

**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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**STATEMENT OF EVIDENCE OF DAVID HARFORD  
ON BEHALF OF REDMOND RETAIL LIMITED**

**Dated 12 April 2019**

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## 1. INTRODUCTION, QUALIFICATIONS & EXPERTISE

1.1 My name is David Harford. I am an independent Planning Consultant and Director of David Harford Consulting Ltd (“DHCL”). I have a Bachelor of Resource Studies (Lincoln University) and am an associate member of the New Zealand Planning Institute (“NZPI”). I have been involved in resource management for both local government and in a private capacity for over 20 years.

1.2 I acknowledge that I have read the code of conduct for Expert Witnesses in the Environment Court Consolidated Practice Note (2014). I agree to comply with this Code of Conduct. This evidence is within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## 2. SCOPE OF EVIDENCE

2.1 Redmond Retail Ltd has applied for an application under Section 85 of the Resource Management Act 1991 to;

1. *Remove from the Ashburton District Plan the heritage listing of the building at 229 – 241 West Street Ashburton from Appendix 12.1 “Schedule of Heritage buildings/items” being:*

*Heritage Building 9 – Peter Cates Grain Store – 229 West Street Ashburton – TS 193 Pt TS 194 Ashburton Town – Group A – HNZ Category ii – HNZ No. 1807 – District Plan Map Number U53.*

2. *Remove the “H9 Notation” for the Cates building on planning map U53 of the Ashburton District Plan.*

2.2 This evidence is given in support of the application under Section 85 lodged with the Ashburton District Council by Redmond Retail Ltd (“the applicant”) in relation to the removal of the heritage listing detailed above.

2.3 The evidence will address the following matters for the application and those matters raised as *“Essential Issues of fact and opinion to be resolved*

*and legal issues to be decided” in the “memorandum of counsel for the respondent in relation to Court minute of 8<sup>th</sup> February 2019 re case management” issued on the 8<sup>th</sup> March 2019:*

- (a) The heritage values associated with the building;
- (b) Under the District Plan zoning, what uses can be made of the building;
- (c) Is the site capable of any further development with the building remaining in situ?;
- (d) What is the development potential of the site if the building were to be demolished or otherwise removed.

### **3. THE HERITAGE VALUES ASSOCIATED WITH THE BUILDING**

- 3.1 The specific heritage values associated with this building were succinctly detailed in the report prepared by Jenny May of Heritage Management Services included as Annexure 11 of the Section 85 application.
- 3.2 In terms of the Ashburton District Plan heritage status for the building this applies to all of the building as detailed in the heritage listing “Peter Cates Grain Store” at 229-241 West Street, Ashburton from Appendix 12.1, Table 12.3 “Schedule of heritage items” in the Operative Ashburton District Plan which legally describes the land as being TS 193 and Pt TS 194 held in Computer Freehold Registers CB 15K/1325 and CB 20K/251.
- 3.3 However as the application under Section 85 detailed at paragraphs 4-9 the building is separated into the “original building” and the “rear extension”. It is only the original building that has the internal and external protection. The rear extension does not have any heritage value in terms of the physical structures that have been added since circa 1960’s.
- 3.4 The heritage classification for this building has always been understood to be the front or original building erected circa 1880’s with the curved roof and substantial timber supports within the building.

#### 4. USES OF THE BUILDING UNDER THE CURRENT DISTRICT PLAN ZONING

4.1 Under the Operative District Plan the site is zoned Business A.

4.2 The following paragraph from the zone description captures the purpose of the Business A zone:

*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 Rakaiia, 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.*

4.3 Rule 5.8.2 sets out Permitted Activities:

*The following shall be permitted activities, provided that they comply with all the relevant Site and Zone Standards below and all relevant District Wide Rules, and are not otherwise specified as a controlled, restricted discretionary, discretionary, non-complying or prohibited activity:*

- a) *Residential Activity in the Business A, B and C Zones;*
- b) *Residential Activity, for the purpose of custodial and site management, in the Business D, E and F Zones;*
- c) *Visitor Accommodation in the Business A, B and C Zones;*
- d) *Community Activity in the Business A, B and C Zones;*
- e) *Recreational Activity (excluding shooting ranges) in the Business A, B and C Zones;*

f) *Retail Activity (excluding service stations) in the Business A Zone, 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 500m<sup>2</sup>;*

...

k) *Commercial Activity*

4.4 Permitted uses must comply with all relevant site and zone standards and all relevant District wide rules. The key standards relate to;

*5.9.4 Building Coverage - 75% of net site area;*

*5.9.5 Verandas*

a) *In the Business A Zone, every building adjoining a road boundary, on its erection or on being reconstructed or altered in any way that substantially changes the exterior appearance, be provided with a veranda. b) The veranda shall be constructed along the full length of all parts of the building facing the road and within 2 metres of the road boundary. The height, width and fascia of the veranda shall relate to any adjoining verandas to provide continuity of veranda coverage, except where an access or driveways are provided to the rear of the building.*

*5.9.6 Windows*

a) *In the Business A Zone, every building adjoining a road boundary shall contain window(s) covering a minimum of 65% of the area of the ground floor wall(s) along the road frontage(s), for the purposes of the display of goods and services.*

4.5 There is no requirement for any building setback from boundaries or the road and no requirement for onsite car parking; the plan states that an extensive level of building development is anticipated.

