

**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

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

Dated 5 July 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 REBUTTAL EVIDENCE

2.1 I have previously prepared a Statement of Evidence in Chief dated 12th April 2019.

2.2 I have been requested by Counsel for Redmond Retail Ltd to prepare rebuttal evidence relating to the matters raised by the planning witnesses for the Council and Heritage New Zealand in their evidence in chief and matters arising from the planning witness caucusing undertaken on the 11th June 2019.

2.3 In preparing this rebuttal evidence I have familiarised myself with;

- The evidence of Mr Stewart Fletcher
- The evidence of Ms Nicola Rykers
- Points of disagreement identified in the planning witness conferencing

3. THE HERITAGE VALUES ASSOCIATED WITH THE BUILDING

3.1 The specific heritage values associated with this building as it relates to the Ashburton District plan were detailed in the report prepared by Jenny May of Heritage Management Services included as Annexure 11 of the Section 85 application and both the Councils heritage expert, Ms Arlene Baird and Heritage New Zealand's expert Ms Christine Whybrew therefore I will not repeat that information here.

4. THE PROPOSAL

The nature of the application was detailed in section 2.1 of my evidence in chief therefore I will not repeat that detail.

5. REBUTTAL

Evidence of Stewart Fletcher

5.1 In paragraph 3.8 of Mr Fletcher's evidence the comment is made that *"the applicant appears to consider that to not be able to demolish the building places an unreasonable burden on the applicant"*. The burden is that not having the ability to demolish the building then creates the issue in terms of any reasonable use for the building that is economic. The building as it exists now is not suitable for uses permitted under the plan other than storage as it is currently used for (and then in only part of the building).

5.2 In paragraph 8.3 Mr Fletcher raises building consent requirements. Like Mr Fletcher, I am not an expert in Building Act matters. However the Building Act requirements need comment as they are so linked to the implication of the heritage status of the building in terms of reasonable use and burden. Points 1-3 from his evidence are listed below however it is para 8.3(3) from his evidence in chief below that needs comment;

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.

5.3 In his paragraph 8.4 Mr Fletcher states that the seismic strengthening of the building as stated in (3) only has to get to 34% of the NBS and that if the building owner cannot meet full compliance, the Council has discretion to accept less than 100% compliance in relation to any alteration work, subject to meeting certain criteria stated in Section 133AT Building Act. These are listed in bullet points in Mr Fletcher's evidence under his paragraph 8.4 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.*

5.4 I am not disputing the actual building requirements as outlined above, however if 'significant' alterations are required to strengthen the building to bring this to a minimum NBS so that it is no longer earthquake prone, it is likely to be unduly onerous for the owner.

5.5 From a planning perspective the ability to bring the building to a minimum standard of 34% (or beyond) is likely to require significant alterations to the building. District Plan and resource consenting issues are triggered and alterations that require removal or partial demolition brings an application back into non-complying activity status.

5.6 Under the District Plan, 'partial demolition' is defined as:

means to demolish a substantial part of any building or structure. Partial demolition includes façade retention which normally involves the demolition of the rear or a substantial part of a building or structure and the retention of the front or main façade and the construction of a new building or structure behind the preserved façade.

*(See also definition of **Demolition**)*

5.7 The definition of 'demolition' is:

means to damage and demolish a building or structure.

5.8 In paragraph 8.7 of Mr Fletcher's evidence he refers to the “preliminary investigations” (as opposed to a 'specific' analysis) undertaken by the applicant. However, I refer to Mr Gwatkin's structural engineering report, Mr Skews Conditions report and then onto Mr Harrison's quantity survey report, which present a level of detail that would provide a fairly good level of understanding in terms of the works and costings associated with bringing this building up to a tenantable standard.

5.9 This is a building with heritage classification and therefore requires another layer of care where strengthening and upgrading are carried out assuming consent is granted.

5.10 In his paragraph 11.1, Mr Fletcher notes that the building is within a zone that provides for a number of permitted activities. That is correct, however the building design and existing materials and on-site configuration all impose limitations on any one of these permitted uses i.e. for modern commercial, retail or administration type activities in terms of a suitable layout and style while factoring heritage protection this may impose a further significant restriction.

5.11 Under paragraph 11.3, Mr Fletcher refers to policies in the plan that he considers afford flexibility in relation to the reasonable use of a heritage building. I don't agree that the policies that he refers to (Policy 12.1E, Policy 12.1G and/or Assessment Matters 12.9.1(c) and (d)) give flexibility

to the range of uses that could be made of this heritage building. These are all provisions that will be triggered in a resource consent context, and all give priority to ensuring protection of the valued (heritage) features of the building.

- 5.12 If a non-complying activity consent is triggered, these policies are likely to be outweighed by *Objective 12.1 Historic Heritage* and therefore I do not look at these policies and/or assessment matters in isolation bearing in mind the consenting context in which they are likely to arise. I accept his point that there is a reasonable range of potential permitted activities in this zone but significant alterations needed to be made to the building to make it suited to any of those uses.
- 5.13 At paragraph 11.7 in the last sentence of this paragraph, Mr Fletcher states that Appendix 12, paragraph 6 of the application (the Skews report) confirms a minimum standard of 34%, however other paragraphs of that report refer to the requirement being greater than 34% NBS i.e. for different parts of the building. At paragraph 27 of the Skews report, it is noted that the boundary wall of the building will need to be brought up to the full 100% NBS. Further at paragraph 29(c), the Skews report notes that restoration of some but not all of the internal heritage features will have a building code requirement for structural compliance at full code, and I took this to be 100% NBS. These are issues outside of my planning expertise, and I comment no further.
- 5.14 Under paragraphs 11.1 through to 11.14 Mr Fletcher refers to four potential uses for the building. I (and both other expert planners) have provided in evidence what the District Plan permits for the site but in terms of what interest there is from a tenant or purchaser is another matter entirely. Storage of intermittent items such as rowing skiffs, carpet and vehicles are mostly confined to the rear part of the building, as there is limited ability for storage with logistical ease in the actual original heritage part of the building (due to limits on access and height of 'ceilings').

Evidence of Nicola Rykers

- 5.15 In paragraphs 48 – 50 of her evidence, Ms Rykers refers to potential uses of the site, and while I agree that these are or may be activities that could be undertaken on the site under the plan, the real issue for Redmond Retail Ltd is that 'reasonable use' is constrained by having to retain the original heritage building. Ms Rykers suggests activities that could be undertaken within the building but factors outside of planning (such as market, cost and regulatory requirements) will have influence on the viability of these uses.
- 5.16 There is also no certainty as to an 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.



David Harford
5 July 2019