

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2018-CHC-198

**IN THE MATTER
AND
IN THE MATTER**

of the Resource Management Act 1991 ('the Act')

BETWEEN

of an application under section 85 of the Act
REDMOND RETAIL LIMITED

Applicant

AND THE

ASHBURTON DISTRICT COUNCIL

Respondent

**MEMORANDUM OF THE APPICANT AS TO SERVICE
DATED 27 SEPTEMBER 2018**

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Request for Plan Change

Pursuant to Section 85 and Part 2, clause 21 of the First Schedule of the Resource Management Act 1991

**TO: The Environment Court
Christchurch Registry**

Redmond Retail Ltd requests the following changes to the Ashburton District Plan (the District Plan) under section 85 of the Act:

1. To 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. To remove the “H9 Notation” for the Cates building on planning map U53 of the Ashburton District Plan.

1. **The names** of the owner and occupier (other than the applicant) of any land to which this application relates are as follows:

Redmond Retail Limited (RRL/applicant).

2. **The location** to which this application relates is:

229- 241 West Street, Ashburton: The land is legally defined as TS 193 and Pt TS 194 Ashburton Town.

3. Attached, in accordance with Section 85 and Part 2 of the First Schedule of the Resource Management Act 1991 (the Act), is an explanation for the request.

.....
(Signature of applicant or person authorised to sign on behalf)
AJ Prebble as counsel for the applicant

DATED: 24 September 2018

EXPLANATION FOR THE SECTION 85 REQUEST

1. Redmond Retail Ltd ('the applicant') requests the Environment Court ('the Court') to change the Ashburton District Plan by removing the – "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 (the Cates building/the building). The site is shown on planning map U53 attached as **Annexure 1**. The application is sought under section 85 of the Resource Management Act 1991 (Act).

Background

2. The building is believed to have been erected in the late 1870s or early 1880s. It has been primarily utilised for the storage of grain and other ancillary activities since.
3. The building has a Category II New Zealand Historic Places Trust Registration Now Heritage New Zealand [Pohere Taonga]. Its Heritage NZ registration is number 1807. It should be noted that it is the building with frontage to West Street that has the heritage status and not the addition to the rear of the building on site (the rear extension).

The "original building"

4. The building is constructed in two parts. The original two storey, curved roof building fronts West Street and is considered to have been constructed around 1880 (the original building). It was constructed of light weight corrugated iron roofing on timber purlins with curved timber rafters with 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.

The "rear extension"

5. The Council building consent records provide some detail that the West Street façade was altered in mid 1960s with the wall demolished below the first-floor level with a new reinforced concrete frame constructed of brick infill along with new doors and windows. A reinforced concrete wall was constructed on the south-west wall to the front part of the building. An office area was constructed on the north of the building in 1992/1993.
6. The construction date of the single storey building to the rear is uncertain, but the heritage experts anticipated this was somewhere in the later period between the 1940s/60s. This addition to the original building is described as having steel roofing on timber purlins, timber trusses to the central part and timber rafters each side which are supported by timber posts. There is detail in the Council records and mentioned in the engineering report that the side and rear concrete reinforced block walls were constructed in the late 1960s/early 1970s.
7. For ease of reference, and for the purpose of the application, the single storey extension to the rear of the original building and the side additions are simply referred to as the "rear extension" as they were undertaken at about the same time and, while neither have any heritage status under the Plan, the extension to the back of the building is more significant in scale than the side additions.

8. The heritage protection for the original building is for both internal and external protection. Of note too is that Heritage NZ require an application for an "Archaeological Authority" be made for approval for any works at the site. This is a requirement for works on a site or building that existed prior to 1900. This will be applied for separate to this application.
9. The building has had various inspections and assessments undertaken to determine the repair and strengthening required to retain the building on site such that it meets the required New Building Standard (NBS) required by the Ashburton District Council (the Council) under the Building Act 1991.

Resource consent for demolition of the building (the original application)

Redmond Retail Limited (RRL/applicant) lodged a resource consent for the demolition of the Cates building in January 2015. A copy of the original application including the assessment of effects is attached as **Annexure 2**

Original resource consent decision

10. The original application was lodged following notice to RRL from the Council in 2014 of the earthquake prone status of the building under the Building Act 1991 and the related building regulations/building code. A copy of the notice is attached as **Annexure 3** along with an email from the Council's Building Consents Manager dated **12 September 2018** confirming that this was considered by Council to be a formal notice that the building was earthquake-prone. At the time of the resource consent hearing, the estimated costs of earthquake strengthening of the building up to code and its interior refurbishment to a leasable standard (excluding any specific fit out costs) was between \$2,000,000 and \$2,600,000.¹
11. 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 areas 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).
12. It is clear from this rule that the demolition or relocation of the Cates building (being a Group A listed heritage building) is a non-complying activity under the District Plan. The applicant has at all times recognised the heritage value of the building. It has been involved in other commercial heritage upgrades and changes of use of heritage buildings including the Ashburton Arcade between Burnett and Tancred Streets in

¹ [Evidence of Stewart Harrison 19th January 2017 - Footnote to be inserted?]

central Ashburton. The heritage value of the Cates building is described in the evidence of its heritage expert, Ms Jenny May, presented to the Council hearing and attached as **Appendix 4**. This is summarised further below.

13. The basis for the original application was that a heritage building of this size, shape and type would not provide a rental return close to that required for an economic return for these upgrade and refurbishment costs.
14. The relevance of an economic return was recognised by the Environment Court in *New Zealand Historic Places Trust v Manawatu District Council*² where the Court concluded that the requirement to protect historic heritage values from total loss as a matter of national importance was outweighed by factors in favour of allowing the demolition of an Edwardian building, having regard to matters such as:
 - a. the cost of structural strengthening and refurbishment;
 - b. lack of demand, and therefore commercial return, for such a refurbished building; and
 - c. the continued deterioration of the building if it was not strengthened and refurbished.

Decision on the original application

15. In the Council decision dated 15 March 2017 attached as **Annexure 5**, the Council recognised the inherent difficulty with any change or demolition proposal to a Group A listed building given the restrictive wording of *Objective 12.1 Historic Heritage*, within the District Plan, which provides;

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.

16. The Council concluded at paragraph 27 of the decision that:

"I consider that the loss of this building would have significant adverse environmental effects for the reasons stated by the Council witnesses and submitters. In the end I do not think the applicant and its witnesses disagreed fundamentally with this. Their approach was based more on the economic impracticality of restoring the building regardless of its value".

17. In addressing heritage objective 12.1 the Council concluded at paragraph 32:

"Considering first Objective 12.1, I have no doubt that the proposal is contrary to it. This is a very straight forward and directive objective. It makes no allowance for mitigating factors. It is difficult to see how any demolition of a Category A listed building could not be contrary to it..."

(underlining added).

² [2005] NZRMA 431 (EC). See also *Tuscany Ltd v Christchurch City Council* Decision EnvC 099/05 and *Gordon v Auckland City Council* [2012] NZRMA 328.

18. In concluding comments, the Council hearings commissioner noted at paragraph 54;

"I recognise that it puts the applicant in a difficult position. It may consider it to be an impossible position. I acknowledge that it has proved very difficult to find another use for the building given its condition and the very high restoration costs".

19. He continued at paragraph 55:

"...I believe the objective [Objective 12.1] is very demanding, some would say unrealistically so."

20. The Council then proceeded to suggest an alternative remedy of a plan change request for buildings that "actually cannot be saved if there is no realistic prospect of them being restored or reused" (paragraph 55).

The "Gilkison proposal"

21. The Gilkison proposal is best summarised at paragraphs 26, 28 and 29 of Mr Skews Updated Condition Report (Annexure 12). He summarises the proposal at paragraph 29 as follows:

"My understanding of the Gilkison proposal is that it involves:

- a. The demolition of the building extension;
- b. The removal of the 1950s onwards additions to the original building such as the lower half of the street facade and the side extensions so as to return the building to the original curved iron structure of the grain store;
- c. Restoration of some, but not all, aspects of the remaining internal heritage features of the [original] building. Note the code requirements for consent will require structural compliance to be full Code.)

(Our insert).

22. On the basis of the adverse effects conclusion and the conclusion that the application failed to achieve Objective 12.1, the Council determined that the application for demolition consent should be declined.

Environment Court appeal

23. The appeal was lodged on 6 April 2017 and a copy is attached as **Annexure 6**. The grounds for appeal included, as relevant:

"8. The Council erred in its interpretation of Heritage objective 12.1. In its decision, the Council recognised that it is difficult to see how any demolition of a Group A heritage building could not be contrary to the objective (paragraph 32). The Council's strict interpretation of the objective fails to recognise and reflect the non-complying activity status of the demolition application. The consequence is that the strict interpretation has the practical effect of making the objective itself a de facto prohibited activity rule for any Group A listed heritage building

...

12.2 the costs of the required earthquake strengthening and associated refurbishment of either the original building only or the original building and extensions are estimated as being not less than \$2,000,000 and \$2,600,000 respectively;

12.3 the building is essentially uninsurable for any change of use unless the earthquake strengthening works are carried out;

12.4 there are no heritage funds that will provide any meaningful contribution to the costs of earthquake strengthening and associated refurbishments;

12.5 there is a lack of demand and therefore a commercial return for such a refurbished heritage building in Ashburton; and

12.6 when the proposal is assessed on the merits, collectively these factors outweigh the requirement to protect the historic heritage of the building."

24. As will be recorded on the Court file, the parties agreed to Court assisted mediation and the update reports record that RRL agreed to pursue an alternative solution to relocate the heritage building to another site. The applicant subsequently prepared and lodged a resource consent application for the relocation of the building to a location known as "The Plains Heritage Village" (the Heritage Village) in Tinwald, south of Ashburton (the relocation application). A copy of the relocation application dated 18 December 2017 is attached as **Annexure 7**.

25. Under Section 95 of the Act the Council decided that the application for relocation be processed on a publicly notified basis. A copy of the notification decision is attached as **Annexure 8** ("the notification decision").

26. The full cost of the relocation proposal was to be underwritten by RRL. A funding working party including the main participants to the appeal was established to explore and obtain funding for the proposal. Little progress was made because potential private donors were unwilling to commit money until a relocation consent had been obtained. In addition, the conditions of the consent would have enabled clarification of the likely overall costs of the relocation proposal.

27. Even if the applicant obtained land use consent for relocation, it would have been left to cover any shortfall in costs of relocation, re-establishment, and refurbishment of the building. Preliminary estimates were that these costs would most likely be many hundreds of thousands of dollars. At the time that the appeal was withdrawn, no significant donors had provided any commitment to financially assist the relocation proposal. In addition, public donors such as the Ashburton District Council and Heritage New Zealand, had made it clear that they would not contribute any financial assistance to the proposal.

The "relocation application"

28. A key aspect of the relocation application was that, while relocation of a building is typically classified as a permitted activity (subject to compliance with strict criteria under the Ashburton District Plan activity requirements) or a restricted discretionary activity, the Cates building remained a Group A heritage building. This meant that any proposed change to the building, including the proposed relocation to the Heritage Village, immediately lead to a non-complying activity status (rules 12.7.5(a),(b) and (c).

29. A copy of the Council's notification decision on the relocation application dated 2 February 2018 is attached as **Annexure 8**. This concluded on page 10, paragraph 5: "In summary, having assessed the adverse effects of the activity on the environment, I consider that the activity will overall have a more than minor adverse effect on the environment as discussed in section 3.1.4."

29. In practical terms, the notification decision placed the applicant in the same position as it faced when the original application was declined and therefore faced the same “statutory roadblock” under section 104D of the Act. As soon as the Council determined in the notification decision that the actual or potential environmental effects of the relocation proposal were more than minor then, in the absence of a complete 180° about turn on this decision by the Commissioner (who signed off on the notification decision), the outcome of the substantive decision on the relocation application was inevitable.
30. If the commissioner maintained his notification decision that the environmental effects were more than minor, then following his decision on the original application, he would have no option but to conclude that the relocation proposal was therefore contrary to Ashburton District Plan Heritage objective 12.1 and that resource consent for the relocation proposal must therefore also be declined under section 104D of the Act for the same reasons.
31. The relocation application was accompanied by a detailed heritage assessment by Jenny May³, which recommended a number of detailed conditions regarding the dismantling, relocation, and reconstruction of the original building with reference to relevant heritage standards, discovery and archaeological protocols and so on. If the matter was to be pursued to a hearing, there was no fresh evidence on heritage effects that the applicant could have provided that would have materially altered the information that informed the Council notification decision and, in particular, its assessment of environmental effects. On the advice of its various consultants, RRL concluded that there was no realistic prospect of convincing the commissioner to overturn his environmental effects assessment in the notification decision and there was little purpose in incurring the cost of the substantive hearing.
32. It was on this basis that the relocation application and appeal was withdrawn by RRL in March 2018.

OVERVIEW OF STATUTORY FRAMEWORK

33. Section 85 of the Resource Management Act 1991 states the following:

85 Environment Court may give directions in respect of land subject to controls

- (1) An interest in land shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in this Act.
- (2) Notwithstanding subsection (1), any person having an interest in land to which any provision or proposed provision of a plan or proposed plan applies, and who considers that the provision or proposed provision would render that interest in land incapable of reasonable use, may challenge that provision or proposed provision on those grounds—
- (a) in a submission made under Schedule 1 in respect of a proposed plan or change to a plan; or
- (b) in an application to change a plan made under clause 21 of Schedule 1.
- (3) Subsection (3A) applies in the following cases:

³ Relocation application Annexure G

- (a) on an application to the Environment Court to change a plan under clause 21 of Schedule 1:
 - (b) on an appeal to the Environment Court in relation to a provision of a proposed plan or change to a plan.
- (3A) The Environment Court, if it is satisfied that the grounds set out in subsection (3B) are met, may,—
- (a) in the case of a plan or proposed plan (other than a regional coastal plan or proposed regional coastal plan), direct the local authority to do whichever of the following the local authority considers appropriate:
 - (i) modify, delete, or replace the provision in the plan or proposed plan in the manner directed by the court:
 - (ii) acquire all or part of the estate or interest in the land under the Public Works Act 1981, as long as—
 - (A) the person with an estate or interest in the land or part of it agrees; and
 - (B) the requirements of subsection (3D) are met; and
 - (b) in the case of a regional coastal plan or proposed regional coastal plan,—
 - (i) report its findings to the applicant, the regional council concerned, and the Minister of Conservation; and
 - (ii) include a direction to the regional council to modify, delete, or replace the provision in the manner directed by the court.
- (3B) The grounds are that the provision or proposed provision of a plan or proposed 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.
- (3C) Before exercising its jurisdiction under subsection (3A), the Environment Court must have regard to—
- (a) Part 3 (including the effect of section 9(3)); and
 - (b) the effect of subsection (1) of this section.
- (3D) The Environment Court must not give a direction under subsection (3A)(a)(ii) unless—
- (a) the person with the estate or interest in the land or part of the land concerned (or the spouse, civil union partner, or de facto partner of that person)—
 - (i) had acquired the estate or interest in the land or part of it before the date on which the provision or proposed provision was first notified or otherwise included in the relevant plan or proposed plan; and

(ii) the provision or proposed provision remained in substantially the same form; and

(b) the person with the estate or interest in the land or part of the land consents to the giving of the direction.

(4) Any direction given or report made under subsection (3A) has effect under this Act as if it were made or given under clause 15 of Schedule 1.

