

**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

**AGREED STATEMENT OF FACTS
Dated 27 May 2019**

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AGREED STATEMENT OF FACTS

- 1 Redmond Retail Limited (**Redmond**) is the owner of a property known as Peter Cates Grain Store (**the Building**) located at 229-241 West Street, Ashburton.
- 2 Redmond has owned the property since 28 February 2015. Redmond is a property investment company that has owned and developed numerous commercial properties in Ashburton over the past 50 years.
- 3 The land and Building was purchased for \$800,000 with rates and the cost of the Glasgow lease payments are \$15,643 annually.
- 4 While it was in the ownership of Peter Cates Limited (**Peter Cates**) it was used for grain storage and distribution. Peter Cates moved its activities to another site in Ashburton. The site was available for leasing from late 2015.
- 5 The Building is currently identified in Appendix 12.1, Table 12.3 'Schedule of Heritage Items' in the operative Ashburton District Plan (**the District Plan**) and is identified as such on Planning Map U53.
- 6 The Building was first included as a heritage place under the District Plan administered by (the former) Ashburton Borough Council in 1981.
- 7 The Building is also identified as a Category 2 historic place on the New Zealand Heritage List/Rārangī Korero (formerly the New Zealand Historic Places Trust Register of historic places, historic areas, wāhi tapu and wāhi tapu areas). It is entered on the New Zealand Heritage List as List number 1807. The extent of the New Zealand Heritage List entry is defined as the original part of the Building fronting West Street.
- 8 The Building is constructed in two parts:
 - 8.1 The original 2-storey, curved roof building fronting West Street constructed around 1878-1879 (**the original building**), constructed of lightweight corrugated iron roofing on timber purlins with curved timber rafters and steel ties on timber posts. The first floor, which does not extend the full length of the building, is constructed of timber flooring on timber joists and beams supported by timber posts);
 - 8.2 A rear extension (**extension**) was added to the original building comprising a single storey building sometime in the 1940s – 1960s, the precise date of its

erection being uncertain. This extension has steel roofing on timber purlins, timber trusses to the central part and timber rafters each side supported by timber posts, with side and rear concrete reinforced block walls constructed in the late 1960s/early 1970s.

- 9 The heritage protection under the District Plan pertains to the entire building both internal and external, although the extension is not considered to have any heritage value. There have been some internal alterations made after the building was scheduled in the District Plan.
- 10 The Heritage New Zealand List entry pertains only to the original building.
- 11 The original building was constructed around 1878-1879, although the West Street facade was altered mid-1960s. An office area was constructed on the north of the building in 1992/1993.
- 12 The Building does not currently comply with the New Building Standard (**NBS**) under the Building Act 2004 and will require repair and strengthening work as it is currently considered to be earthquake prone, the extent of which will depend upon its ultimate use.
- 13 Although the Building is in a reasonable state of repair, works would be required for a change of use. This would require compliance with regulations additional to the District Plan concerning structural performance, sanitation, fire regulations and access.

Underlying Tenure

- 14 The buildings (original building and extension) are contained on two fee simple lots on separate titles, while Redmond's site extends across three adjacent lots with a total site area of 2,532 m². Underlying tenure is both the fee simple lots and a leasehold interest (under a Glasgow lease from the Council).
- 15 The building occupies close to 100% of these two titles extending out to the road frontage. The adjoining (leasehold) site comprises the carpark serving the site, as well as the vehicle crossing for access to and from the adjoining State Highway (State Highway 1). This is one of two existing vehicle crossings enabling access to the building; the second crossing provides an internal entrance to the building, attributable to its historic use for grain storage.

- 16 State Highway 1 is a 2-lane sealed road with a minimum carriageway width of 14 metres with footpaths and kerb and channel on each side of the street.
- 17 Kerbside parking is available on both sides of the highway, along with a public car park across the highway, that provide on-street parking for staff and visitors to existing businesses on the western side of the Ashburton Business Area.

Zoning

- 18 The site is situated in the Business A zone under the operative District Plan and the Building is recognised as a Group A Heritage Item. A Group A Heritage Item is one that is:

... 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.

[See: Ashburton District Plan, 12.6.1 – Reasons for Rules]

- 19 The Business A zone covers the inner commercial area of Ashburton and provides principally for small-scale retail activity. Under this zoning, permitted activities include:

- Residential activities;
- Visitor accommodation;
- Community activities;
- Recreational activities (excluding shooting ranges);
- Retail activity (excluding service stations) other than where specified as controlled, discretionary or non-complying activity, provided that the maximum gross floor area does not exceed 500 m²; and
- Commercial activities.

