate and sensible. Reasonable use could mean, or be based on, a variety of matters relevant to a specific person such as economics, function, desired use and many other reasons of particular interest to a person but ultimately the question is whether the building could be realistically used for something. It could be that the special attributes and characteristics of the site may attract a person who considers historical preservation is appropriate. To this end preservation may be considered a reasonable use. The building is in a zone which provides for a variety of activities and while the building was originally constructed for the purpose of a grain store it is considered the building design provides flexibility for other uses. I consider that the building and site is not restricted to one particular purpose or type of use.

- 11.2 Relevant provisions of the District Plan, as identified in section 7 of my evidence, seek to achieve a balance whereby a structure is suitably protected while still encouraging that structures are able to be utilised. Policy 12.1E encourages the use of protected buildings while ensuring that their valued features are not impaired or destroyed. Policy 12.1G encourages owners to retain historic heritage values through considering a range of mechanisms, including opportunities for alternative uses of the site or building. Assessment Matter 12.9.1(c) requires consideration to be given to 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. Assessment Matter 12.9.1(d) requires that consideration be given to 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.
- 11.3 The above provisions encourage flexibility as to the use of a site and ultimately seek a balance whereby a heritage structure is protected but provision for change is available and an accepted part of utilising such a structure. In my opinion the provisions seek to ensure a reasonable use of a site can still occur. This concept is reflected in the rules of the District Plan with different levels of activity status applying depending on the scale of works / change proposed. A restricted discretionary activity status provides for refined consideration of how a building might be altered to accommodate a proposed use of the site.
- 11.4 I do not consider it appropriate to suggest that the only reasonable use of the site is to demolish the building.

- 11.5 I have turned my mind to what the site could be used for, keeping in mind the question asked through the memorandum is separate from the later question of uses provided for under the District Plan which is discussed later.
- 11.6 The building is versatile in its design as it includes a combination of open storage areas, office space, arterial road frontage, associated car parking, two access points and could be altered to accommodate various activities depending on their specific needs. The capability for alteration is better addressed by Ms Baird but it might be possible for various additions and add-ons to be changed with potentially lesser effect on the historic components of the building. For example, it might be possible to alter the frontage, change or remove the internal partitioned walls, the side walls, including add on on the northern side, and the rear extension could be altered, changed or removed.
- 11.7 Opinions and evidence have been provided from quantity surveyors, engineers and architects as part of the application and the evidence process. I have concerns (as a lay person) regarding some of the analysis provided and the standards which would have to be met, particularly on the basis of the comments from Ashburton District Council Building Services Manager Mr Michael Wong. For example, if 34% of the Building Standard is required to be met, this could be quite different to the 100% discussed elsewhere in the application with regards to the level of work required and associated costs. Appendix 12, paragraph 6, of the application confirms a minimum standard of 34%.
- 11.8 Again, evidence has been provided proposing that the current state of the building, when assessed against building consent standards, means there is no reasonable use for the site but again this is not a result of District Plan provisions. I again take care in my discussions as per above and following on.
- 11.9 A review of the reports provided also highlights the issue of not knowing the requirements of a potential tenant and accordingly providing estimates based on potential maximums. For example, the upper floor area in the building is potentially of little use depending on the type of activity proposed. Nevertheless, estimates include the potential provision of an elevator and twin egress stairs. It may be that it is possible to undertake measures that may avoid the need for elevators and stairwells thereby reducing potential refurbishment costs.
- 11.10 These are factors to take into account in determining what could constitute a reasonable use of the site including how the District Plan would provide

for such changes and whether there are other limitations such as strengthening.