(5) Nothing in subsections (3) to (3D) limits the powers of the Environment Court under clause 15 of Schedule 1 on an appeal under clause 14 of that schedule.

34. Section 85(2) enables the applicant to either (a) make a submission under Schedule 1 of the RMA or (b) make an application to change a plan made under clause 21 of Schedule 1. This proposal is an application under section 85(2)(b).

CHANGES REQUESTED

35. Under sections 85(2)(b) and section 85(3A)(a)(i) the applicant requests that the following provisions of the Operative District Plan be deleted:

1. Appendix 12.1: Schedule of Heritage Buildings/Items

Table 12.3: Schedule of Heritage items

District Plan ID Number	Name	Location	Legal Description	District Plan group	HNZ Category	HNZ Register Number	District Plan map Number
9.	Peter Cates Grain Store	229 West Street Ashburton	TS 193 Pt TS 194 Ashburton Town	Group A	II	1807	U53

2. Planning Map U53 – H9 Notation on the Planning map

35. The applicant owns the Cates building and considers the provisions of the District Plan make the land incapable of reasonable use and places an unfair and unreasonable burden on it as landowner on the basis that:

- the building lacks structural integrity and has been identified by the Council as "earthquake prone" under the Building Act 1991.
- Compliance with the Building Act 1991 requirements including the New Building Standards (NBS) for the purpose of earthquake strengthening and compliance with the change of use provisions whereby the building must be upgraded to as near as reasonably practicable (ANARP) to 100% of the NBS are prohibitively expensive.
- Building upgrade and refurbishment costs and building insurance requirements are a significant financial burden with upgrade costs estimated to be between \$1,990,919 (Gilkison proposal) and 42,630,381 (upgrade and refurbishment of the entire existing building);

- the Group A heritage listing of the building makes any demolition or relocation a non-complying activity under the District plan.
- Heritage objective 12.1 protects heritage buildings from the “adverse effects of subdivision, land-use and development”.
- the relevant heritage provisions of the District Plan are such that any proposal to demolish or relocate a Group A listed heritage building will be a non-complying activity; have more than minor adverse environmental effects; and be contrary to objective 12.1.
- RRL is therefore unable to either demolish or relocate the Cates building.
- The strengthening and other building upgrade works required to comply with the Building Act 1991 to bring the building back to a “tenantable standard and condition” involves prohibitive costs several times the value of the building. There is no realistic prospect of the applicant obtaining an economic return on these costs.

36. Clause 21 of Schedule 1, Part 2 of the Act states:

Part 2 Requests for changes to policy statements and plans of local authorities and requests to prepare regional plans

21 Requests

- (1) Any person may request a change to a district plan or a regional plan (including a regional coastal plan).
- (2) Any person may request the preparation of a regional plan, other than a regional coastal plan.
- (3) Any Minister of the Crown or any territorial authority in the region may request a change to a policy statement.
- (3A) However, in relation to a policy statement or plan approved under Part 4 of this schedule, no request may be made to change the policy statement or plan earlier than 3 years after the date on which it becomes operative under clause 20 (as applied by section 80A(2)(a)).
- (4) Where a local authority proposes to prepare or change its policy statement or plan, the provisions of this Part shall not apply and the procedure set out in Part 1, 4, or 5 applies.
- (5) If a request for a plan change is made jointly with an application to exchange recreation reserve land (as permitted by section 65(4A) or 73(2A)), the application must be—
 - (a) Processed, with the request for a plan change, in accordance with this Part, other than clauses 27 and 29(4) to (8); then
 - (b) Decided under section 15AA of the Reserves Act 1977.

37. Section 21(1) enables any person to make a request to change a district plan.

38. There have been few cases on applications challenging the provisions of a District Plan under Section 85 of the Resource Management Act 1991 (the Act). However, the case

law is enough to clarify the procedural requirements. These have been set out by the Court as follows⁴:

1. "The applicant applies to the Court by way of request under clause 21 of the First Schedule to the Act with accompanying documents as in clause 22 of the First Schedule.
2. This application and accompanying documents should be forthwith served upon the relevant local authority whose (proposed) rule is the subject of the Section 85(93) challenge.
3. Either party may apply to the court (with supporting affidavits) for directions as to whether other persons are to be served.
4. The Council should, if it opposes the request, within 15 working days give written notice to the Registrar (and the applicant) of its opposition and the matters it wishes to advance.
5. The Registrar should set the matter down forthwith and we note that any person may be heard who qualifies under section 274 of the Act (and the Council may have chosen to alert parties to the existence of the proceeding).
6. After the hearing the court may
 - (i) Refuse the request; or
 - (ii) Grant the request; or
 - (iii) If it considers –
 1. That a reasonable case has been presented for changing or revoking any provision of a plan; and
 2. That some opportunity should be given to interested parties to consider the matter;

39. In addition, the Court confirmed that there is no requirement for the application to be accompanied by a Section 32 report⁵.

40. The various requirements under section 85 and clause 21 are addressed in the sections that follow.

⁴ Steven v Christchurch City Council (1997) 4 ELRNZ 64

⁵ Ibid at paragraph 26.

EXPLANATION

41. The proposal is to seek removal of the heritage listing in the District Plan for the building held on Section 193 TN of Ashburton and Pt Section 194 TN of Ashburton.
42. This then paves the way for the applicant to remove the building and use the land for redevelopment and an economic use of the land. At this time there is no fixed proposal or concept plans to rebuild a replacement building(s). However, the intent would be that replacement buildings and commercial use of the site will be undertaken in the future should the heritage listing be removed. The general redevelopment proposal and indicative concept plans are set out in the report of Mr Redmond attached as **Annexure 10**.
43. The site is currently zoned Business A in the District Plan and the buildings are located within a land area of 1518m². There is an additional portion of land adjoining the site, Lot 3 DP 81368, that is owned by the Ashburton District Council and leased by the applicant, which is essentially a sealed car parking and access/egress area to West Street (State Highway 1) for the benefit of the building.

SUPPORTING EXPERT REPORTS

44. The application is supported by reports prepared by a Director of RRL (Mr Barry Redmond) and expert consultants. These are consolidated reports based on assessments provided for both resource consent applications (demolition and relocation of the building).
45. They include;
 - A statement from Barry Redmond on behalf of RRL. (**Annexure 10**)
 - Building heritage assessments – Ms Jenny May (**Annexure 11**)
 - A building condition report – Mr Bill Skews (**Annexure 12**)
 - A structural engineering report– Mr Tim Gwatkin (**Annexure 13**)
 - A building construction quantity survey estimates report– Mr Stuart Harrison (**Annexure 14**)
 - A commercial valuer's report – Mr Clark McLeod (**Annexure 15**)

Statement of Barry Redmond

49. Mr Redmond is a shareholder and director of the applicant company, RRL. It is a family held company. In his statement, Mr Redmond briefly explains the circumstances in which the company purchase the building, has assessment of the constraints on its use due to its heritage listing and location, the consideration of potential uses and redevelopment of the building, and the financial reality the company faces in terms of either the strengthening the building to enable continued existing uses or the cost of upgrades to achieve a change of use.
50. Mr Redmond is a very experienced and successful commercial property developer in Ashburton and has a very clear understanding of the Ashburton commercial market. His company has been involved in previous adaptive reuse developments of heritage buildings including the "Arcades" development. His assessment, based on

his decades of experience as a commercial developer was that the “totally restored” option for the building, given the estimated upgrade costs, would require a rental return in excess of \$300,000 per annum. This is supported by the expert assessment of Mr McLeod.

51. Like Mr McLeod, he concluded that any form of development of the building - be it to address the Building Act “earthquake-prone” minimum strengthening requirements or to bring the building up to as near as reasonably practicable to the NBS to enable a change of use of the building - was financially unreasonable in this particular case.

Building Heritage Reports – Jenny May

46. The original application included a “Condition Report” on the appearance and historical values of the Cates building prepared by Mr Bill Skews, a heritage architect and principal of Skews Architects Ltd. The Original application did not include a heritage report although the heritage value of the building was recognised in the application.
47. At the Council hearing of the original application, expert evidence on the heritage value of the building was provided for the applicant by Ms Jenny May, a nationally recognised heritage expert. A copy of her evidence dated 2 February 2017 is attached as **Annexure 4**.
48. As noted earlier, in declining consent, the Commissioner was critical of the failure by RRL to consider a “partial restoration of only the original building”⁶ (the Gilkison proposal raised during the original application hearing). Through the appeal and mediation process, RRL agreed to apply for the relocation application discussed above. This included a “Heritage Assessment Report” for the relocation of the Cates building prepared by Ms May (undated but prepared in December 2017) which is attached as **Annexure 11**.
49. The main points from Ms May’s original evidence and relocation report can be summarised as follows:

Original application evidence

50. Ms May bases her assessment in her evidence for the hearing of the original application⁷ on the criteria set out in paragraph 3.5 of the report.
51. While she considers the Group A heritage listing of the building in the District Plan as difficult to reconcile with the criteria (paragraph 3.6.4), neither she nor the applicant has assessed or treated the building as anything other than a Group A listed heritage building in the Plan.
52. At paragraph 3.6.7 she summarises her opinion as follows:

“There is no argument that the building has a significant social, cultural and historical history and I concur with Arlene Baird’s comments to this end in her review of the consent application and particular noting .7. The building is a significant tangible reminder of the cultural and social importance and significance of agriculture in the development of Ashburton as a town.”

53. At paragraph 4.1 she begins her conclusions as follows:

⁶ Council decision (Annexure 5), paragraph 51.

⁷ See Annexure 4 attached.

"The retention of any heritage building may place financial hardships on the property owner/occupier's enjoyment and practical use of the heritage item once the use for which it was built ceases to occur on the building. This does not mean that a viable new use and adaptive reuse change cannot be found and instated. This however places financial constraints/hardships on the owner who may face considerable costs in order to meet required change for adaptive reuse and comply with current building code matters. Invariably it falls into the need to measure and mitigate public expectation of the retention of listed heritage with private right (sic) of an owner to manage and ensure the site is financially viable. Thus the reality is that this does place a financial hardship on the owner."

54. In paragraph 4.2, she notes:

"The conundrum is balancing the need to secure and ensure a future for heritage buildings with practical and viable solutions for adaptive reuse and restoration that do not destroy the tangible heritage values nor are economically impossible."

55. Her conclusion in paragraph 4.4 is that:

"I am of the opinion that the former Cates Seed and Grain Building does have heritage value as has been well expressed by others presenting evidence and reports for this Hearing [being the original application]. It is important to remember that ascribing heritage value is not limited to the physical but as noted above covers a wider area of tangible and intangible values. As discussed above the physical or tangible heritage value of this building, despite the continued use for the purpose for which it was built, has been eroded over time through changes in operation and technology. Despite this I believe there is enough physical evidence and photographic records to reinstate the principal façade to more appropriately represent its original form and that there is enough heritage value in the 19th century section of the building that could be retained in any structural or adaptive reuse. However while this ideal may be able to be achieved, the most critical factor in heritage retention in the private sector, in my opinion, is financial viability.

(Our insert and underlining)

The Relocation Heritage Assessment

56. Ms May's report prepared for the relocation application is attached as **Appendix 11**. This largely recounts her heritage assessment of the original evidence but in the context of the proposed relocation application of the Cates building to the Heritage Village. At paragraph 3.9.2, Ms May says:

"The proposal to relocate the Cates building to the Plains Historic Village, 86 Maronan Road, Ashburton would remove its group/context and landmark significance. This significance is inextricably linked with the original building site. Once moved the associated intangible values and physical group/context and landmark significance associated with the site will be lost. As the sole survivor of a once thriving industry in this precinct the Cates building reminds us of the past role of West Street which housed a number of agricultural merchants and seed and grain related activities office of the Railway and its associated yards."

57. And then at the second paragraph of two paragraphs 4.1 at the bottom of page 11:

"I believe that this application to relocate the building to the Plains Historic Village may well be the only action to preserve the building for future generations. Currently it runs the risk of remaining on its site and through lack of use falls into disrepair. However the loss of a building from its original position is not an ideal outcome and as noted in section 3.9 of this report, the location of a heritage item on its original site is very much about the contextual, significance of place and social history - it is the

tangible reminder of a now intangible past and that lies its value to the community. Suffice to say that the relocation of any heritage item retains aspects of the original history and heritage fabric values and does bring a new history to the items through its physical retention." At paragraphs 4.4 and 4.5 she sets out relevant provisions of the Heritage New Zealand requirements and the ICOMOS New Zealand Charter (2010) relating to the relocation of heritage buildings which, she notes, is becoming a more viable outcome to preserve heritage buildings, albeit it in a different location than retention, restoration, and refurbishment on the original site which is becoming increasingly uneconomic and is not supported by adequate public funding.

58. At the conclusion of paragraph 4.5 on page 13, Ms May concludes in respect of the ICOMOS NZ Charter as it relates to relocation:

"With reference to the last sentence of this principle then I consider that the Plains Historic Village would be a place that could "... *provide a setting compatible with the cultural heritage value of the structure.*"

59. She then concludes at paragraph 4.6 that:

"Thus with appropriate conditions of consent around the timing of full restoration, the development of a Conservation Plan, a heritage inventory of the fabric and a Temporary Protection Plan that covers the buildings relocation and the protection of the fabric while it is restored and given the discussion above, I believe the relocation of this building could be supported."

Building Condition Report – Mr Bill Skews

60. Skews Architects Ltd was engaged to provide a Condition Report of the original application to demolish the Cates building to identify items of heritage value and how they should be dealt with in the strengthening and refurbishment process. This, in turn enabled the engineering assessment and budget costings (QS estimates) of the upgrade work to be completed (the Condition Report). This has been updated since the Council's original decision for the relocation application, and now for the section 85 application, given the passage of time since Mr Skews' original report. A copy of the most recent "Updated Condition" report dated **13 April 2018** is attached as **Annexure 12** (the Updated Condition Report).
61. In summary the building will undergo a change of use and will need to comply with the relevant provisions of the Building Act 1991 (as near as is reasonably practicable).
62. Other provisions of the Building Act also need to be addressed with a change of use including, fire safety, egress and access and facilities for people with disabilities.

63. The Updated Condition Report contains his assessment as an architect with particular expertise in the redevelopment of heritage buildings including heritage features of the building and the relevant potential effects on these by the required strengthening work and Building Code upgrade requirements (NBS).

64. Key aspects raised in the Updated Condition Report are that⁸:

“The building has been assessed as being earthquake prone. For any future use the building will require a change of use. This requires the building to be upgraded to as near as is reasonably practicable to comply with the Building Act for structural performance and significant structural upgrade works are required to achieve this, as are total remediation for fire, egress and accessibility”.

65. As a minimum the building will require a complete new exterior wall envelope, twin egress stairs, a lift (dependant on the type of occupancy) given the upper floor area is in excess of 400m², fire rating of all surfaces and a type 4 Fire system is required and along with a compliant accessible toilet/water closet (WC) and access ways.

66. From an economic perspective all the buildings on the site will need to be brought up to the earthquake standard and therefore are included in Mr Harrison’s costing by forming part of the overall estimate of strengthening and refurbishment costs. If the rear extension including side additions were to be demolished to save the original heritage building (the Gilkison proposal) then the cost of demolition and resurfacing the area on which the demolished section stood, still impacts on the overall viability of reinstatement. Mr Skews explains this in his report.