- 20 'Commercial activity' is defined as:

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.

21 Rules for Historic heritage Values and Protected Trees are set out in Section 12 of the District Plan. Rule 12.7.5 (page 12 – 12) sets out the following activities as a non-complying activity:

- a) The relocation of a Group A listed heritage building / item to another location within the property or to another property.
- b) The partial demolition of a Group A listed heritage building / item.
- c) The demolition of a Group A listed heritage building / item.
- d) The relocation or partial demolition of buildings identified as “A” within the identified area of Longbeach Estate Heritage site.
- e) The demolition of buildings identified as “A” within the identified area of Longbeach Estate Heritage site.
- f) The destruction or removal of any tree listed in Appendix 12-4 as Protected Trees (other than a dead, hazardous, or dangerous tree).

These implement and achieve a suite of objectives and policies (**the Heritage Provisions**).

Resource Consent History

22 In January 2015, Cates Grain & Seed Limited and CJ Redmond Ltd (jointly) made an application for land use consent for a non-complying activity to demolish the Building. The application was publicly notified and attracted a number of submissions all in opposition, from Historic Places Mid-Canterbury, Heritage New Zealand, Mr Nigel Gilkison, Ms Julie Luxton, and Ms Maxine Watson, all of whom are parties to the current application.

23 Following a hearing, a Commissioner appointed by the Council issued a decision declining resource consent. The Commissioner found that the proposal would have significant adverse effects on the environment (at paragraph 29), and that the demolition was contrary to the key objective in the District Plan. In particular, Objective 12.1 which was described in the decision as a 'straightforward and directive objective' (paragraph 32) which was “very tough” and “puts the applicant in a difficult position”. The objective is:

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

- 24 An appeal was filed against that decision on 6 April 2017, and an Environment Court conducted mediation was held which resulted in a further application for a land use consent for relocation of the Building to another site within the district (which also attracted non-complying activity status). That application was lodged in December 2017.
- 25 However, it was withdrawn after public notification was recommended and despite discussions with Council officers who encouraged the applicant to proceed with the application. The withdrawal of the application was followed by the withdrawal of the appeal against the decline of the demolition consent.

Section 85 Application

- 26 On 25 September 2018, Redmond made an application under s85 RMA to change the District Plan to remove the Building from Appendix 12.1, Table 12.3 'Schedule of Heritage Items' and its identification as a protected heritage item from the relevant planning map.
- 27 The application is made on the grounds that the Heritage Provisions:
- 27.1 Render the land incapable of reasonable use; and
- 27.2 Places an unfair and unreasonable burden on them.
- 28 For the purpose of applying that test, 'reasonable use' is defined in s85(6) as including:

In relation to land ... the use or potential use of the land for any activity whose actual or potential effects on any aspect of the environment or on any person (other than the applicant) would not be significant.

Dated this 27th day of May 2019.



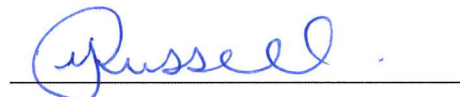
Prudence Steven QC

Counsel for Redmond Retail Limited



Andrew Schulte

Counsel for Ashburton District Council



Melanie Russell

Counsel for Heritage New Zealand Pouhere Taonga

Nigel Gilkison

Michael Hanrahan

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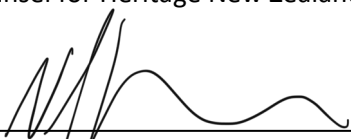
Maxine Watson

Andrew Schulte

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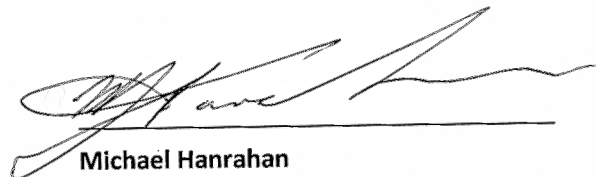
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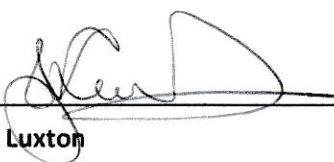
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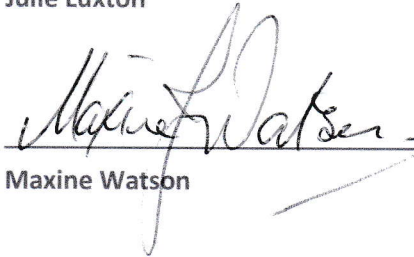
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Julie Luxton

A handwritten signature in black ink, appearing to read 'Maxine Watson', is written over a horizontal line. The signature is fluid and cursive.

Maxine Watson