- 11.11 With the above in mind, and considering what actual reasonable uses could entail, the first option could be that the building could continue to be utilised for storage. This could include the removal of internal partition spaces within the front portion of the building to open up storage spaces. While I am not a building consent expert it is envisaged that if any strengthening works were undertaken the required standards for a storage activity would be potentially less than other types of activity, such as a restaurant.
- 11.12 Another option could include the separation of the building into parts such as the establishment of a wall between the historic and newer parts of the building. The rear building could be accessed from the side, as it currently is, and any improvements could be focused on the appropriate area. The front, historic portion, of the building may be more attractive to a tenant, such as a characterful café or retailer compared to the rear open more industrial area. As identified earlier, based on the number of buildings classified as heritage buildings in the local business area (8 buildings/structures), heritage buildings are a more rare or unique feature which might make it more attractive to some potential occupiers.
- 11.13 In reinforcing the above options, at the time of my recent site visit, part of the building was being used for storage activities including the storage of carpet, vehicles, rowing skiffs and equipment. This is being undertaken without changes to the structure of the building but I note the storage activity was focused within the rear newer portion of the building and there were large portions of the older section of the building which were not utilised.
- 11.14 The location of the site provides for a variety of uses / activities particularly given the range of activities in the area and the connections to the local roading network. A wide scope is provided through the District Plan Business A zone rules for a range of activities typical to the area.
- 11.15 The above provides guidance as to how the District Plan seeks to enable the reasonable use of the site while protecting certain values. In my opinion reasonable uses are available for the site.

12 Under the District Plan Zoning, What Uses Can be Made of the Buildings?

- 12.1 As identified earlier, the Business A zone provisions provide for a variety of activities such as recreational, retail and commercial activities. Accordingly,

a wide variety of activities are provided for. In my opinion, and purely based on the provisions of the District Plan, the two most likely uses of the site would be either retail or commercial activities.

12.2 Recreational uses are considered less likely due to the characteristics of the front section of the building, with numbers of columns, but also a recreational activity is defined as something different from commercial activities being not fee paying. The applications importance placed on financial return would make such an activity less likely. Visitor accommodation or residential activities are also considered less likely as the District Plan site standards require these activities to be at a first floor level or above. While the front part of the building contains a first floor the shape and design, including support stays / poles, would make visitor accommodation activities difficult and again, less likely. This reinforces my opinion that, in considering those activities which are permitted under the provisions of the Ashburton District Plan, retail or commercial activities are the most realistic uses of the site.

12.3 The definitions for commercial and retail activities have previously been defined in my evidence.

12.4 In section 11 above, of my evidence, I comment that a likely use for the site could be the continuation of storage activities. Under the District Plan a storage activity would fall under the definition of 'Service Activity' which is defined as follows:

"Service Activity

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. See also the definition of Rural Service Activity for those activities servicing a rural activity."

12.5 A service activity is not permitted in the Business A zone and is instead a discretionary activity under rule 5.8.5(i) of the District Plan. It could be that existing use rights may apply given the historic and current use of the site but for the purposes of this assessment it is assumed resource consent would be required. Therefore, a storage activity remains possible for the site and in my professional opinion, depending on the details of a proposal, it would be possible to obtain resource consent but I also acknowledge there is a greater unknown as to whether resource consent would definitely be obtained compared to those activities provided for as a permitted activity.

- 12.6 Again, I reiterate that I do not consider that the only reasonable use available for the site is the demolition of the building. The District Plan discourages demolition including rules and objective 12.1 but this does not discourage all uses. The Business A zone provides for a wide variety of activities. The heritage provisions, as discussed earlier (paragraphs 11.2 – 11.4), reflect a balance of protecting heritage structures while encouraging their adaptation for alternative uses.
- 12.7 In my opinion, the approach of the District Plan is also consistent with section 6 of the Act (Matters of National Importance) which requires recognition and provision for the protection of historic heritage from inappropriate use and development.
- 12.8 In my opinion the District Plan strikes the right balance in seeking to protect historic structures while also encouraging their use and providing flexibility to provide for this.

13 Is the Site Capable of any Further Development With The Building Remaining in Situ

- 13.1 This has been examined by Ms Baird in her evidence including an examination of site coverage. I note that, as discussed at paragraphs 7.10 and 7.11 of this evidence, 100% building coverage is permitted.
- 13.2 In addition to her comments it is important to understand that those aspects of the building which are the most important, from a heritage perspective, are the roof structure and the wooden columns. This provides significant flexibility with regards to the site including the alteration or removal of elements, such as the extension along the side of building.
- 13.3 It is important to also consider the relationship with the lease area as to how the lease area site could be used will influence the development of the site. The applicant has previously provided an indicative concept for the development of the site, including lease area but this can only be treated as indicative.
- 13.4 On the basis of the flexibility of the historic elements of the site it is considered further development is possible which could include changes and alterations to existing structures. Resource consent would be required for alterations to the existing building, based on the heritage classification, but given previous investigations and depending on the nature of any alterations it would be reasonable to assume a high likelihood of resource consent being obtained. I also note that the other District Plan provisions would also remain applicable in considering any proposal.

