

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

ENV-2018-CHC-198

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

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

**BETWEEN**

**REDMOND RETAIL LIMITED**

Applicant

**AND**

**ASHBURTON DISTRICT COUNCIL**

Respondent

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**JOINT WITNESS STATEMENT**  
**Dated 21 June 2019**

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## JOINT WITNESS STATEMENT

- 1 At the direction of the Court expert witness conferencing was undertaken between those expert planners who had produced evidence on the application by Redmond Retail Limited (Court Reference ENV- 2018-CHC-198).
- 2 The expert witness conferencing was held on 11 June 2019 at Christchurch. The planners also had the benefit of attending the expert heritage conferencing on 10 June 2019.
- 3 Attendees at the conference were:
  - a) Stewart Fletcher (Fletcher Consulting & Planning) for the Ashburton District Council;
  - b) Nicola Rykers (Locality Limited) for Heritage New Zealand Pouhere Taonga;
  - c) David Harford (David Harford Consulting Limited) for Redmond Retail Limited
- 4 This joint statement is prepared in accordance with section 4.7 of the Environment Court Practice Note 2014.
- 5 We confirm that we have read the Environment Court Practice Note 2014, and in particular Appendix 3 – Protocol for Expert Witness Conferencing, and agree to abide by it.
- 6 The purpose of conferencing was to identify, discuss and highlight points of agreement and disagreement on planning issues arising from the application to amend the District Plan for the purpose of removing the heritage classification from a building.
- 7 On the basis of conferencing undertaken the following agreed statement has been prepared which is attached as Annexure A.
- 8 In addition to those matters detailed in Annexure A the planners noted and expressed some confusion as to what material should be treated as expert evidence specifically whether this should include the information submitted as part of the application.

**Dated** this 28<sup>th</sup> day of June 2019.

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**David Harford**

Expert Planner for Redmond Retail Limited



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**Nicola Rykers**

Expert Planner for Heritage New Zealand

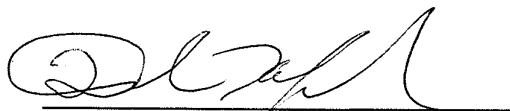


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**Stewart Fletcher**

Expert Planner for Ashburton District Council

Dated this 28<sup>th</sup> day of June 2019.



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**David Harford**

Expert Planner for Redmond Retail Limited

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**Nicola Rykers**

Expert Planner for Heritage New Zealand

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**Stewart Fletcher**

Expert Planner for Ashburton District Council

## ANNEXURE A

### Regarding an application under section 85 of the Resource Management Act 1991 by Redmond Retail Ltd

Issues	Statements	Agreed Position	Disagreements / Reservations with Agreed Position
1. What is the permitted site coverage for the site.	The District Plan permits a maximum site coverage of 100% based on the site being within the Business A Zone and Ashburton Town Centre (as defined).	Agreed by all	
2. What provisions of the Ashburton District Plan are relevant in considering the application for a plan change.	<p>The objectives, policies and rules for the Heritage and Business Zone Chapters of the District Plan are relevant to the application.</p> <p>Other provisions of the Plan may potentially be relevant if a more specific proposal was being considered.</p>	<p>Agreed by all while noting that the Transport Chapter of the District Plan may also influence a future use proposal due to the site adjoining a State Highway.</p> <p>All agreed that the scheduled heritage status of the building is a consideration in how the site may be used or developed.</p>	<p>David Harford considers reasonable use is constrained by having to retain the original heritage building.</p> <p>Nicola Rykers considers that the scheduled status adds further matters to be considered but does not necessarily represent a barrier to future use.</p>
3. Why was the previous resource consent to demolish the building declined?	One of the main reasons the resource consent application, which sought approval for the demolition of the building, was declined was on the basis of Objective 12.1 of the Ashburton District Plan.	Agreed by all	

4.Application of heritage provisions	Where a proposal is looking at the future use of a heritage building or site the heritage objectives and policies are relevant and may carry extra emphasis that would not otherwise apply to the particular activity on a non-heritage listed site.	Agreed by all	
5.What is the activity status for an activity involving the heritage building	<p>Repairs and maintenance are a permitted activity.</p> <p>Alterations and additions which extend beyond repair and maintenance will require a resource consent as a Restricted Discretionary activity.</p> <p>The partial or full demolition of the building or its relocation is a Non-Complying activity.</p> <p>If there was no heritage classification a number of activities are permitted by the District Plan.</p>	Agreed by all	
6.Application of the term 'Reasonable Use'	The Ashburton District Plan (a) makes any land incapable of reasonable use; and (b) places an unfair and unreasonable burden on any person who has an interest in the land.	No agreement	<p>The planners could not agree that the range of permitted activities allowed for "reasonable use".</p> <p>In the view of David Harford it came down to what is defined as "Reasonable use". There is no certainty as to an outcome for a</p>