67. Mr Skews sets out the strengthening and refurbishment requirements to meet the relevant NBS for both the original building and rear extension/extensions to the building (consistent with the original application for both buildings and the “Gilkison proposal”).

68. At paragraphs 28 - 35 of his Updated Report, he sets out his understanding of the “partial restoration” and the “Gilkison proposal” for the purpose of enabling the updated structural engineering report of Mr Gwatkins and the updated QS report of Mr Harrison.

⁸ Skews Updated Condition report at paragraph 9.

69. At paragraph 61 he repeats his original recommendations for actions required to maintain and strengthen both the original building and rear extension of the building. At paragraphs 43 and 44 he makes more detailed recommendations regarding works required to achieve the Gilkison proposal with more detailed recommendations to Mr Gwatkins and Mr Harrison respectively.

Structural Engineering Assessment – Tim Gwatkins

74. Mr Gwatkins is a structural engineer and has prepared an Updated Detailed Seismic Assessment of the Cates building dated 27 August 2018.

75. In summary his assessment is that:

- a. The building has been assessed as earthquake prone (currently 15 – 30% of the NBS), and any likely future use will involve a “change of use” for the purposes of the Building Act 1991 and the related regulations in the building code;
- b. Significantly, structural upgrade works would be required to achieve a change of use “as near as reasonably practicable” to the NBS. This includes matters such as building structural strengthening, disabled access, fire egress provisions (which would require significant changes to the access to the mezzanine floor, possibly including a lift), et cetera;
- c. Due to the age of the building, its original construction design, and the degradation of materials, significant structural work would be required to bring both the original building and the rear extension/extensions of the building up to NBS;
- d. The estimated costs to achieve this are set out in the report of the quantity survey, Mr Harrison, having regard to both Mr Skews recommendations and the structural engineer’s assessment.

Building Construction quantity Survey Estimate – Mr Stuart Harrison

76. Mr Harrison is a registered quantity survey and a principal of Harrison’s Quantity Surveyors. He has provided estimated costs to both strengthen and refurbish the original building along with the rear extension (total restoration) and strengthening of the original building only along with demolition of the rear and side extensions (the Gilkison proposal).

77. He estimates the cost of total restoration to be \$2,630,381.00 (paragraph 19) and the cost to achieve the Gilkison proposal as \$1,990,919.00 (paragraph 27).

Valuation and commercial property report – Clark McLeod

78. Mr McLeod is an experienced commercial property sales and leasing expert within the Ashburton market. He is a senior member of the Property Institute of New Zealand SPINZ), a registered valuer, and member of the Institute of Valuers (ANSIV).

79. His report covers his experience of the adaptive reuse of heritage or older commercial buildings in Ashburton; the current oversupply of office space in the market; attempts to market and sell or lease the Cates building on behalf of RRL; the general lack of market interest in purchasing or leasing the building and the unrealistic rent required for the building to make any market return on the upgrade costs estimated by Mr Harrison; his opinion that the financial situation under the "Gilkison proposal" would be even worse; his opinion as a commercial land agent of the section 85 requirements of whether the heritage listing and related building upgrade costs make the building "incapable of reasonable use" and places an "unfair and unreasonable burden" on RRL as the landowner;

80. His overall conclusions are succinctly summarised in paragraphs 43 to 45 as follows:

"The cost of strengthening and refurbishing the entire building amounts to \$2,630,381; and the cost of the Gilkison proposal to maintain and reinstate the original building is \$1,990,919. With the limited return achievable on investing in this property it would be more financially beneficial to lock the doors and walk away from this property and invest in an alternative. The loss of the purchase price and holding costs to date to simply leave the building and its current untenanted state and allow it to deteriorate to the point of becoming derelict and beyond the point of restoration would result in a smaller loss than the estimated costs of strengthening and refurbishing the building to enable a change of use that all market indications suggest there is no demand for.

In my experience the only realistic available use would be as a secondary storage facility. This would be for the short term until the building condition deteriorates or the use becomes prohibited under the Building (Earthquake-prone buildings) Amendment Act 2016.

Conclusion on effects

81. In my view the building is obsolete in design and use. The cost to earthquake strengthen and refurbish the building are excessive and cannot achieve a return on costs within the Ashburton market. Any proposed development incorporating the existing heritage building is cost prohibitive and a significant economic loss would be incurred.

SECTION 85 ASSESSMENT

82. The assessment of whether the provision of a plan or proposed plan makes any land incapable of reasonable use and places an unfair and unreasonable burden on any person who has an interest in the land is set out in section 85 of the Act and in paragraph 32 above.

83. The application is made under section 85 of the Act which specifically provides, as relevant:

(3A) The Environment Court, if it is satisfied that the grounds set out in subsection (3B) are met, may,—

(a) in the case of a plan or proposed plan (other than a regional coastal plan or proposed regional coastal plan), direct the local authority to do whichever of the following the local authority considers appropriate:

(i) modify, delete, or replace the provision in the plan or proposed plan in the manner directed by the court:

(ii) acquire all or part of the estate or interest in the land under the Public Works Act 1981, as long as—

(A) the person with an estate or interest in the land or part of it agrees; and

(B) the requirements of subsection (3D) are met; and

(b) in the case of a regional coastal plan or proposed regional coastal plan, —

(i) report its findings to the applicant, the regional council concerned, and the Minister of Conservation; and

(ii) include a direction to the regional council to modify, delete, or replace the provision in the manner directed by the court.

(3B) The grounds are that the provision or proposed provision of a plan or proposed 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.

84. There have been few cases where applications have challenged the provisions of a district plan under section 85 of the Act. However, the case law is enough to clarify the procedural requirements. These have been set out by the Court in the *Steven* case referred to in paragraph 38 above.

85. This approach has been confirmed by several subsequent decisions, including the relatively recent decision of the High Court in *Newbury Holdings Ltd v Auckland Council*⁹.

86. It follows that the application itself is effectively a private plan change request challenging a provision of the district plan, but one brought under section 85(3) rather than section 73(2).

87. The main differences between the section 85 application and a private plan change are that:

a. There is no requirement for the application to be accompanied by a “section 32 report” which often involves a complex costs and benefits analysis otherwise required for any amendment to a district plan provision; and

b. The application imports the extra grounds that the heritage listing “renders any land incapable of reasonable use” and “places an unfair and unreasonable burden on any person having an interest in the land” (the two tests).¹⁰

88. In terms of the second matter, the Court in *Steven* held that the two tests in section 85(3) should be addressed as follows¹¹:

⁹ [2013] NZHC 1172.

¹⁰ Op cit at paragraph 26.

¹¹ Ibid at paragraph 34.

"... Whether there is an unfair and unreasonable burden cannot be considered in the abstract but in the context of the Act and in particular with (differentially weighted) reference to:

- (1). The natural and physical resources in the case;
- (2). That no reasonable use can be made of the land (that is whether the first test in section 85(3) is satisfied);
- (3). Part 2 of the Act (the purpose and principles) because these underpin everything else in the Act...;
- (4). Part 3 of the Act and the inference from section 9 that real property rights prima facie meet the purpose and principles of the Act – Part 3 and section 9 are expressly referred to in section 85(3) so there can be no doubt of their relevance;
- (5). The relevant provisions of the proposed plan [or District Plan] (in this case the heritage section and discretionary rules) because the listing of the property has to be looked at in the context of that plan...;
- (6). The rebuttable presumption that the proposed plan is effective and efficient - otherwise the work on the (proposed) plan is wasted;
- (7). The personal circumstances of the applicant looked at objectively - because in assessing a burden one has to look at who is carrying it.

We have to exclude from our considerations Part 4 of the Act, and section 32 in particular (except to the extent identified in (6) above which allows the assumed results of a section 32 analysis to be considered)."

[Our insert and underlining]

89. The Court's interpretation of the requirements of the second test in section 85(3) will be discussed further below.

Practical requirements

90. When applied to the RRL application, the initial steps required can be summarised as follows:

- a. The application is made under section 85(3) and clauses 21 and 22 of the First Schedule, but in most respects, it is the same as a private plan change to challenge or remove a heritage listing of a building in a district plan.
- b. The main differences are that a section 32 report is not required but the application must state the reasons why the heritage listing makes the property incapable of reasonable use and places an unfair and unreasonable burden on RRL - the two tests.
- c. The application must be filed with the Court and served on the Council in the usual way.
- d. In terms of notification of the application on any other persons, the application should be accompanied by a memorandum of counsel recommending upon whom the application be served or, in the alternative, that it be publicly notified

- e. As with a private plan change request, the application should annex summary reports from experts that are relied upon to support the challenge to the heritage listing.

Discussion

91. The summary of the relevant District Plan provisions set out above (Heritage objective 12.1, "Appendix 12.1: Schedule of Heritage Buildings/Items", "Table 12.3: Schedule of Heritage items", and planning map U53-H9 Notation) under rule 12.7.5(a) and (c) collectively require the relocation or demolition of any Group A listed heritage building to be classified and assessed as a non-complying activity under section 104D. Any application by an owner of a Group A heritage building to demolish or relocate the building (even to a heritage village) will almost inevitably be met with a Council assessment that the adverse effects of the proposal will be more than minor. The relevant Heritage objective 12.1 is - restrictive in its wording so as to prevent ("protect" against) any activity that would cause adverse effects to the heritage item. This is the "statutory roadblock" that RRL has faced even when it has done all it can to relocate the building to the Heritage Village.

92. As the hearing commissioner stated at paragraph 55 of the Council decision to decline the original application:

"I believe the objective is demanding, some would say unrealistically so."

93. He then proceeded to suggest a plan change request as a way forward. This is certainly an option available to RRL, but it invites further opposition and potential appeals from heritage groups that are well-meaning but do not have the funds to assist the applicant to retain the building - let alone convince the Council that relocation to the Heritage Village was or remains a good solution. More importantly, it is a first instance process so even a successful outcome for RRL may be appealed and lead to yet more delays and costs.

94. The applicant is therefore left with the realistic options of the section 85 application to remove the listing (but subject to the option to enable a relocation to the Heritage Village as set out below), or to leave it as it is with no practical use given the building regulations and building upgrade costs so that over the course of time it will inevitably fall into disrepair to the point where, despite the best efforts of the owner, it will eventually become another listed heritage building demolished due to dereliction. This is the realistic option that has been presented by Mr McLeod, the expert valuer with specific experience in commercial sales and leasing within the Ashburton market.

Incapable of reasonable use

95. The cause of the original application for resource consent was the 2015 notice provided by the Council that the building had been assessed as earthquake-prone.

96. The original evidence and Heritage Relocation Report of Ms May both accepted and fully acknowledged the heritage value of the building but equally acknowledged the reality that public expectations of retention and restoration of heritage buildings need to be balanced against private costs in the absence of adequate (or any) public financial assistance.

97. As noted in the attached reports of Mr Redmond and Mr McLeod, the costs to either strengthen the building to satisfy the earthquake-prone building requirements (to enable insurance and limited use of the building for grain storage/general storage or

to upgrade and refurbish the building to enable a change of use to "as near as reasonably practicable" to the NBS are not financially viable. In terms of the latter option, Mr McLeod estimated that the conversion of the building to a bulk retail use on a current standard market rental of \$130/per square metre (which is the midpoint of the retail market range) would likely result in a net loss to RRL of \$1,335,000¹². This supports the more general statement of Mr Redmond, based on his decades of commercial development in Ashburton, that the strengthening or change of use costs for the building are too much, by a very wide margin, to provide any realistic financial return in the Ashburton commercial building market.

99. The evidence of Mr Skews, Mr Gwatkin's, and Mr Harrison collectively identify the works required to bring the Cates building up to a tenantable standard and the estimated costs involved (both as a "total restoration" of the entire building and of the restoration of the original building only – being the Gilkison proposal).

101. Under both proposals the financial costs to be incurred by the landowner are prohibitive, being \$2,630,000 and \$1,119,000 respectively.

102. Finally, Mr McLeod, a valuer and commercial property sales and leasing agent who specialises in the Ashburton commercial market, has provided a report that sets out the basis for his opinion that there is no reasonable use for the building because it requires significant strengthening and refurbishment upgrades and the cost of these, as provided, are such that there is no realistic prospect of the applicant ever making an economic return on the building. This includes an opinion that the building is effectively unsaleable, and any strengthening or upgrade costs incurred to make the building tenantable would require a rental return on investment that would not attract any realistic tenant.

Unfair and unreasonable burden on the landowner

103. If the building is made good so that is both tenantable and insurable RRL will be required to spend between \$1,119,000 - \$2,630,000 to bring it up to building code (NBS) and a tenantable and insurable standard (being the original building restoration only and entire building restoration options respectively).

104. Mr McLeod has provided a report, that has been summarised, and effectively concludes in clear terms that RRL will never achieve a commercial return on this expenditure, even as a long-term investment. His reasons for this conclusion are summarised above.

105. On this basis, the continuation of the heritage listing of the Cates building requires the applicant to maintain the running costs (rates, interest, opportunity costs) of the building if it is not upgraded and cannot therefore be tenanted, or otherwise spend between approximately \$1,200,000 and \$2,630,000 to upgrade it to a tenantable standard in a commercial market that will not come close to providing a commercial return for that investment.

106. Under either scenario, the heritage listing places an unfair and unreasonable burden on the applicant as the owner of the building.

¹² McLeod report, paragraph 27.

CONSULTATION

107. In terms of Clause 1(h) of the Fourth Schedule of the RMA, persons affected by the proposal are to be identified, along with *the consultation undertaken, if any, and any response to the views of any person consulted.*
108. There is no specific direction to consult with any parties under Section 85 or Section 21 of the First Schedule of the RMA.

CONCLUSION

109. The applicant requests that the Ashburton District Council be directed to change the District Plan by deleting the Cates building as a listed heritage building in Appendix 12.1 Schedule of heritage buildings/items, Table 12.3 and as shown on planning map U53-H9 as detailed in the "Changes requested" section of this application.
110. No new district plan rules are considered necessary for this request.
111. The application applies to the particular circumstances of the Cates building only and will not affect the ability of the District Plan to continue to meet the purpose and principles of the RMA regarding its section 6(f) duties to protect historic heritage from inappropriate subdivision, use, and development.
112. In terms of Section 85 of the Act and clause 21 of Part 2 of the First Schedule, it is therefore requested the Environment Court accept the application and delete the relevant heritage building listing from the Operative Ashburton District Plan.

Dated this 24th day of September 2018



Aidan Prebble

Counsel for Redmond Retail Limited



Ashburton District Plan Ashburton



Scale 1:5,000 (A4)

Street Index
Rural Index
Urban Index

R72	U46	U47	U48
U52	U53	U54	
U59	U60	U61	

Ashburton
DISTRICT COUNCIL

Map
U53
29/03/2017

"2"



URBIS
ASHBURTON
(2012) LIMITED

RESOURCE MANAGEMENT PLANNING

Application for Land Use Consent

**Cates Grain & Seed
Limited/CJ Redmond Ltd**

241 West Street,

Ashburton

January 2015

Ashburton District Council

Reference: 330

Revision: Final

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Annexure A: Form 9

Annexure B: Certificates of Title

Annexure C: Location Plan

Annexure D: Initial Evaluation Procedure (IEP)

Annexure E: Engineering Structural Assessment Report – TM Consultants Ltd

Annexure F: Letter from Cates Grain & Seed Ltd – 19th January 2015

Annexure G: Insurance Email-Vero

Annexure H: Cates Grain & Seed Ltd - Insurance Policy

Annexure I: Building Consents

Annexure J: Planning Map U53

Annexure K: LLUR

QUALITY ASSURANCE

Project Reference: 330


Title: Application for Land Use Consent – Cates Grain & Seed Ltd
and CJ Redmond Ltd

Client: Mr Barry Redmond

Filename: 330-Cates Grain & Seed Ltd & CJ Redmond Ltd

Version: Final

Lodgement Date: January 2015

Prepared By: 
David Harford

1.0 INTRODUCTION

Section 88(2)(b) of the Resource Management Act 1991 requires that any application for a resource consent should include an assessment of any actual or potential effects that the activity may have on the environment and the ways in which any adverse effects may be mitigated.