- 13.5 I recognise the application has placed significant emphasis on the requirements to strengthen and refurbish the building up to appropriate standards and how this influences the use of the site. As previously mentioned in this evidence these other standards are not those of the District Plan and as such I recognise them but continue to suggest caution is required in the level of influence such information should have in reaching a decision on the application.
- 13.6 This also leads me to question what investigations were undertaken at the time of purchase of the property. I have demonstrated that significant information was available from the Council regarding the heritage values of the site and due diligence should have led to an exploration of the ramifications of this. The applicant should have investigated potential uses of the site at the time of purchase in reference to the framework of the District Plan, let alone other requirements such as structural strengthening and the costs of refurbishment. The requirements of the District Plan have not changed between the time of purchase and now and the requirements of the Building Act 2004 are much the same.

14 Whether Demolition of the Building Extensions (1950's Onwards) Enhances Reasonable Use of the Building

- 14.1 Whether or not the demolition of the extensions would enhance the reasonable use of the building is very much going to depend on the specific needs of any particular development. The demolition of part of the building may provide alternative options but the establishment of a wall between the new and old section of building could also provide an option.
- 14.2 In my opinion the rear newer building does not limit or impede the use of the front structure. The question instead is what the needs of an individual might be. For example, a potential tenant may require a certain amount of space for their activity. They may or may not require a large open area or smaller enclosed spaces. If a person requires a smaller amount of space of a certain characteristic then logic would suggest that the establishment of an internal wall, or similar arrangement instead of the outright demolition of a structure, is a practicable and reasonable option. Paragraph 11.12 of my evidence suggests the option of separating the building into parts which would enable multiple tenancies which I consider is a valid consideration.
- 14.3 On this basis I would suggest the demolition of the building extensions does not change the reasonable use of the building. Once one determines an appropriate use of the building this will dictate the scale of changes required.

- 14.4 Depending on the outcome of initial investigations, or at the determination of the applicant, partial demolition of the building would provide the opportunity to provide new spaces and also the redevelopment of the historic components. This would allow for the retention and adaption of the heritage parts of the building while providing for further activities in a purpose designed building if that is the need of the owner or a tenant.
- 14.5 Overall, the message I want to make clear is that I do not have an expectation that the non-heritage components of the building should or should not be demolished to enable the use of the site. I am instead suggesting there is, and needs to be flexibility, to ensure opportunities are available for the reasonable use of the site which may or may not include partial demolition. I consider that the District Plan provides that flexibility.

15 Whether the Owner has Reasonably Explored Alternative Options of the Reasonable Use of the Building and the Site

- 15.1 As previously outlined, and included in the application, a resource consent was sought for the demolition of the building and following the declining of that application, approval was sought to relocate the building but that application process was never completed. Since 2015 no resource consent applications have been sought to alter the building so as to facilitate alternative uses of the building / site.
- 15.2 The applicant took possession of the property in February 2015 and lodged the first resource consent application to demolish on 21 January 2015.
- 15.3 The application, as lodged, and across the various processes has included various investigations as to the building and what works would be required in order to strengthen the building. These investigations were broad and included various cost estimates. Those estimates varied depending on the scope and nature of any improvements.
- 15.4 It is my opinion that those investigations did not adequately consider potential alternative uses of the buildings or the parts of the site that don't not possess significant heritage values. This includes whether the structures could be let out for multiple tenants which may facilitate different activities across the building and also the scale of work required depending on the specific needs of an activity. In saying this I am not suggesting these investigations are faulty and, given the constraints, I accept that the investigations undertaken have been reasonable. It is instead that specific alternative activities have not been proposed or investigated and as such a more broad analysis has been required. Again, I also note that much of the

analysis undertaken by the applicant focuses on the strengthening of the building and code requirements rather than the District Plan.