			<p>resource consent pathway if significant alterations and/or additions are required to be made to the building for the range of uses that would be permitted under the Ashburton District Plan.</p> <p>In particular, if a proposal required significant alterations that required removal of heritage features that could be deemed as partial demolition then a non-complying activity is required. This will entail further costs and it must be considered that there is no certainty as to the outcome of this consenting pathway because of the thresholds tests under Section 104(D) of the RMA.</p> <p>There is potential for public notification and subsequently appeal procedures.</p> <p>In the opinion of Nicola Rykers and Stewart Fletcher the District Plan does not limit future uses, as there is a consenting pathway for consideration of a wide range of activities. Reasonable use is potentially determined more by matters outside the District Plan e.g. insurance and costs.</p>
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			<p>It was determined that there was a disagreement between the planners which particularly stemmed from section 85 (3B). This section of the Act directs that consideration be given to the provisions of the District Plan but then requires an analysis of how the plan provisions affect reasonable use, fairness and burden.</p> <p>Reasonable use, fairness and burden can be dependent on an individual's circumstances, aspirations and perspective which are matters that extend beyond only planning. The planners considered this was a matter better directed to legal interpretation.</p>
7. Should the heritage classification only apply to part of the building	Only part of the structure, being the original building, is of such a historic character as to be classified as a heritage structure.	It was agreed that an option could be to apply a heritage classification to only the relevant portion of the building but that this would have to be carefully defined in the District Plan to ensure that no works can be undertaken that may affect the heritage structure without the necessary approvals.	
8. An activity or change of use for the site may not be permitted.	Activities could be undertaken within the building which may not	Agreement that from a planning perspective activities that may not	In addition David Harfords view is there is no certainty as to an



	<p>be provided for as a permitted activity in the Business A zone but could still be appropriate with the necessary approvals.</p>	<p>be permitted could still be considered appropriate or suitable e.g. coffee roastery but this would be subject to an Assessment of Effects, consideration of the provisions of 104 (e.g. if a non-complying activity, that effects are minor or the proposal is not contrary to objectives and policies) and Part II of the Act.</p>	<p>outcome for a resource consent pathway if significant alterations and/or additions are required to be made to the building for the range of uses that would be permitted under the Ashburton District Plan.</p>
<p>9. What are the implications of removal of rear portion of building.</p>	<p>The removal of the rear portion of the building could facilitate alternative activities.</p>	<p>It was agreed that if the rear building extension was removed there are potentially other matters relating to access or other performance standards that may trigger resource consent. The planning implications are difficult to determine in the absence of a particular proposal.</p>	
<p>10. Is Part II of the Resource Management Act 1991 applicable.</p>	<p>Part II of the Resource Management Act 1991 must be considered in assessing any application under section 85.</p>	<p>All planners discussed the matter of Part II of the RMA and Section 85. It is assumed that s85 must be considered having regard to the Purpose of the Act and Part II. The Planners considered it would be beneficial to have the relationship between these two parts of the legislation clarified and seek guidance from Counsel in respect of this matter.</p>	

<p>11. Does the Ashburton District Plan prevent the undertaking of activities on the site.</p>	<p>Through the Business A zone provisions the Ashburton District Plan provides for a variety of activities to be undertaken on the site. The overlay of the heritage classification does not prevent these activities occurring and heritage policies enable opportunities for a wider range of activities while ensuring potential effects on a heritage structure are suitably managed.</p>	<p>Agreed by all planners that the Business A and heritage provisions enable a variety of activities and uses of the site to occur including the provision of tools to facilitate such activities.</p>	<p>David Harford agrees with the agreed position for this matter but also considers that other factors, such as economic costs, existing structural/building layout and materials effect the reasonable use of the site and this has implications for the application of District Plan provisions.</p> <p>David Harford's view is the issue here is that there is no certainty as to the outcome of a consenting pathway if significant alterations need to be made to refit the building for the range of uses otherwise permitted under the District Plan.</p> <p>If a proposal was deemed a non-complying activity this will entail further costs and it must be considered that there is no certainty as to the outcome of this consenting pathway because of the threshold tests under Section 104(D) of the RMA.</p> <p>There is potential for public notification and subsequently appeal procedures.</p>
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<p>12. Has a specific use or alternative proposals been explored in determining if a reasonable use of the site is available.</p>	<p>The applicant has not explored alternative uses of the site and building beyond the building's removal or demolition other than some initial concept building design for the site that could be undertaken in this zone as part of the original resource consent application.</p>	<p>Agreed that no formal investigations or applications have been sought for alternative uses of the site.</p>	<p>David Harford can agree with the agreed position for this matter to some extent but also considers that broad investigations have been undertaken in the preparation of applications for demolition which have influenced the need to not undertake any investigation of alternative uses of the site.</p> <p>David Harford's view is the issue here is that there is no certainty as to the outcome of a consenting pathway if significant alterations need to be made to refit the building for the range of uses otherwise permitted under the District Plan.</p> <p>If a proposal was deemed a non-complying activity this will entail further costs and it must be considered that there is no certainty as to the outcome of this consenting pathway because of the threshold tests under Section 104(D) of the RMA.</p> <p>There is potential for public notification and subsequently appeal procedures.</p>
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<p>13. To what degree would the Zone and Site Standards influence future uses?</p>	<p>The relevant zone and site standards for the Business A Zone have been identified but are not considered determinative of reasonable use.</p> <p>Car parking is not required for a future use.</p> <p>Some transport site standards would be relevant eg loading but have not been assessed.</p>	<p>Agreed by all</p>	
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