Section 88(2)(b) also requires that any assessment shall be in such detail as corresponds with the scale and significance of the actual or potential effects that the activity may have on the environment and shall be prepared in accordance with the Fourth Schedule to the Resource Management Act 1991.

Form 9 as required by Section 88 of the Resource Management Act 1991 is provided as Annexure A to this application. The body of this application addresses the character of the land, the proposed land use activity and the relevant provisions of the District Plan. It also includes an assessment of effects on the environment as required by the Fourth Schedule to the Resource Management Act 1991.

The proposal is assessed under the Operative Ashburton District Plan.

1.1 Site Information

Site Address:	229-241 East St, Ashburton
Legal Description:	Section 193 & Pt Section 194 Tn of Ashburton & Lot 3 DP 81368
Certificates of Title	CB 15K/251, CB 20K/251 (buildings) & CB 47A/1218. Refer Annexure B
Total Site Area:	2532m ²
Property Owner	Cates Grain & Seed Limited
District Plan Zone:	Operative District Plan - Business A
Planning Maps	U53
Special Notations:	Heritage Building – 9 and NZHPT Category II

1.2 Activity Classification

Non-Complying Activity in respect to non-compliance relating to:

12.7.5 Non-Complying Activities –

- c) The **demolition** of a Group A listed heritage building / item;

2.0 SITE AND SURROUNDS

2.1 The Application Site and Surrounds

The site is located in the Business A zone. This zoning is the predominant CBD Ashburton zone however it stretches across onto West Street and captures a number of established and redeveloped business properties between Havelock and Moore Streets.

The site contains the existing Cates Grain Store building and car parking/loading area as shown in photos 1 and 2 below. The main building was originally erected circa late 1870s-1880's. This building has been utilised for storage of grain and other ancillary activities for essentially its entire lifetime since it was built.

Part of the building on the frontage is leased currently to a fabric shop. Prior to this it housed Morrison's Saddlery & Feed Ltd.

The building has a Group A District Plan listing in the schedule of Heritage Items contained in the District Plan.

The building has a Category II New Zealand Historic Places Trust Registration. The Historic Places Trust (now Heritage NZ) Registration is number 1807. It should be noted that it is the building with frontage to West Street that has the heritage status and not the addition to the rear of the building on site.

In terms of the list entry information for the Grain Store for Heritage NZ, the store was built of mainly corrugated iron, timber and stucco and owned by the Friedlander brothers. There was mention here that the building was thought to have originally been built around 1877 but there is some uncertainty around the specific date. The main store it was said, was enlarged a couple of times in the 1880's, to obviously contain the volumes of grain that were transported and stored in this building. The capacity of the store was to hold up to 70 000 sacks of grain.

The building is constructed in two parts. The original two storey, front of the building is determined to have been constructed circa 1877 - 1880's. The materials it was constructed of was light weight roofing on timber purlins with curved timber rafters with steel ties on timber posts. The first floor, which does not extend the full width of the building, is constructed of timber flooring on timber joists and beams supported by timber posts.

The building consent drawings provide some detail that the West Street façade was altered in the mid 1960's with the wall demolished below the first floor level with a new reinforced concrete frame constructed of brick infill along with new doors and windows. A reinforced concrete wall was constructed on the south-west wall to the front part of the building. An office area was constructed on the north of the building in 1992/1993.

The construction date of the single storey building to the rear is unknown however it is anticipated this was somewhere between the 1940/60's but this needs to be verified. This addition to the original building is described as having steel roofing on timber purlins, timber trusses to the central part and lean to timber rafters each side which are supported by timber posts. There is detail in the Council records and mentioned in the engineering report of the side and rear concrete reinforced block walls constructed in the late 1960's/early 1970's.

A number of building consents have been applied for and approved for the additions and alterations to the building since 1965. These building consents are included with the application as Annexure I. It is noted that prior to this time and building related matters were unlikely to have had any records with the Council.

The heritage protection for this building is for both internal and external protection. Of note too is that Heritage NZ require an application for an "Archaeological Authority" be made for approval for any works at the site. This is a requirement for works on a site or building that existed prior to 1900. This will be applied for separate to this application.

As will be explained below the building has had various inspections and assessments undertaken to determine the repair and strengthening required to retain the building on site such that it meets the required NBS (New Building Standard) by the Council.



Photo 1: Existing Building



Photo 2: Existing building

The surrounding area is both business and community use including a Real Estate agency, large retail and merchandising store (ATS) and the Ashburton Public Library. The site fronts to State Highway 1 and has two existing vehicle crossings into the building

being a crossing into the actual building and the separate crossing into the car parking area to the north of the site which Cates Grain & Seed Ltd lease.

On the opposite side of State Highway 1 is the Ashburton public car park which sits between the State Highway 1 and the South island Main Trunk railway line.

Planning Map U53 shows the site as containing the listed heritage item on the site.

State Highway 1 is a two lane sealed road with a minimum carriageway width of 14 metres. Footpaths and kerb and channel are located on both sides of this street. Kerbside car parking is available on both sides of the State Highway which has been relied upon as on street parking for many years for staff and visitors to existing businesses on the western side of the Ashburton Business area.

Other information will be outlined further in this application as required.

3.0 PROPOSAL

The proposal is to seek full demolition of the building(s) at 229 West Street, Ashburton held on Section 193 Tn of Ashburton and Pt Section 194 Tn of Ashburton. At this time there is no fixed proposal or concept plans to rebuild a replacement building(s) however the intent would be that replacement buildings and usage of the site are likely to be undertaken in the future should demolition of the building be approved.

Included as Annexure E to this application is an engineering report prepared by TM Consultants Ltd, Mr Tim Gwatkin. The report assesses the buildings condition and comments on what strengthening is likely to be required to bring the building up to at least 67% New Building Standard (NBS). The summary of that report was that whilst the buildings appear to be in reasonable condition for their age the extent of the strengthening work required is extensive with a provisional cost estimate of \$500 000 with another estimated \$50 000 general remediation work. The comment was it may not be economical to strengthen the buildings.

Annexure G is a copy of an email from the applicant's insurer who sought comment with regard to the likelihood of obtaining earthquake/natural disaster insurance for the building. The key comment is that in regard to this insurance a policy is unlikely to be considered unless the building was 100% up to building code or NBS. Of note in this regard is that the engineers assessment was working on the basis of bringing the building up to a 67% NBS.

Further, in terms of the current insurance policy for the building on the site up to June 2015, the indemnity sum insured is \$421 000.00 with exclusions applicable and for a pre-1935 building risk for the Natural Disaster area, that this building exists within, has a significant excess for the business assets site sum insured. This is a very real commercial consideration for the applicants that they must factor and is included as part of this application for the Councils consideration. A copy of that insurance policy document is included as Annexure H.

Aspects of these relevant reports will be discussed to a larger or smaller degree throughout the assessment of effects below.

4.0 DISTRICT PLAN ASSESSMENT

4.1 District Plan Status

The Ashburton District Plan has been an Operative Document since August 25th 2014. In any event rules that relate to historic heritage as listed in section 86(B) (3) (d) took immediate legal effect under the Resource Management Act 1991.

Demolition of a Group A heritage item is classified as a non complying activity.

4.2 Zoning

The application site is zoned Business A under the Operative District Plan.

4.3 Compliance Assessment

For the purposes of this application the proposal complies with all other relevant heritage rules in the Operative Ashburton District Plan.

4.4 Activity Status

Consent is sought for a **non-complying activity**.

5.0 ASSESSMENT OF EFFECTS

The following assessment of effects arising from the non compliances with development standards is discussed below. The Operative District Plan **under 12.9.1 Heritage buildings / items** provides a number of assessment matters relating to the demolition of a heritage building and these are discussed below.

5.1 Assessment of Effects – Heritage Buildings

The site is within a Business A zone however the relevant assessment matters for the demolition are detailed below;

- (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);*

The obvious immediate effect is that the building is proposed to be demolished and therefore the visual amenity being the character of the building would be lost. The building has been sited at this location for some 130 years so can be considered as a feature building within this inner part of Ashburton Town. The building was constructed as a grain store and has still been utilised for that purpose to this day.

The reasons for the rule detail the significance of a Group A heritage item and in particular;

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.

The buildings listing as a Category A building and in terms of New Zealand Historic Places (NZHPT) classification held over the building since 1981, the *statements of significance* that apply to this building as outlined in the list entry information include;

- 1.1 *Is physical evidence of important ideas, themes, developments, or patterns in New Zealand history or the history of a particular region in New Zealand.*
- 3.1 *provides or is likely to reveal important physical evidence or earlier human occupation, activities or events;*
- 4.1 *Demonstrates or represents important developments or applications of technology or the operation of past technological processes;*
- 5.2 *Is clearly related to other buildings or structures or makes a contribution to a group or piece of townscape.*

In terms of those statements above the grain store was initially owned by the Friedlander brothers, who were very influential people in early days of the Ashburton Settlement development. At the time and still to a degree today, grain is a major part of the Ashburton arable farming scene and storage of the same still occurs within the building.

The book *Ashburton: A history of town and county* by WH Scotter, provided details of the arable farming practices and the storage of the grain in not only this building but other similar buildings within Ashburton township. Therefore this building is linked to the early history of Ashburton and the arable industry of the time was linked very much to the Mid Canterbury area. Therefore this building was part of the fabric of early occupation of Ashburton and the establishment of the township as essentially a rural servicing town which it still is today.

In terms of its relation to other buildings history and some earlier photographs show other similar buildings used for grain storage and the like on the West Street frontage that some time ago made a contribution to a group of similar buildings or a portion of the townscape however this has long since changed. Those earlier buildings have long since been replaced and in terms of the existing building, there have been both exterior and interior modifications and additions to this building.

With regards each assessment of a heritage building or item that suffered earthquake damage, a building is to be assessed on its merits and key structural and geotech

engineering (where relevant) for the purpose of structural integrity and safety are key considerations for the seeking of the demolition of this building.

- 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;*

This building is not part of a group of buildings on the site or on adjoining sites that would create an adverse effect.

There are no other buildings within the direct vicinity that have any heritage classifications with the exception of the former Capon Madden building at 73 Burnett Street and the DR Middlemiss Family Trust dwelling at 86 Burnett Street. St Andrews Church on the corner of Havelock and Parks Streets however that heritage building being a church building holds a character and style that is different to the subject building. Of note is that the St Stephens Church on the corner of Burnett and Park Streets does not hold any heritage status.

- 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;*

The important aspect and what is sought for this proposal is that the current building requires substantial works to bring this to a new Building Standard of which based on the requirement for insurance for the building, this would need to be to 100% of NBS. Some figures to achieve a 67% standard were provided and that equated to significantly more than the indemnity sum that the buildings are insured for now.

There are very real issues in terms of traffic logistics for the use of the building i.e. heavy traffic accessing and egressing the site to load or unload grain and the layout of the building for the storage and internal logistics for management. Included as Annexure F is a letter provided by the Directors of Cates Grain & Seed Ltd dated 19th January 2015. In that letter they state that "*the building has been substantially altered by our company and previous occupiers to meet changing business needs, with only a very small part of the building being original*" This is reflected somewhat in the building consent issued since 1965 and any works undertaken prior to that.

Following the Initial Evaluation Procedure (IEP) completed in 2011 which determined the building was 11.41% of New Building Standards (NBS) the directors and shareholders went to some lengths to investigate options for strengthening the building to continue the business operations. It became evident that this work would become uneconomic to complete with some risk and the store would not be economically functional for the business following strengthening. This was quantified in the letter stating that *'the remedial and repair work would have significantly impacted on the available storage space in our warehouse and also defeated any remaining heritage value in the building'*.

Based on the latter comment the effects on the heritage value therefore is markedly changed for the interior of the building.

The building therefore is seen to be past its economic usefulness for grain storage and the age and functionality of the building render it no longer functional for its original purpose.

There are no alternative options open to the applicant short of trying to sell the building as a going concern or a use for the building that would satisfy and certain business or activity. The issues are the building has been modified and its structural integrity for any given use is in question and linked to this is the very real economic issue of costs of bringing the building up to a new building standard and the necessary insurance such that both the building and its contents can be insured.

The heritage building will be affected in the sense it is being demolished and the retention of the interior and exterior features of the building which provide its character unfortunately will be lost.

The engineering report prepared by TM Consultants Ltd dated 8th December 2014 is included as Annexure E to this application. The findings in that report can be summarized for both the front and rear part of the building. There were some significant findings there related to strengthening works. In particular, whilst it is said the building is in reasonable condition for its age the key factor remains that the building is well short of a new Building Standard for earthquake prone or at risk buildings.

The seismic load resisting systems in both the longitudinal and transverse directions in both parts of the building are minimal with significant strengthening works required to lift the seismic strength of the buildings. Provisional cost were provided in the order of approximately \$550 000.00 for the works. There were exclusions to these figures so there

could well be significant additional costs. To that end it can be said it is uneconomic to undertake those works.

- 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.*

The property owners will enjoy no more use or enjoyment of the heritage item should consent be approved for the buildings demolition. It was stated in the letter of Cates Grain & Seed Ltd on 19th January 2015 that following strengthening works the store would be no longer economically functional and the remedial and repair work would have significantly impacted on available storage space within the building.

Therefore if consent is refused for the demolition of this property, the applicant is then faced with the uneconomic situation of undertake the reinstatement and strengthening works, find tenants which could use the building or simply abandon the building.

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

There are no incentives available that the applicant is aware of in the sense of any significant subsidizing or grants to try to repair and retain the building. Heritage grants can be applied for from the National Heritage Preservation Fund, Lottery Grants and the Canterbury Heritage Building Funds that could be applied for however it is envisaged if these were available, there would be minimal funding available toward the level of works required to bring this building back to a standard that met the minimum National Building Standards. The building is a Category A building which puts this into a higher classification of heritage value for the Council.

The issue becomes one of what value is placed upon retention of the Category A building and the costs associated with bringing it up to the status given to it. Based on the detail included in the engineers report and insurance annexures to this application these matters are to the forefront of consideration for the Council and Heritage NZ. Therefore it is put to Council that this is an uneconomic repair.

- 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;*

This proposal is not for any of those matters listed in the assessment matter. It is for demolition. However it is anticipated that a potential condition of any approved resource consent is that some form of photographic record or information of the building may be required for historic purposes.

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

The land surrounding the heritage item is a mix of both community and business zoned land. Adjoining the site to the north is the Ashburton District library, a community asset. This is an important community building for the District and this proposal in no way affects the function of the library other than demolition or construction work which are both temporary in nature. To the south is a building housing a Real Estate firm with other individual businesses upstairs in this building. To the rear or west of the site is the Ashburton Trading Society land and buildings.