- 15.5 If the applicant undertook some works to enhance the site, or parts of it, this may make it capable of providing for some of their own needs or make it more attractive to potential tenants. For example, a first stage of strengthening could have been undertaken and cosmetic improvements could be made. This may make the building more attractive such that a base income could be generated from at least part of the building which may then facilitate further improvements over time, again making the development more attractive for potential tenants. This would also better demonstrate the owner has reasonably explored other options.
- 15.6 This would require the applicant to provide a capital outlay and investment and, if those works were not for their own activities, the works would be undertaken not knowing if a tenant would be attracted to such a development and also not knowing what the needs of a tenant would be, such as size / space required. There are financial implications for this but this can be no different to other building owners and in the context of a site purchased with knowledge of heritage value ought to have factored into their decision to go ahead with the purchase. Also, it is not unusual to see advertising for potential developments seeking registrations of interest and I note that, in this instance, no such information has been provided by the applicant. The applicant has advertised the property for sale or lease but I have not received any information as to the nature of any promotion nor any investigations as to how the applicant proposes to make the property more attractive to tenants including the proposition of different options for development. This includes whether they have considered the use of the site for their own purposes.
- 15.7 I recognise that it is likely that as part of making the site more attractive to potential tenants or owners resource consent will be required. Some persons may perceive this as an obstacle but, as previously discussed, the District Plan includes provisions to encourage the use and development of buildings. Policy 12.1E encourages the use of protected buildings. Assessment Matter 12.9.1(d) requires consideration of the effect on the property owners enjoyment and practical use of the site including the extent they would face unreasonable restrictions and costs as a result of consent being refused or conditions imposed.
- 15.8 Therefore, in my opinion, District Plan requirements are not a barrier to the exploration of alternative options, while the definition of reasonable use in section 85 as inclusive of activities that may have "not significant" adverse

effects on other persons suggests that the need to obtain a consent won't make a use unreasonable.

- 15.9 On the basis of the above, and a review of information provided in the application, I do not consider that the owner has reasonably explored alternative options for the reasonable use of the building and the site.

16 Whether There Are Other Options That Could Still Reasonably Be Pursued;

- 16.1 Throughout my evidence I have made mention of various options for the site which start from the point of its continued use for storage activities. On the basis of the analysis through my evidence I consider there are other options for the use of the site which can still be pursued.

- 16.2 As part of this, as per my discussion about my most recent site inspection, Ms Baird has commented that she has viewed the building on multiple occasions and she is of the opinion that the building has not notably deteriorated during this time. This further confirms that the exploration of alternative options remains viable.

17 What is the Development Potential of the Site if the Building Were to be Demolished or Otherwise Removed

- 17.1 The earlier review of the provisions of the Ashburton District Plan Business A zone detailed the basic parameters for the site that would be applicable for any potential development. This included the range of activities provided for such as commercial and retail activities and also the site standards for any development of the site. Standards included:

- Maximum building height 15m
- No buildings shall be set back from road boundaries
- No internal setback requirements
- No maximum site coverage
- A verandah adjoining the road boundary shall be provided.
- The road frontage, at ground floor level, shall consist of windows covering 65% of the wall area.
- Limitations as to the use of vacant sites;

- Residential and visitor accommodation shall be at the first floor level and above.
- Controls on lighting;
- Offensive processes are not permitted;

17.2 On this basis the main limitation would be if the applicant intended for the site to remain vacant and for it to be used as an open display area. This would be in breach of a site standard. Beyond this, the provisions provide no significant limitation on the development of the site. This includes no limitations on site coverage and also, as mentioned by Mr Harford, no requirement to provide car parking.

17.3 If the buildings were to be removed a large site would be provided which would be perceived as a blank canvas with very little limitations. In my opinion the one limitation that would be imposed is that it would no longer be possible to establish an activity which utilises the current heritage features of the site.

17.4 Finally, in my opinion, the framing of this question tends to skew the enquiry under section 85. The question isn't whether the land could be put to more productive use without the plan provision in place, but whether the plan provision prevents any reasonable use. If the ability to put land to a 'better' use, in the eyes of the landowner, was the principle factor in deciding whether a provision was unreasonable, then many plan provisions may be vulnerable to similar challenge.