4.6 The reason for the 'windows' rule is that the Council wishes to retain its traditional main shopping areas as attractive to the public and seeks to avoid the creation of large blank walls which would break the continuity of window displays and have little visual appeal. A minimum percentage of

the wall to be dedicated for window will ensure that large blank walls are not created.

4.7 The reasons for the verandas is stated as:

*Verandas are a traditional feature of many New Zealand towns and have a significant role in the visual and architectural integrity of the "main" streets of Ashburton (Kapuka) and Methven. They also provide shelter from the weather. The Council wishes to retain this traditional appearance of its main shopping areas, including that of the smaller townships, and promote achieving continuous veranda coverage throughout the Business A Zone. ...*

4.8 There is no setback from the road or internal boundaries, and no onsite car parking is required for any activity.

4.9 As to these rules:

- (a) **Residential and Visitor Accommodation Activity** – is restricted to first floor level and above and shall be developed in accordance with the Residential A zone rules. There is no first floor level to the building other than the mezzanine floor which was historically used for grain storage. In my opinion this poses significant limitations on its use for either activity, and any additions required to this building for it to ever be suitable for residential use would have to change the use under the Building (Specified Systems, Change of Use, and Earthquake-prone Buildings) Regulations 2005. Under these regulations 'Change the Use' means;

*The requirements for compliance with the building code in relation to the new use are additional to, or more onerous than the requirements for compliance with the compliance with the building code in relation to the old use.*

- (b) In reference to Mr Tim Gwatkin, Structural Engineers evidence to the Ashburton District Council hearing seeking the demolition of this building it was stated at paragraph 7 of that evidence;

*In the Ashburton District, the policy for earthquake prone buildings is that they must be upgraded to 67% of the New Building Standard (NBS). However, this applies only to a building with a continuing use. For a building, likely to have a change of use the Building Act requires strengthening and general compliance with the building regulations to as near as reasonably practicable to current code levels (i.e. 100% NBS)*

- (c) **Community Activity** – a community activity includes educational facilities, hospitals, doctors surgeries and other health professionals, churches, halls, libraries, community centres, police stations, fire stations, courthouses, probation and detention centres. The internal layout would pose issues in terms of access and use of space for any of these community activities. There may be the ability to use the building for some form of educational or vocational facility i.e. tertiary mechanical or engineering teaching facility but the layout and internal structure for structural integrity and safety for public use under NBS and insurance purposes would likely operate as significant limitations for this even if there was a demand for such a facility.
- (d) **Recreational Activity** (excluding shooting ranges) - *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.*
- (e) The type of activities here would be such things a sports facility for community use such as badminton or indoor bowls, gymnastics or combat sports such as the martial arts, boxing. The suitability for these types of activities in my opinion requires a more modern layout, better insulation and is only suitable within the rear extension. The original building area is not suitable due to position of support posts and room layout.

- (f) For **Retail Activity**, the maximum gross floor area of any individual retail tenancy shall not exceed 500m<sup>2</sup>. The building layout would pose issues for many modern retailers due to the lack of street frontage for internal tenancies. The building may be better suited to an internal mall-like fit-out (such as the Tannery in Christchurch), although, in my opinion, the likelihood of any small-scale retail wanting to operate out of the current building is remote based on the building structure, the age of the building and the extensive internal fit-out work required to bring it up to a standard fit for this purpose.
- (g) The evidence for Mr Barry Redmond raised, in paragraphs 15-19, potential commercial and retail options for development with new purpose-designed buildings, such as the use as a furnishing and flooring business and/or a homewares centre with additions of a “Tile Warehouse” and “Flooring Foundation” franchise. These would all be permitted activities within the building provided that an individual retail tenancy did not exceed the floor area of 500m<sup>2</sup>.
- (h) In terms of a fast food facility, this would also be permitted alongside a motor vehicle sales facility. A service station however would require a resource consent from the Ashburton District Council as a discretionary activity.
- (i) **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.*

- (j) A **service station** is a discretionary activity in this zone, and although the site is suitable the position of the site close to a signalised intersection would need investigation. Realistically one is not likely to be established within the building.
- (k) Other commercial activities included by the definition would need individual assessment as to the ability to establish and/or the economic reality of being able to establish within this building. The limitations would be similar to that of retailing in terms of professional, administrative and commercial offices with the costs to bring this up to a high standard. A bank or financial lending facility would require a modern, secure structure to operate within and the subject building in my opinion would not meet that requirement. Restaurants or takeaway food bars and potentially a liquor store would likely need significant alteration to layout and provision for storage (including chilled storage) alongside building security measures to meet a tenant's requirements.