These properties were described earlier in this application and whilst the land surrounding the site holds some importance in terms of the activities they undertake it is not considered there is anything significant about these areas.

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

The impact is large in the sense that this proposal is seeking demolition of the existing building. Essentially the value of the heritage resource as it exists will be lost. This is an unfortunate reality of buildings established many decades ago using the materials and design which in short were not designed to withstand the effects of a large magnitude earthquake or have reached the end of their economic life and the subsequent requirements to repair or remediate a building and secure insurance become major obstacles.

Based on the effects sustained to this building and the significant remedial work required to return the building to an NBS the recommended works in the engineering report led to the conclusion that it is not economic to warrant reinstatement.

l) the importance attributed to the heritage item by the wider community.

The existing building does hold some heritage value for the community. The building was first erected circa late 1870s—1880's with that unusual curved roofline and street façade that provides a character and appearance and as stated in the book written by WH Scotter *Ashburton- A History of Town and County* pg 112 ...*"across the railway line from these buildings were the first large grain stores which were increased in size and became the most characteristic feature of Ashburton's architecture"*..

The key point from that sentence was the grain stores became the most characteristic feature of Ashburton's Architecture. At the time there were likely to be few buildings in the town and over the years as development increased and interesting buildings erected with varying design and appearance that would likely had some key features that added to the town's architecture.

The Cates building is recognized as an early Ashburton building that still holds a character however whether it's a building that could be said to be striking or unique in its appearance is a matter of opinion and specifically whether the wider community place any significant value on the building is uncertain.

However, it does hold the more significant Category A classification of heritage status in the Operative District Plan which is the higher category and one of regional as opposed to perhaps national significance but there comes a point where heritage buildings must still fulfill a purpose and usefulness whilst still being economic and safe to function.

- 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.*

Based on the assessment and information undertaken to determine what is required to repair or remediate the building there is justification for its demolition. The assessment undertaken strongly indicates the works are uneconomic to be undertaken. This becomes a commercial consideration for a building owner. This would be no different to a number of similar heritage buildings that exist within the greater Canterbury Area post earthquakes. There will be a component of infrastructure, servicing or utility works with any project of this scale in the sense of disconnecting those services in preparation for demolition and then reconnection in preparation for the new replacement building. This is

not a significant undertaking albeit like any development there is a cost to the applicant to undertake this.

In terms of a functional constraint the site has operated as a storage building for grain and seed. Over time there have been constraints in terms of available storage area within the building and access/egress. Comment has already been made about storage availability within the building which would be jeopardized with the strengthening works required to bring the building up to NBS.

With regard to the access and egress the site fronts to State Highway 1 (West Street) which is a busy arterial road. At times heavy vehicles deliver or remove grain and seed at the site which at times requires a vehicle to reverse into the building or onto the car park area for loading/unloading. This can create the situation of obstructing highway traffic whilst that maneuver is undertaken.

The wider benefits of this proposal is that the site can be replaced with a new building that meets up to date building code or NBS requirements. It will therefore be safe to function within and will have less likelihood of longer term issues with regards to other potential earthquake related effects that might occur in the future should the decision to progress with repair or remediation have been undertaken. To that end the building has far greater likelihood of being insured to an appropriate level which basically is critical for any building asset used for industrial, commercial, rural or residential purposes.

5.2 National Environmental Standards

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the NES) came into effect on 1 January 2012.

The statements in italics below are direct from the Ministry for the Environment's website and are included for the purpose of identifying the likelihood of contamination at this site.

The NES for Assessing and Managing Contaminants in Soil to Protect Human Health:

- *provides a nationally consistent set of planning controls and soil contaminant values*
- *ensures that land affected by contaminants in soil is appropriately identified and assessed before it is developed - and if necessary the land is remediated or the contaminants contained to make the land safe for human use.*

The NES classifies as permitted activities (meaning no resource consent required if stated requirements are met):

- *removal or replacement of fuel storage systems and associated soil, and associated subsurface soil sampling*
- *soil sampling*
- *small-scale (no greater than 25 cubic metres per 500 square metres of affected land) and temporary (two months' duration) soil disturbance activities*
- *subdividing land or changing land use where a preliminary investigation shows it is highly unlikely the proposed new use will pose a risk to human health.*

Activities requiring a resource consent under the NES include:

- *the development of land where the risk to human health from soil contamination does not exceed the applicable soil contaminant value (classified as a controlled activity, meaning resource consent must be granted)*
- *the development of land where the risk to human health from soil contamination exceeds the applicable soil contaminant value (classified as a restricted discretionary activity)*
- *the development of land where the activity does not meet the requirements to be a restricted discretionary, controlled or permitted activity (classified as a discretionary activity).*

Section 6 methods of the legislation states;

6 Methods

- *(1) Sub clauses (2) and (3) prescribe the only 2 methods that the person may use for establishing whether or not a piece of land is as described in [regulation 5\(7\)](#).*
 - (2) One method is by using information that is the most up-to-date information about the area where the piece of land is located that the territorial authority—*
 - *(a) holds on its dangerous goods files, property files, or resource consent database or relevant registers; or*
 - *(b) has available to it from the regional council.*
 - (3) The other method is by relying on the report of a preliminary site investigation—*
 - *(a) stating that an activity or industry described in the HAIL is, or is not, being undertaken on the piece of land; or*

- *(b) stating that an activity or industry described in the HAIL has, or has not, been undertaken on the piece of land; or*
- *(c) stating the likelihood of an activity or industry described in the HAIL being undertaken, or having been undertaken, on the piece of land.*

(4) The person must—

- *(a) choose which of the 2 methods to use; and*
- *(b) meet all the costs involved in using the method that the person has chosen.*

Under Clause 6(2) (b) the only recorded HAIL activity for this site was for the storage of agrichemicals on the site which were held in an above ground cage and within sealed 5-50 litre containers. A copy of that assessment is contained at Annexure K.

Section 8 of the NES includes the following;

Subdividing or changing use

(4) Subdividing land or changing the use of the piece of land is a permitted activity while the following requirements are met:

- (a) a preliminary site investigation of the land or piece of land must exist:*
- (b) the report on the preliminary site investigation must state that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land:*
- (c) the report must be accompanied by a relevant site plan to which the report is referenced:*
- (d) the consent authority must have the report and the plan.*

Section 8 is key to this proposal. This is in regard to whether a preliminary site investigation (PSI) is required.

The law (Resource Management (NES for soil contamination that may affect human health) Regulations 2011) states that a PSI is required if the land use is changed. For this proposal the land use won't change in that it will be the removal of existing buildings on the site which are both industrial and commercial activities with potential for a future new building on this site which would also come within that category. The use of this land has therefore not changed. To continue to use it for a similar purpose would mean that no change has occurred.

Likewise there is no subdivision of this land as party of this application.

Therefore on the basis of this assessment no consents under the NES are deemed to be necessary.

5.3 Effects Summary

Overall, in terms of safety and the economics surrounding this proposal the solution for the site is to allow the demolition of the building.

5.4 Consideration of Alternatives

An assessment of effects has been completed and as stated above, no adverse effects greater than minor are anticipated. The alternatives in terms of investigating remediation or repair for the building were assessed as significant and were not seen as options from an economic and social wellbeing perspective.

Should the building be remediated to bring this to the acceptable NBS and to a level of insurability the building owners would have less available storage space which links to the functionality of the building.

6.0 OBJECTIVES AND POLICIES

The following objectives and policies are considered relevant for this application. In terms of the classification of the building the following is relevant;

Group A

These heritage items are considered to be of national or regional significance, and include NZHPT registered Category I historic places. These places are of special or outstanding value or representative value and the loss of these items would be a matter of national or regional significance and of interest to the wider community. The Council wishes to provide for their long-term conservation and protection.

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.

The Operative Ashburton District Plan requires partial or total demolition of Category A heritage buildings to be considered as a non-complying activity. Whilst protection is the key to the policy it is recognized that demolition is a last resort for all buildings whether heritage or not and they must stand up on the merits of whether they are economic to maintain, repair and/or remediate. Of particular relevance post-earthquake in Canterbury, is the ability to now provide insurance for a heritage building which links back to the safety of the building and less risk of failure by meeting the robust NBS minimum requirements.

Policy 12.1E

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

The point here is that parts of the buildings features are impaired and the costs of repairing and remediation outweighs the value in retention for it's continued use.

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.

The building owner had undertaken the initial assessment of an independent earthquake evaluation to determine the building was approximately 11.4% of NBS. That equates to the building being an earthquake risk and earthquake prone. From that perspective any continued or alternative use needs to consider that risk.

To enable an alternative use the buildings condition needed to be assessed and comment was required on what strengthening would be required to achieve a minimum of 67% NBS. The assessment prepared by Mr Gwatkin from TM Consultants concluded possible costs of approximately \$550 000 00.

This would result in changes within the interior of the building and possibly the exterior for any roofing material replacement. Comment has been made that this would reduce the space available for the current owner's use of the building in terms of available space let alone the cost of undertaking the works.

Development incentives would need to be significant on the basis of the findings in the engineering report and the building owners own consultation for re-consideration of building retention and therefore these incentives mentioned for the property are not relevant on the basis the applicant is seeking demolition.

Policy 12.1H

To ensure the protection of significant 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.

The existing building does have heritage significance in the District Plan and through heritage NZ's classification however the damages incurred are to an extent that to afford the cost of repairing to a level that meets both codes and safety of residents or tenants utilising the building this would outweigh the value of demolition on the site. Heritage Protection Orders would seem more appropriate if the building was registered under the Heritage NZ as a Category 1 status but as it is on the Heritage NZ Category II status it may well be the building does meet a significant enough heritage value for a heritage protection order. Such an order is not seen as warrantable on the basis of the original building being modified and added to, including the addition of the additional building area to the rear, in such a manner over time that the original building status has lost a large portion of heritage value.

Policy 12.1I

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

For completeness the building was built circa 1870-1880's. Heritage NZ will be consulted about this proposal for their comment and review in accord with the Operative Ashburton District Plan requirement 12.7.6 *Notification/Consultation/notes*.

A further step to be undertaken in accord with the pre 1900 building is that an 'Archaeological Authority' will be required to be applied for from Heritage NZ for the building demolition. This is a separate process to the Resource Management Act 1991 and is proposed to be undertaken post the resource consent process. The authority requires input from an archaeologist as part of the application process.

7.0 PART II OF THE RESOURCE MANAGEMENT ACT

Part II of the Act contains Sections 5 – 8 and relates to the purpose and principles of the Act. It is considered that the proposal should be assessed against Sections 5 and 7.

7.1 Section 5

Section 5 outlines the purpose of the Act as follows:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, “sustainable management” means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while:*
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Section 5 of the Resource Management Act 1991 identifies the purpose of the Act as being the promotion of sustainable management of natural and physical resources. For the aforementioned reasons, it is considered that the proposed development achieves this purpose by avoiding, remedying or mitigating any adverse effects.

Under 5(a) above it can be stated that the demolition of the existing buildings and re-establishment and construction of a new building(s) would indeed enable meeting the needs of future generations and to a degree avoiding, remedying or mitigating adverse effects of the building from potential risk and failure should an earthquake strike that places safety in jeopardy.

7.2 Section 6

Section 6(f) identifies “*protection from historic heritage from inappropriate subdivision, use and development*” as a matter of national importance, which the Council must recognise and provide for.

Historic heritage is defined by the Resource Management Act as:

means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:

- (i) archaeological;*
- (ii) architectural;*
- (iii) cultural;*
- (iv) historic;*
- (v) scientific;*
- (vi) technological; and*

Includes —

- (i) historic sites, structures, places, and areas; and*
- (ii) archaeological sites; and*
- (iii) sites of significance to Maori, including wahi tapu; and*
- (iv) surroundings associated with the natural and physical resources.*

The existing building has NZHPT comment with regards to its status as Category II on their register which included matters of sociological and historic significance, archaeological, technical and aesthetic significance.

The demolition of the building is now recognised in the Operative Ashburton District Plan as a non-complying activity but is not inconsistent with specifically the protection of historic heritage. The wording in the law uses “*inappropriate..use and development* “. In this case, based on the costs of remediation seeking demolition of the building is not seen as inappropriate development. The proposal does overall satisfy Part II, Section 5, being the purpose of the Act, in providing for the economic and social wellbeing of people and their health and safety.

7.3 Section 7

Section 7 outlines other matters that need to be considered. Matters of relevance are:

- (c) The maintenance and enhancement of amenity values;*

(f) Maintenance and enhancement of the quality of the environment;

Section 7(c) and (f) of the Act are matters to which Consent Authorities should give particular regard to when making informed decisions. When assessing a non-complying land use consent application, consideration may be given to the effects on amenity values and maintenance and enhancement of the quality of the environment as a result of the proposed activity.

The proposal is also considered to be consistent with these Part II matters in that the proposal will maintain the amenity of the surrounding environment, in accordance with Section 7c and 7f. Given the above, it is considered that the proposal is in keeping with Part II of the Act.

8.0 SECTIONS 104 & 104D - CONSIDERATION OF APPLICATIONS

Section 104 sets out those matters that must be considered when assessing an application for a resource consent. Subject to Part 2 of the Act, Section 104(1) requires a consent authority to have regard to the following matters:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of-*
 - (i) *a national policy statement;*
 - (ii) *a New Zealand coastal policy statement;*
 - (iii) *regional policy statement or proposed regional policy statement;*
 - (iv) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application."*

The actual and potential effects have been assessed and demolition is seen as the only viable option for this existing building.

Section 104D of the Resource Management Act is a test that must be applied to applications for non-complying activities. If an application cannot satisfy the requirements of Section 104D(1) (a) or (b), then consent must be refused.

The test for "non-complying" applications is

a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –

- (a) *the adverse effects of the activity on the environment ... will be minor; or*
- (b) *the application is for an activity that will not be contrary to the objectives and policies of ... the relevant plan.*

The Council must be satisfied to require a positive finding that, in the authority's view and on the evidence, the balance is tipped in favour of one or both of the specified conclusions.

Section 104(1)(b)(2) requires the consent authority to have regard to any relevant provisions of the District Plan or 104(1)(c) any other matter the consent authority to determine the application or Section 104(D)(1)(b)(i) the activity not being contrary to the objectives and policies of the District Plan.

Section 104D(1)(a) and (b) have been described by the Environment Court as “gateways”. If neither gateway is satisfied, the application fails. If the application satisfies either gateway then the application is to be considered under Section 104 of the RMA.

The gateways of section 104D(1)(a) and (b) are disjunctive, meaning that in order to satisfy Section 104D it is necessary to satisfy only one of those gateways, not both.

It is noted that even where one (or both) “gateway” tests are satisfied, the consent authority retains discretion to decline consent if it considers the proposal will not achieve the purpose of the act.

In conclusion, it is considered that the proposal potentially passes the first gateway of Section 104D (1) and meets the second leg in terms of the proposal tested against those relevant heritage objectives and policies.

9.0 NOTIFICATION –SECTIONS 95 AND 95A-F

Under Section 95A(2), a consent authority must publicly notify the application if it decides (under Section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor.

The effects arising from the proposal have been considered in this application and have been found to be no more than minor. The effects of the proposal have been considered and on balance the building is not in a condition to be retained without some significant works being undertaken for remediation and repair. The economic implications for that perspective alone is significant and the building is not considered viable to repair.

Heritage NZ are deemed to be an affected party to this proposal as the building has NZHPT Registration.