18 Other Matters

18.1 My discussion above has addressed those matters identified in the Minute of the Environment Court dated 14 March requiring due consideration by the Court (Paragraph 4). Paragraph 5 of the minute details those legal issues to be decided. For the most part I leave these matters to be addressed by the Counsel for the Respondent, but I provide brief comment as follows:

18.2 I consider the owner purchasing the building as a listed heritage building is a relevant consideration because prior to purchasing the building due diligence would have been undertaken and an understanding of the provisions of the District Plan obtained. This is very different compared to when new requirements are imposed on an existing landowner. In this instance the owner entered into the purchase of the property in the knowledge of the requirements or burden of the District Plan provisions for

the site and that information was freely available. The same applies for other requirements such as the Building Act 2004.

- 18.3 If the owner had purchased the site and undertaken a reasonable effort to find a use of the site, which may have necessitated a financial investment and a resource consent to alter some part of the building, then it would be better demonstrated that the owner purchased the site in knowledge of the requirements of the District Plan and made good effort to work within those in requirements to achieve a reasonable use of the site.
- 18.4 A financial threshold or level of cost is one part of determining whether a burden is unreasonable, but I reiterate the question here is in the application of the District Plan provisions, not the Building Act 2004. Information provided in the application is focused on the costs of complying with building requirements, not the District Plan. I consider there will be other factors in determining whether a burden is unfair and unreasonable. The question also remains that whether by not being able to demolish the building, as opposed to repair or alter, if this represents an unfair burden.
- 18.5 In consideration of the final point (d) I reiterate that the application focuses on the belief that the only reasonable use of the building is its demolition. The declining of resource consent to demolish is relevant but consideration needs to be given to the heritage provisions of the District Plan as a whole. This includes that there are rules permitting certain works and it is a restricted discretionary activity to alter the building. Surrounding this are provisions (policies and assessment matters) which support the establishment of alternative uses for the building. This must be considered in ascertaining the level of burden being placed on the owner and whether this is unreasonable.
- 18.6 In addition to the legal issues, given the unusual circumstances of the application, as previously described I am cognisant of the potential wider implications of application. If the Plan Change was granted by the Court, the decision, and circumstances surrounding the process that led to the decision, could set a precedent (treating like for like) for other situations across New Zealand. This could involve heritage buildings or other situations where a person or organisation seeks to undertake an activity that may have been previously declined consent or are faced with provisions in a Plan which do not accommodate a landowner's intended or preferred use of a site.

19 Summary

- 19.1 In my opinion, the District Plan contains provisions which seek to protect heritage structures and these provisions are consistent with the Resource Management Act 1991. A fair and reasonable balance is provided through the review of and the application of the Plan provisions. The District Plan provisions were in place at the time of the applicant's possession of the application site.
- 19.2 Reasonable uses are available for the site and in my opinion the applicant has not attempted to explore all uses available. I am also of the opinion that the District Plan provides flexibility for the use of the building with a variety of status's being applied depending on the scale of the activity proposed. It is only the removal or demolition of the building which is provided for as a non-complying activity under the Ashburton District Plan.
- 19.3 Overall, I am of the opinion that the classification in the District Plan is appropriate and reflects the importance of the building. The relevant rules and provisions of the Plan seek to protect the building but appropriate flexibility has been provided to ensure the building can continue to be utilised for various activities. I do not consider the land to be incapable of reasonable use and the Plan impositions are not unfair or unreasonable. Therefore, the proposal does not pass either of the tests in section 85(3B) of the Act and needs to pass both to allow the Plan Change. I also consider that the purpose of the Act would be better given effect to by declining the Plan Change sought on the basis of it being a matter of national importance to protect historic heritage from inappropriate use and development.

Appendix 1

Certificates of Title

Appendix 2

Deed of Lease

Appendix 3

Land Information Memorandum

Appendix 4

District Plan Maps

Appendix 5

List of Heritage Buildings

Appendix 6

District Plan Heritage Rules

Appendix 7

Email Correspondence