4.10 The requirement for development on a Business A zone street frontage to make provision for a veranda and windows covering a minimum 65% at ground floor level would also involve extensive alterations to the fabric of the heritage building.

4.11 In addition there are issues in terms of traffic logistics for the use of the existing building entrance, particularly for heavy vehicles accessing and egressing the site to load or unload, in addition to the internal logistics in terms of its existing layout.

## **5. IS THE SITE CAPABLE OF ANY FURTHER DEVELOPMENT WITH THE BUILDING REMAINING IN SITU?**

5.1 Any further development or an adaptive reuse of the building whilst keeping the existing building in situ must be a reasonable use that can be

established at the site and one that is capable of the applicant making a reasonable return.

- 5.2 At the original resource consent hearing seeking demolition of the building Mr Gwatkin stated in his evidence;

*In the Ashburton District, the policy for earthquake prone buildings is that they must be upgraded to 67% of the New Building Standard (NBS). However, this applies only to a building with a continuing use. For a building, likely to have a change of use the Building Act requires strengthening and general compliance with the building regulations to as near as reasonably practicable to current code levels (i.e.100% NBS). By 2015, it became clear that the Cates building would more than likely require a change of use to attract a tenant.*

- 5.3 Since 2015 a new National Policy has come into force that only requires earthquake prone buildings to be upgraded to 34% of the New Building Standard. It remains however that this applies only to a building with a continuing use and any change of use still requires strengthening and compliance to 100% NBS code.
- 5.4 The building has inadequate structural integrity to comply with the NBS and is currently earthquake prone. Modifications over time have worsened both the structural integrity of the building and the significance of some of its heritage features.
- 5.5 The building is a Group A listed heritage building in the District Plan and a Category II historic place under the Heritage New Zealand (HNZ) heritage listings.
- 5.6 The relevant rules under the Ashburton District Plan for alterations and additions to a listed heritage building are;

#### *12.7.3 Restricted Discretionary Activities*

*b) Alterations and additions to a listed heritage building / item (Group A & B or a building identified as "A" at Longbeach Estate Heritage Site);*

- 5.7 Relevant assessment matters in the District Plan include;

### 12.9.1 Heritage buildings / items

*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.*

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

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

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

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

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

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

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

5.8 Some of those assessment matters are relevant to the situation the applicant faces. In particular additions or alterations to the building, which would be required due to meet any reasonable use of the building. Any alterations or additions to the building would need to factor the burden of unreasonable costs to the applicant.

5.9 The impact that any proposal for alteration or additions to the building are not aided by these assessment matters as the potential impact of any

proposal is more than likely to effect the integrity or value of the building particularly with regards to physical works that would be required to bring this building up to a NBS.

5.10 The relevant objective and policies are;

*Objective 12.1: Historic Heritage To protect significant historic heritage in the District, including historic buildings, places and areas, waahi tapu sites and areas and archaeological sites, from adverse effects of subdivision, land-use and development.*

*Policy 12.1C To use methods and rules in the District Plan to protect historic heritage listed in the heritage schedule from adverse effects of land-use, subdivision and development.*

*Policy 12.1E To encourage the use of protected buildings while ensuring that their valued features are not impaired or destroyed.*

*Policy 12.1G 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.*

5.11 The key provision that formed the basis of the decision to prevent demolition of the heritage building was Objective 12.1 which stood in the way of that application being approved. That in turn created the hurdle for the applicant in subsequently seeking resource consent to relocate the building. As that objective is direct in its wording the related relevant policies provide little or no comfort for the applicant. Essentially, this does not enable reasonable use for the applicant.

- 5.12 Further, there is a constraint in terms of significant alterations or amendments required for a future tenancy(s) on the basis of the unreasonable costs and works required to bring the building up to a point that it meets the New Building Standard required as discussed earlier in this evidence.
- 5.13 It is only the repair and maintenance of heritage buildings meeting site standards that is permitted by the District Plan. Additions or alterations are not permitted and require resource consent as a restricted discretionary activity. The Council's assessment will include the extent to which *“any alteration or addition is in sympathy with the original design and materials or is visibly differentiable as new work”*.
- 5.14 The issue is whether retention of all or part of the heritage building can be achieved in a manner that still enables a commercially viable (tenantable) building that will provide an economic return for the owner. The building itself has an unusual quality in the sense of its shape and design with its curved roof however the actual frontage of the building has changed since its original construction with additions of the office areas on the front and a 1960s period replacement of the ground floor of the West Street facade.
- 5.15 The retention of the heritage features links to the costs associated with bringing the building up to a minimum NBS. An issue with the building as it stands is that there has been no meaningful use of this building in over two years, and any new use will require an upgrade in terms of earthquake resistance.
- 5.16 If there is to be further development with the heritage building remaining in situ then this must be factored.
- 5.17 The options for further development whilst keeping the heritage building intact are;
- Keep the original building and extension;