Section 95A (2) (a), states that despite its discretion to decide whether to notify and application or not,

“...a consent authority must publicly notify the application if—

(a) it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor...”¹

Section 95D sets out how adverse effects are to be assessed for the purpose of the public notification test. Section 95D (a) requires the consent authority to disregard any effects on persons who own or occupy the subject site or any land adjacent to it. These properties are to be assessed when considering limited notification, later in the process. Taking this into account, there are no more than minor adverse effects on the environment arising from the proposal that extend beyond the properties adjacent to the application site.

It is understood that the Councils position with regards to heritage buildings in recent years has been to publicly notify such applications.

Limited Notification

If the Ashburton District Council decides not to publicly notify the application, it must then decide whether to notify it on a limited basis under section 95B of the Act. The requirements for this assessment are set out in section 95E and 95F. A person is an affected person under section 95E of the Act if the adverse effects of the proposed activity on the person are minor or more than minor (but not less than minor). This is a significant change from the wording before the 2009 amendments to the Act, under which a person was entitled to be notified on a limited basis if the effects of the proposed activity on them were more than *de minimis*.

It is submitted that there are no persons who will experience adverse effects that are minor or more than minor as a result of this activity, and so no affected persons under section 95E. As set out in the application, potential effects of the activity will be minimised and mitigated where necessary.

The effects arising from the proposal have been considered in this application and have been found to be no more than minor to not require limited notification.

It is relevant that the 2009 amendments to the Act limited those situations in which an application should be notified, either on a public or limited basis. There is no longer a presumption that an application should be notified. This illustrates Parliament's intent that applications should not be notified unless they fall into one of the specified categories set out in the Act. This application does not fall into one of these categories.

On the basis set out above, the Applicant submits that the effects of the proposed activity are minor, and therefore the application may not be required to be notified on a public or limited basis. There will be no adverse effects on the environment that are more than minor, excluding the application site and the land adjacent to the application site. The only affected persons, for the purposes of sections 95B and 95E, is considered to be Heritage NZ who are required to be consulted with in any event through the District Plan. It is therefore, submitted that this application could be processed on a non-notified basis.

It could well be however that Council consider that there are special circumstances which exist that would require notification under Section 95A (4).

10.0 CONCLUSION

This application seeks consent for the demolition of the existing Category A heritage building and additional building attached to the heritage building at 229 West St Ashburton. The application overall is for a non-complying activity.

Section 104 of the Act sets out the matters to be considered when assessing an application for resource consent. These matters require consideration of any actual and potential effects on the environment arising from the proposal, together with an assessment as to whether the proposal is consistent with the relevant objectives, policies and rules of the District Plan.

It has been demonstrated by the preceding assessment that the effects on the environment as a result of this proposal will be no more than minor. The relevant provisions of Part II of the Resource Management Act 1991 have been satisfied and it is considered that the proposed development is consistent with the purpose of the Act, promoting the sustainable management of natural and physical resources, with no more than minor environmental effects.

ANNEXURE A – FORM 9

Form 9: Application for Resource Consent
Under Section 88 of The Resource Management Act 1991

TO: The Ashburton District Council

Cates Grain & Seed Ltd and CJ Redmond Ltd applies for the resource consent described below.

1. **The names and addresses** of the owner and occupier (other than the applicant) of any land to which this application relates are as follows:

Cates Grain and Seed Ltd

2. **The location** to which this application relates is:

229-241 West St Ashburton, legally described as Section 1903 and Pt Section 194 Tn of Ashburton and Lot 3 DP 81368 contained in the Certificates of Title included as Annexure B.

3. **The type of resource consent** being sought is a Land Use Consent.

4. **A description of the activities** to which the application relates is:

The proposal is to seek demolition of the existing ADC Category A building and NZHPT (Heritage NZ) Category II Number 1807 on the site. Non compliance with this proposal is a non-complying activity.

The proposed development will be in accordance with the plans accompanying this application and which should be read as part of it. A more detailed description of the proposed activity is to be found in the assessment of effects on the environment which accompanies this application and should be read as part of this application.

5. **Attached is an assessment of any actual or potential effects** that the activity may have on the environment.
6. **No additional resource consents** we are aware of are required in relation to this proposal:
7. **No other information** is required to be supplied by the district or regional plans or regulations.



.....

DATED: 20th January 2015

(Signature of applicant or person authorised to sign on behalf)

Address for service:

Urbis Ashburton 2012 Limited
P O Box 603
Ashburton 7740

Attention: David Harford

Telephone: (03) 307 7164

Facsimile: (03) 307 7165

Email: david@urbisashburton.co.nz

Address for Applicant

CJ Redmond Ltd
C/- Mr Barry Redmond
174 Burnett Street
ASHBURTON 7700

Telephone: 03 3085 269



WEST STREET

ANNEXURE B – CERTIFICATE OF TITLE

QuickMap Title Preview

Information last updated as at 06 Sep 2014



COMPUTER INTEREST REGISTER UNDER LAND TRANSFER ACT 1952

Identifier 43857
Land Registration District Canterbury
Date Issued 09 July 2002 03:45 p.m.

Prior References

CB47A/1218

Estate	Leasehold	Instrument	L 5278434.1
Area	1014 square metres more or less	Term	21 years from and inclusive of 1.1.2000 (Right of Renewal)
Legal Description	Lot 3 Deposited Plan 81368		

Proprietors
Cates Grain & Seed Limited

The information provided on this report forms a guideline only. As a result, Custom Software Limited cannot and does not provide any warranties or assurances of any kind in relation to the accuracy of the information provided through this report, the Site and Service. Custom Software Limited will not be liable for any claims in relation to the content of this report, the site and this service.

QuickMap Title Preview

Information last updated as at 06 Sep 2014



COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952

Identifier CB47A/1218
Land Registration District Canterbury
Date Issued 21 September 1999

Prior References

CB483/201

Type	Fee Simple
Area	2028 square metres more or less
Legal Description	Lot 2-3 Deposited Plan 81368
Purpose	Municipal Purposes
Proprietors	The Ashburton District Council

5278434.1 Lease of Lot 3 DP 81368 Term 21 years from and inclusive of 1.1.2000 (Right of Renewal) CT 43857 issued - 9.7.2002 at 3:45 pm
43857 (Live) Lot 3 Deposited Plan 81368

The information provided on this report forms a guideline only. As a result, Custom Software Limited cannot and does not provide any warranties or assurances of any kind in relation to the accuracy of the information provided through this report, the Site and Service. Custom Software Limited will not be liable for any claims in relation to the content of this report, the site and this service.



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**

Search Copy



R. W. Muir
Registrar-General
of Land

Identifier **CB15K/1325**
Land Registration District **Canterbury**
Date Issued 14 January 1976

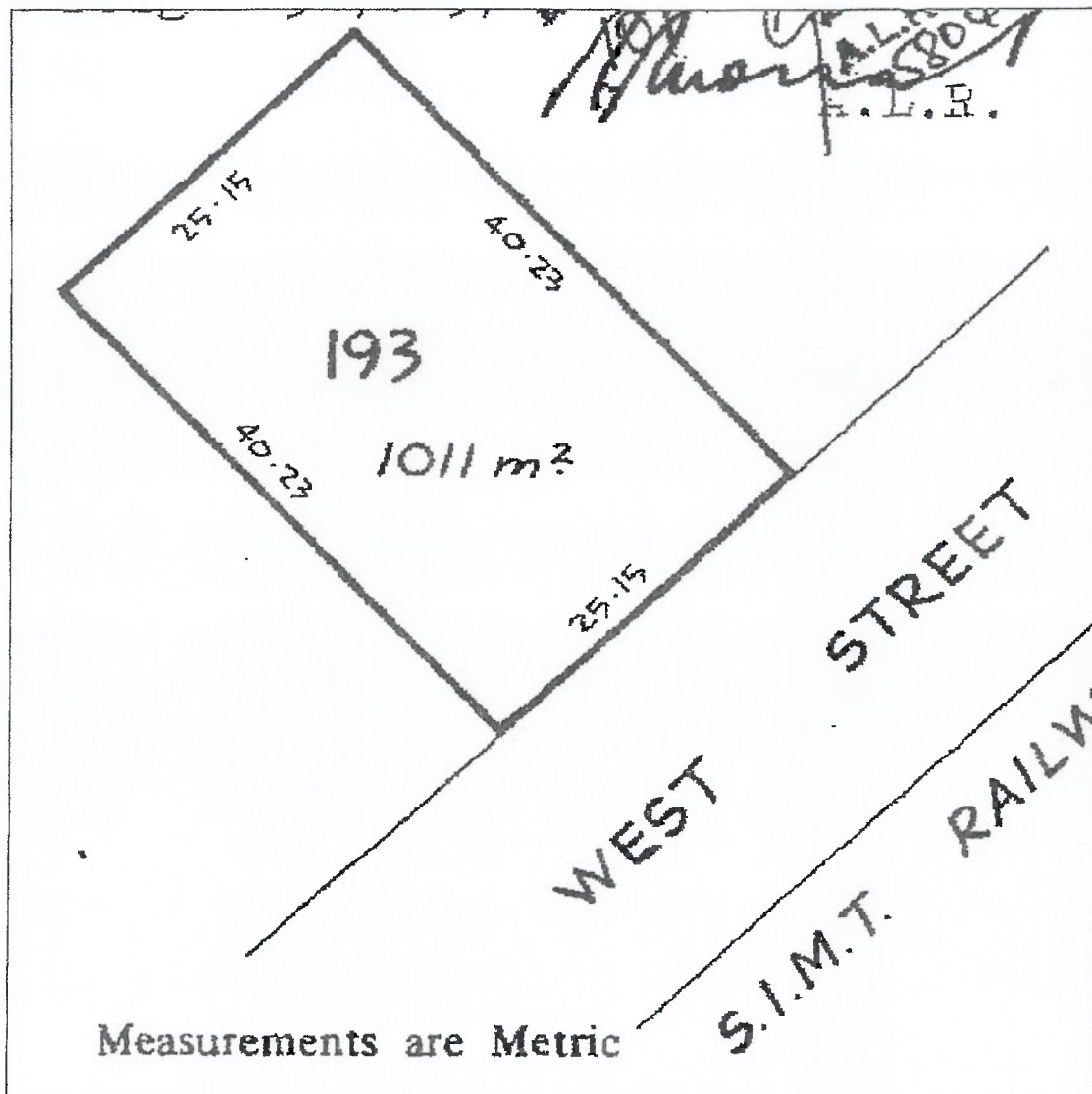
Prior References
CB39/237

Estate	Fee Simple
Area	1011 square metres more or less
Legal Description	Section 193 Town of Ashburton
Proprietors	
Cates Grain & Seed Limited	

Interests

Identifier

CB15K/1325






**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy


R.W. Muir
Registrar-General
of Land

Identifier **CB20K/251**
Land Registration District **Canterbury**
Date Issued 06 December 1979

Prior References
CB92/168

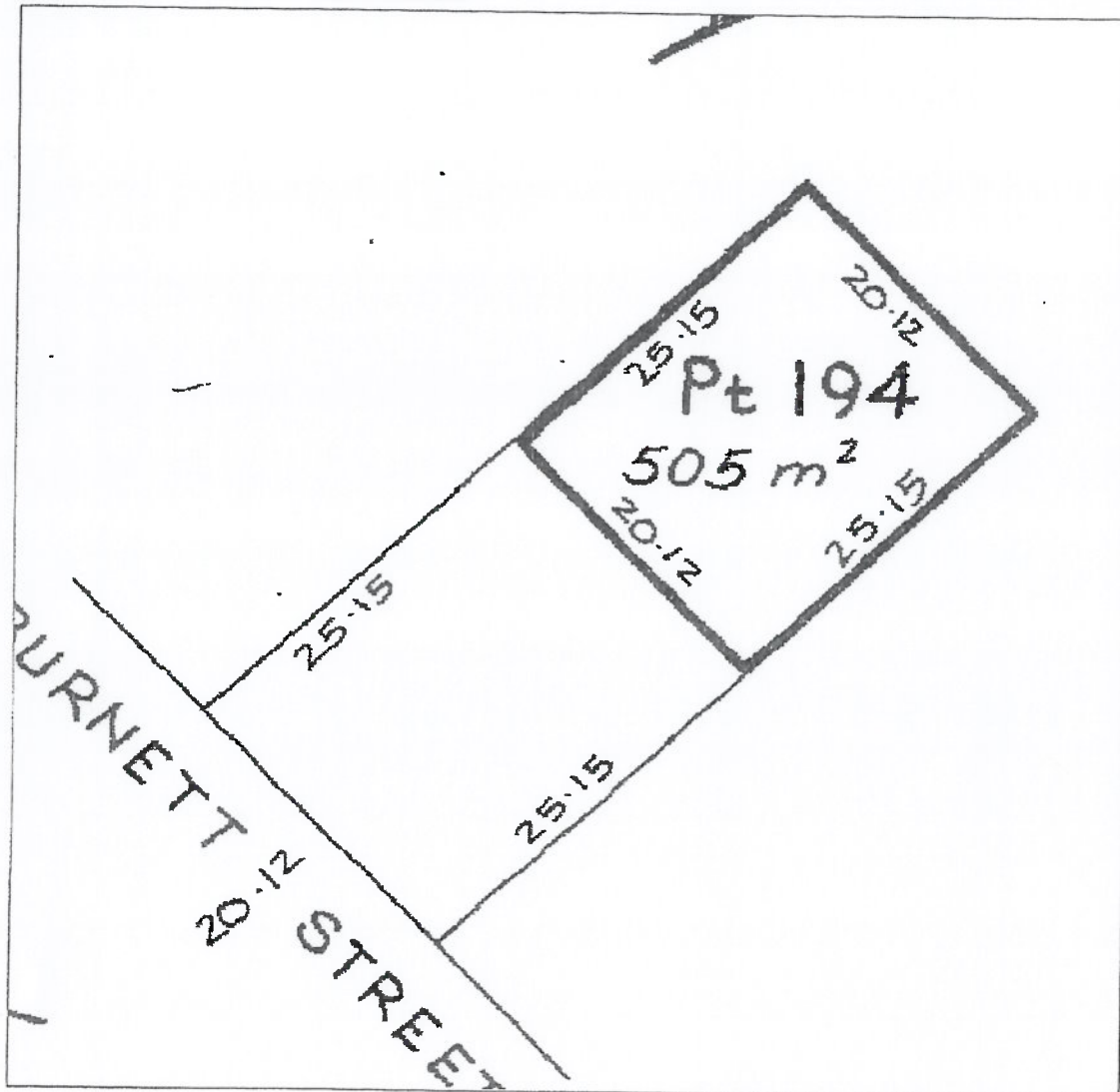
Estate	Fee Simple
Area	505 square metres more or less
Legal Description	Section 194 Town of Ashburton

Proprietors
Cates Grain & Seed Limited

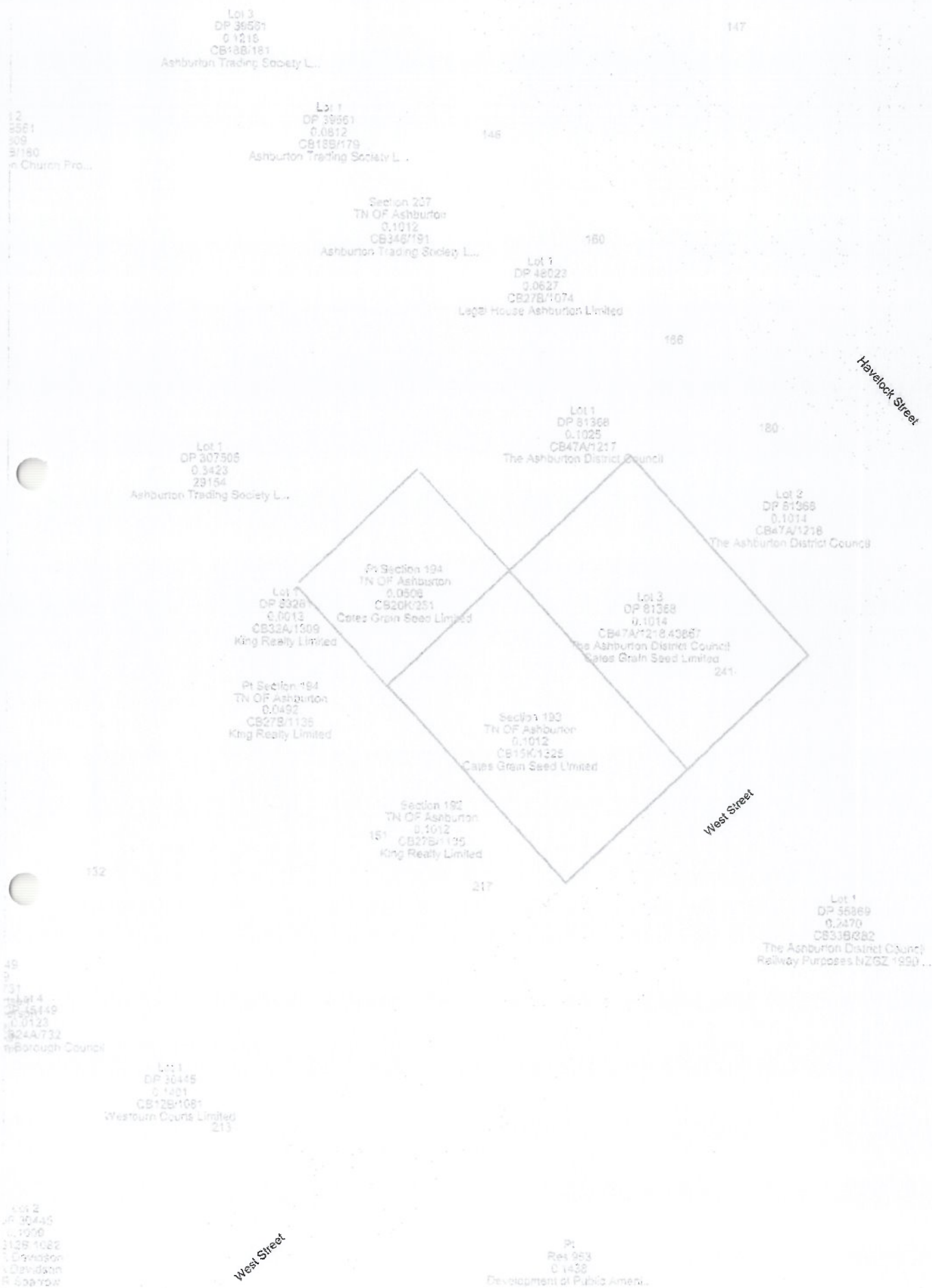
Interests

Identifier

CB20K/251



ANNEXURE C – LOCATION PLAN



QuickMap
Quintessence Software Ltd.

0 10 20 30 40 50 60 70 80 90m

Any person wishing to rely on the information shown on this map must independently verify the information.
Scale 1:725. The programme and Cartasana map derived from LINZ data. Period: 31/10/2014 09:00

ANNEXURE D – INITIAL EVALUATION PROCEDURE

No1 Wharf
Ritchie Street
P.O. Box 642
Timaru, New Zealand

Phone: (03) 688-6713
Fax: (03) 688-6722
Mobile: (021) 737-474
Email: admin@detim.co.nz
www.designengineering.co.nz



Certification, Compliance & Consulting Engineers



5 May 2011

Stuart Begg
General Manager
Cates, Grains and Seeds
Ashburton

Dear Stuart

Initial Evaluation Report of 229 West St , Ashburton Property

Introduction

Design Engineering (SI) Limited was engaged by the client to provide an Initial Evaluation Report to whether the property is considered as an earthquake-prone structure. This evaluation has been carried out upon instruction by the Ashburton District Council to comply with their Earthquake-Prone policy. (Refer to the letter dated 15th December 2010)

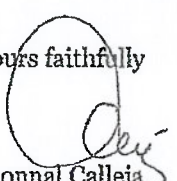
Initial Evaluation Report

1. The seismic calculation was based from the recommendation of the New Zealand Earthquake Engineering Society (NZSEE) as attached. (see pages 3-6 to 3-15)

Conclusion Recommendation

1. The result of the analysis is only 11.41% of the Percentage of the New Building Standard (%NBS). This is considered to be both earthquake risk and earthquake prone. (see page 3-15)

Yours faithfully


Jhonnal Calleja

BSc,NZCE,MIPENZ(Civil,Struct)
CPEng,IntPE(NZ)
email: jhonnal@detim.co.nz
mob.0226270401

Timaru Office
No. 1 Wharf, Ritchie Street
PO Box 642, Timaru
Phone: (03) 688 6713 / Fax: (03) 688 6722

Christchurch Office
28f Acheron Drive, Riccarton
Christchurch
Phone: (03) 348 6713 / Fax: (03) 348 6723

Dunedin Office
32a Cresswell St.
Dunedin
Phone: (03) 477 1713 / Fax: (03) 477 1765

Table IEP-1: Initial Evaluation Procedure - Step 1

Table IEP-1 Initial Evaluation Procedure Step 1 (Refer Table IEP-2 for Step 2; Table IEP-3 for Step 3; Table IEP-4 for Steps 4, 5 and 6)		Page 1...
Building Name	CATER GRAINS & SEEDS	Ref:
Location	220 WEST ST ASH BURTON	By: JK
		Date: 19.4.11
Step 1 - General Information		
1.1 Photos (attach sufficient to describe building)		
SEE ATTACHED		
1.2 Sketch of building plan		
<p style="text-align: center;">OFFICE ADDITION</p> <div style="display: flex; justify-content: space-around; width: 100%;"> <div style="border: 1px solid black; padding: 10px; text-align: center;">1-LEVEL</div> <div style="border: 1px solid black; padding: 10px; text-align: center;">2-LEVEL</div> </div> <p style="text-align: center;">DATE OF CONST ± 1920'S</p>		
1.3 List relevant features		
ALL STRUCTURE & FRAME ARE TIMBER ALL CLADDING (WALL) ARE MASONRY BLOCKS		
1.4 Note information sources		
<div style="display: flex; justify-content: space-between;"> <div> Visual Inspection of Exterior Visual Inspection of Interior Drawings (note type) <u>PLAN</u> Specifications Geological Reports Other (list) </div> <div style="border: 1px solid black; padding: 5px;"> Use as appropriate <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </div> </div>		

Table IEP-2: Initial Evaluation Procedure – Step 2

Table IEP-2: Initial Evaluation Procedure Step 2
(Refer Table IEP-1 for Step 1; Table IEP-3 for Step 3; Table IEP-4 for Steps 4, 5 and 6)

Page 2

Building Name	Ref.
Location	By
Direction Considered: (a) Longitudinal (b) Transverse	Date
(Choose worst case if clear of staff. Complete IEP-2 and IEP-3 for each if in doubt)	

Step 2: Determination of (%NBS)_{nom}

2.1 Determine nominal (%NBS) = (%NBS)_{nom}

a) Date of Design and Seismic Zone

Pre 1935	Seismic Zone: A
1935-1985	B
1985-1970	C
1975-1992	Seismic Zone: A
	B
	C
1992-2004	

b) Soil Type

From NZS1170.6:2004, Cl 3.1.3

From NZS1203:1992, Cl 4.3.2.2 (for 1992 to 2004 only and only if known)

A or B Rock
C Shallow Soil
D Soft Soil
E Very Soft Soil
a) Rigid
b) Intermediate

c) Estimate Period T

Can use following:

$T = 0.09 \sqrt{h}$	for moment-resisting concrete frames
$T = 0.14 \sqrt{h}$	for moment-resisting steel frames
$T = 0.08 \sqrt{h}$	for eccentrically braced steel frames
$T = 0.09 \sqrt{h}$	for all other frame structures
$T = 0.02 \sqrt{h} / A$	for concrete shear walls
$T = 0.4 \sqrt{h}$	for masonry walls

Where h = height in metres to the base of the structure to the uppermost column subject to mass

$A = 1.0$ for $h \leq 2.7$ m

$A =$ gross additional floor area of shear wall in the first storey of the building in m²

$L =$ length of shear wall in the first storey to the given point in the shear force, in m

With the restriction that L/T shall not exceed 0.9

$T = 2.5$ Seconds

d) (%NBS)_{nom} determined from Figure 3.3

$(\%NBS)_{nom} = 2.5$

Note 1: For buildings designed prior to 1965 and known to be designed as public buildings in accordance with the code of the time, multiply (%NBS)_{nom} by 1.25.

For buildings designed 1965-1970 and known to be designed as public buildings in accordance with the code of the time, multiply (%NBS)_{nom} by 1.33. Zone A

1.2 - Zone B

Note 2: For reinforced concrete buildings designed between 1970-84 multiply (%NBS)_{nom} by 1.2

Note 3: For buildings designed prior to 1935 multiply (%NBS)_{nom} by 0.8 except for Wellington where the factor may be taken as 1

$(\%NBS)_{nom} = 2.0$

Continued over page

Table IEP-2: Initial Evaluation Procedure – Step 2 continued

Table IEP-2 Initial Evaluation Procedure Step 2 continued Page 3...

2.2 Near Fault Scaling Factor, Factor A
If $T < 1.65 \text{ sec}$, Factor A = 1

a) Near Fault Factor, $N(T,D)$
(from NZS1170.5:2004, Cl 2.1.6) 1

b) Near Fault Scaling Factor = $N(T,D)$ Factor A 1

2.3 Hazard Scaling Factor, Factor B

a) Hazard Factor, Z , for Site
(from NZS1170.5:2004, Table 3.3) 0.2

b) Hazard Scaling Factor
For pre 1992 $1/Z$
For 1992 onwards Z_{1992}
(Where Z_{1992} is the 1992/2004/2004 Zone Factor from accompanying Figure 3.6(b)) Factor B 5

2.4 Return Period Scaling Factor, Factor C

a) Building Importance Level
(from NZS1170.5:2004, Table 3.1 and 3.2) 2

b) Return Period Scaling Factor from accompanying Table 3.3 Factor C 1

2.5 Ductility Scaling Factor, D

a) Assessed Ductility of Existing Structure, μ
(μ is less than maximum given in accompanying Table 3.2) 2

b) Ductility Scaling Factor
For pre 1976 $1/\mu$
For 1976 onwards 1
(Where μ is NZS1170.5:2004 Ductility Factor, from accompanying Table 3.3) Factor D 1.4

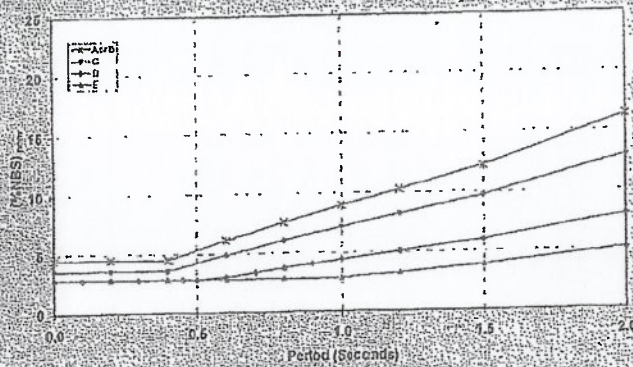
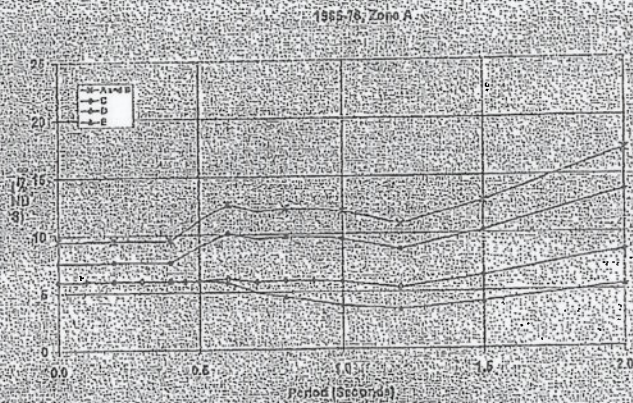
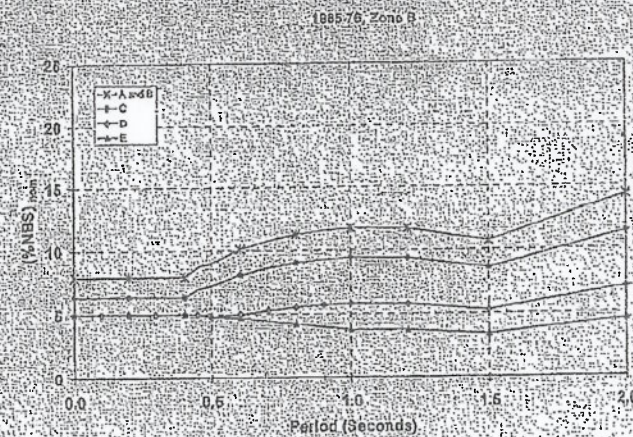
2.6 Structural Performance Scaling Factor, Factor E

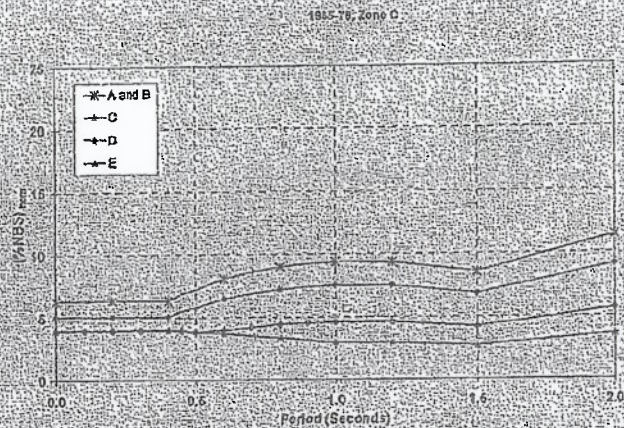
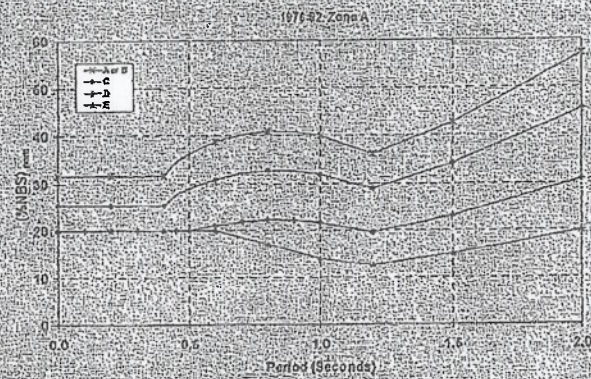
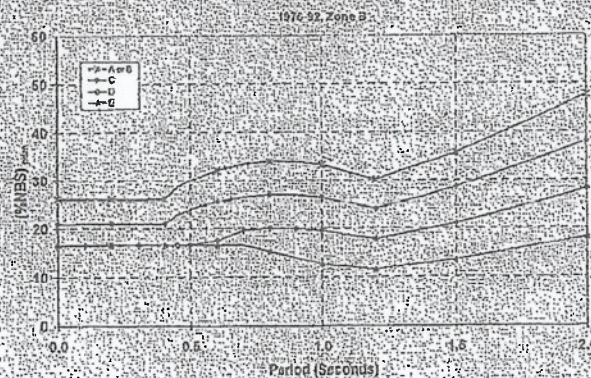
a) Structural Performance Factor, S_p ,
from accompanying Figure 3.4 0.7

b) Structural Performance Scaling Factor = $1/S_p$ Factor E 1.43

2.7 Baseline %NBS for Building, (%NBS)₀
(equals (%NBS)_{nom} $\times A \times B \times C \times D \times E$) 6.30

$k_M = \frac{(\mu-1) + 1}{0.7} = 1.35$

Figure 3.3(a): (%NBS)_{nom} Pre-1965, All ZonesFigure 3.3(b): (%NBS)_{nom} 1965-76, Zone AFigure 3.3(c): (%NBS)_{nom} 1965-76, Zone B