- Demolish rear extension whilst keeping the original heritage building intact (the rear extension is still on part of site listed as having the heritage building upon it); and/or
- Develop the car park area (Lot 3 DP 81368) which is leasehold land owned by the Ashburton District Council.

5.18 If further development was to occur at the rear of the site there would be an issue with regards to vehicle access if that is required as the only access would be over the leasehold land owned by Ashburton District Council, Lot 3 DP 81368. This would require an easement for access. Further it would be a rear site which may not be the profile a future tenant sought or required. In effect it could be said that demolition of the rear building extension worsens rather than enhances reasonable use of the building.

5.19 If the car park area on the leasehold land were to be developed, it would need to meet the Business A zone standards including but not limited to not exceeding 75% of building coverage, no street setback, provision for verandas and windows on the ground floor level. The development of this leasehold land would need to consider the ability to access the rear extension to the original Cates building as the rear extension has no road frontage to State Highway 1.

5.20 In terms of development, a site can be developed with up to 75% building coverage. The original heritage building and rear addition on the freehold land make up to 100% of site coverage now over TS 193 and Pt TS 194.

5.21 In terms of what might be considered realistic retail options or reasonable use options for the building the Business A zone enables retail and commercial activities however, as stated earlier, these uses could not be established within the building without significant alterations to the heritage fabric of the building on both the exterior and interior, and extensive earthquake strengthening.

5.22 Alterations internally may include removal of some of the internal columns if more open internal space was required which in turn removes some of

the internal heritage fabric of the building. On the exterior a retail development for example would require signage; the creation of verandas and minimum window space at ground floor level to comply with the minimum plan requirements.

**6. IN RELATION TO COSTS TO THE OWNER OF BUILDING RETENTION, IS IT RELEVANT THAT AN APPLICATION FOR RESOURCE CONSENT TO DEMOLISH THE BUILDING WAS DECLINED BY THE COUNCIL**

6.1 In my opinion this is relevant. A key part of the decision to decline the demolition of the building is detailed in paragraphs 15-20 of the application under Section 85 of the RMA. In addition to Council's findings in the decision that the effects of the building demolition would be more than minor, the restrictive wording of *Objective 12.1 Historic Heritage* drew Council to the conclusion that as the objective is so directive and made no allowance for mitigating factors so any demolition of the Category A heritage building would be contrary to it. This is what is being referred to as the "statutory roadblock".

6.2 This was the reason the alternative resource consent application to seek relocation of the building to another site (a non-complying activity) was surrendered prior to public notification. The determination for the applicants at the time of the recommendation to notify is that Council would almost surely or it was highly likely to reach the same conclusion as the original decision that Objective 12.1 would create the same "statutory roadblock".

6.3 Therefore this severely limited the applicant's ability to undertake reasonable use of the land.

6.4 The applicant accepts that the proposal, by its nature, will have an impact on the heritage value of the building. It seeks removal of the heritage listing. This loss however must be assessed in the context of the cost of retention to the private owner, the potential for a viable adaptive reuse of the building to make it tenantable, and whether this can be achieved in a manner that is economically viable.

## **7. WITHOUT THE BUILDING**

7.1 The Business A zoning for the land permits a number of activities as detailed earlier in this evidence. In particular these relate to commercial and retail activities. The potential for some retail and showroom activities in my opinion would be a good use of the site. Based on the profile the site has restaurants or takeaway food outlets are an option and there are existing restaurant and bar and takeaway outlets on the West Street frontage near to the site. The Business A zone does not require provision for on-site car parking so there is the ability for a larger building space to be undertaken upon a site albeit some developers may provide some car parking for convenience of customers and potential for a loading bay as required. These activities are permitted by the District Plan.

7.2 The land surrounding the heritage building is a mix of both community (Ashburton library) to the north, a Real Estate firm and offices to the south with the Rural Co retail and merchandise land and buildings to the rear or west.

## **8. CONCLUSION**

8.1 Overall, based on the application and accompanying expert reports under Section 85 lodged with the Environment Court and this evidence, I consider that the heritage building is incapable of reasonable use and there is an unfair and unreasonable burden on the applicant as the landowner of the building.



**David Harford**

12 April 2019