Figure 3.3(d): (%NBS)_{nom} 1965-76, Zone CFigure 3.3(e): (%NBS)_{nom} 1976-92, Zone AFigure 3.3(f): (%NBS)_{nom} 1976-92, Zone B

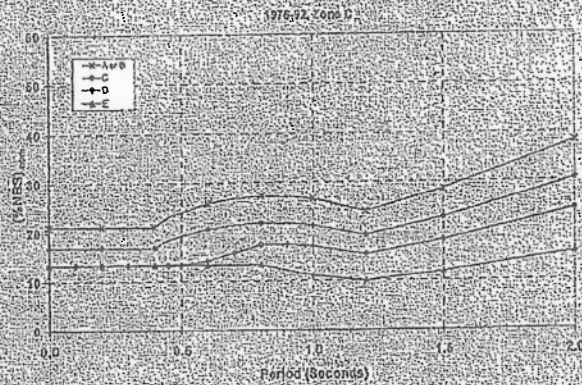
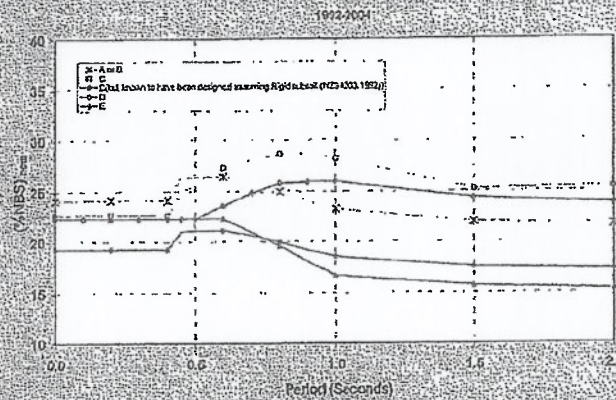
Figure 3.3(g): (%NBS)_{nom} 1976-92, Zone CFigure 3.3(h): (%NBS)_{nom} 1992-2004Figure 3.3: (%NBS)_{nom} for Different Building Design Vintages

Table 3.1: Return period scaling factor

Importance level	Comment	NZS1170.5:2004 Return Period Factor, R		Return Period Scaling Factor, C			
		Annual Probability of Exceedance	Return Period Factor, R	Pre-1985	1985-76	1976-92	1992-04
1	Minor structures (failure not likely to endanger human life)	1/100	0.5	2	2	2	1.2
2	Normal structures and structures not falling into other levels	1/500	1	1	1	1	1
3	Major structures (affecting crowds)	1/1000	1.3	0.8	0.8	1.1	0.9
4	Post-disaster structures (post-disaster functions or dangerous activities)	1/2500	1.6	0.6	0.6	0.9	0.7
5	Exceptional structures are outside the scope of the IEP; special study required						

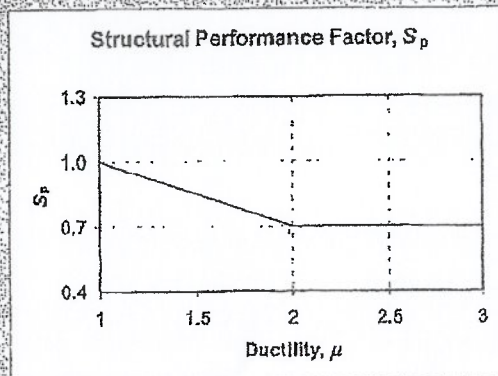
Where R is the return period factor appropriate to the current use of the building, as shown in Table 3.5 of NZS 1170.0:2002.

Table 3.2: Ductility factors to be used for existing buildings

Structure type	Maximum allowable ductility factor for IEP			
	Pre-1935	1935-65	1965-76	1976-2004
All buildings	2	2	2	6

Table 3.3: Ductility scaling factor

Soil Type	Structural Ductility Scaling Factor, K_d							
	1.0 or less		1.25		1.50		2	
	A, B, C & D	E	A, B, C & D	E	A, B, C & D	E	A, B, C & D	E
Period, T								
$\leq 0.40s$	1	1	1.14	1.25	1.29	1.50	1.57	1.70
0.50s	1	1	1.18	1.26	1.36	1.50	1.71	1.75
0.60s	1	1	1.21	1.26	1.43	1.50	1.86	1.80
0.70s	1	1	1.25	1.25	1.50	1.50	2.00	1.85
0.80s	1	1	1.25	1.25	1.50	1.50	2.00	1.90
$\geq 1.00s$	1	1	1.25	1.25	1.50	1.50	2.00	2.00



Where S_p is the Structural Performance Factor from NZS1170.5:2004, Cl 4.4.2.

Figure 3.4: Structural performance factor, S_p



Figure 3.5(a) NZS 4203:1984,
NZS 4203:1976 and
NZS 1900:Chapter 8 sim

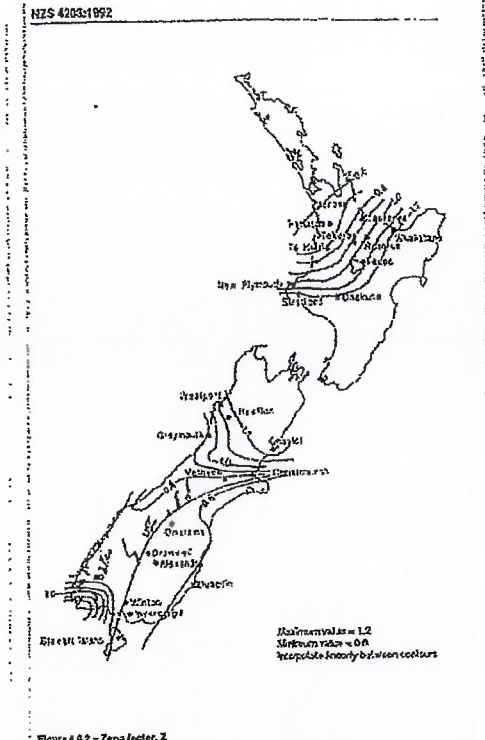


Figure 3.5(b) NZS 4203:1992

Figure 3.5: Extracts from previous Standards showing seismic zoning schemes

Table IEP-3: Initial evaluation procedure – Step 3

Table IEP-3 Initial Evaluation Procedure Step 3		Page																	
(Refer Table IEP-1 for Step 1; Table IEP-2 for Step 2; Table IEP-4 for Steps 4, 5 and 6)																			
Building Name: _____		Ref. By: _____																	
Location: _____		Date: _____																	
Direction Considered: a) Longitudinal b) Transverse (Choose worse case if clear or start. Complete IEP-2 and IEP-3 for each if in doubt)																			
Step 3 - Assessment of Performance Achievement Ratio (PAR) (Refer Appendix B - Section B3.2)																			
Critical Structural Weakness	Building Score	Effect on Structural Performance (Choose a value - Do not interpolate)																	
3.1 Plan Irregularity Effect on Structural Performance	Factor A <input type="text" value="2.7"/>	Severe 0.4 max	Significant 0.7																
Comment			Insignificant 1																
3.2 Vertical Irregularity Effect on Structural Performance	Factor B <input type="text" value="1.0"/>	Severe 0.4 max	Significant 0.7																
Comment			Insignificant 1																
3.3 Short Columns Effect on Structural Performance	Factor C <input type="text" value="1.0"/>	Severe 0.4 max	Significant 0.7																
Comment			Insignificant 1																
3.4 Pounding Potential (Estimate D1 and D2 and set D = the lower of the two, or = 1.0 if no potential for pounding)																			
a) Factor D1 - Pounding Effect Select appropriate value from Table																			
<p>Note: Values given assume the building has a frame structure. For stiff buildings (eg with shear walls) the effect of pounding may be reduced by taking the co-efficient to the right of the value applicable to frame buildings.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Factor D1</th> <th>Severe 0-Sep < 0.05H</th> <th>Significant 0.05-Sep < 0.1H</th> <th>Insignificant Sep > 0.1H</th> </tr> </thead> <tbody> <tr> <td>Alignment of Floors within 20% of Storey Height</td> <td>0.7</td> <td>0.8</td> <td></td> </tr> <tr> <td>Alignment of Floors not within 20% of Storey Height</td> <td>0.4</td> <td>0.7</td> <td>0.8</td> </tr> </tbody> </table>				Factor D1	Severe 0-Sep < 0.05H	Significant 0.05-Sep < 0.1H	Insignificant Sep > 0.1H	Alignment of Floors within 20% of Storey Height	0.7	0.8		Alignment of Floors not within 20% of Storey Height	0.4	0.7	0.8				
Factor D1	Severe 0-Sep < 0.05H	Significant 0.05-Sep < 0.1H	Insignificant Sep > 0.1H																
Alignment of Floors within 20% of Storey Height	0.7	0.8																	
Alignment of Floors not within 20% of Storey Height	0.4	0.7	0.8																
b) Factor D2 - Height Difference Effect Select appropriate value from Table																			
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Factor D2</th> <th>Severe 0-Sep < 0.05H</th> <th>Significant 0.05-Sep < 0.1H</th> <th>Insignificant Sep > 0.1H</th> </tr> </thead> <tbody> <tr> <td>Height Difference > 4 Storeys</td> <td>0.4</td> <td>0.7</td> <td></td> </tr> <tr> <td>Height Difference 2 to 4 Storeys</td> <td>0.7</td> <td>0.8</td> <td></td> </tr> <tr> <td>Height Difference < 2 Storeys</td> <td>1</td> <td>1</td> <td>1</td> </tr> </tbody> </table>				Factor D2	Severe 0-Sep < 0.05H	Significant 0.05-Sep < 0.1H	Insignificant Sep > 0.1H	Height Difference > 4 Storeys	0.4	0.7		Height Difference 2 to 4 Storeys	0.7	0.8		Height Difference < 2 Storeys	1	1	1
Factor D2	Severe 0-Sep < 0.05H	Significant 0.05-Sep < 0.1H	Insignificant Sep > 0.1H																
Height Difference > 4 Storeys	0.4	0.7																	
Height Difference 2 to 4 Storeys	0.7	0.8																	
Height Difference < 2 Storeys	1	1	1																
Factor D <input type="text" value="1.0"/>	(Set D = lesser of D1 and D2 or, set D = 1.0 if no prospect of pounding)																		
3.5 Site Characteristics - (Stability, landslide threat, liquefaction etc) Effect on Structural Performance	Factor E <input type="text" value="1.0"/>	Severe 0.5 max	Significant 0.7																
Comment			Insignificant 1																
3.6 Other Factors	Factor F <input type="text" value="1.6"/>	For ≤ 3 storeys - Maximum value 2.5, otherwise - Maximum value 1.6. No minimum.																	
Record rationale for choice of Factor F: <u>NO PLACING TO RE SIST (LONGITUDINAL)</u>																			
3.7 Performance Achievement Ratio (PAR) (equals A x B x C x D x E x F)	<input type="text" value="0.174"/>																		

Table IEP-4: Initial evaluation procedure - Steps 4, 5 and 6

Table IEP-4: Initial Evaluation Procedure Steps 4, 5 and 6 (Refer Table IEP-1 for Step 1; Table IEP-2 for Step 2; Table IEP-3 for Step 3)		Page				
Building Name	Ref. By					
Location	Date					
Step 4 - Percentage of New Building Standard (%NBS)						
	Longitudinal	Transverse				
4.1 Assessed Baseline (%NBS) (from Table IEP-1)	16.3					
4.2 Performance Achievement Ratio (PAR) (from Table IEP-2)	0.7					
4.3 PAR x Baseline (%NBS)b	11.4					
4.4 Percentage New Building Standard (%NBS) (Use lower of two values from Step 3.3)		11.4				
Step 5 - Potentially Earthquake Prone? (Mark as appropriate)	%NBS > 33	NO				
	%NBS < 33	YES				
Step 6 - Potentially Earthquake Risk? (Mark as appropriate)	%NBS > 67	NO				
	%NBS < 67	YES				
Step 7 - Provisional Grading for Seismic Risk based on IEP						
	Seismic Grade	E				
Evaluation Confirmed by	Signature					
JHONNAL CALLEJA		Name				
283693		PEng No.				
Relationship between Seismic Grade and %NBS						
Grade	A+	A	B	C	D	E
%NBS	> 100	100 to 80	80 to 67	67 to 33	33 to 20	< 20

ANNEXURE E – ENGINEERING STRUCTURAL ASSESSMENT REPORT – TM CONSULTANTS LTD



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8 December 2014

Job No.: 141111

Barry Redmond
bjredmond@xtra.co.nz

RE: 229 WEST STREET - ASHBURTON

Dear Barry

As requested we have inspected the building at 229 West Street Ashburton. The purpose of the inspection is to assess the buildings condition and comment on what strengthening is likely to be required to bring the building to at least 67% NBS.

Building Description

The building is generally constructed in 2 parts. The front two storey, original part, of the building was thought to have been constructed in the late 1880's. It was generally constructed of light weight roofing on timber purlins, curved laminated timber rafters with steel ties, on timber posts. The first floor is constructed of timber flooring on timber joists and beams, supported on timber posts. We note that the floor does not extend the full width of the building.

Drawings show that the West Street facade was altered in the mid 1960's with the wall demolished below the first floor level with a new reinforced concrete frame constructed with brick infill along with new doors and windows. A new reinforced concrete block wall was also constructed on the south west wall to the front part of the building. Further additions to the north east were completed in the 1990's with the addition of a single storey office area.

The construction date of the building to the rear is unknown. This single storey building is generally constructed of steel roofing on timber purlins, timber trusses to the central part and lean-to timber rafters each side, supported by timber posts. Drawings and council records indicate that side and rear concrete reinforced block walls (in part with glazing above) were constructed in the late 1960's/early 1970's. This includes an addition to the remainder of the south west block wall of the original front building. The rear (north west) gable wall has steel cladding/nova roof cladding on timber framing above the block wall. The drawings show that the block walls have been constructed on an existing concrete foundation with vertical reinforcement bars drilled into the foundation a small amount.

Building Condition

There have been some roof members and posts replaced/strengthened in the rear part of the building and others that need remediation.

The block side walls appear to be in good condition with only minor cracking observed. At the junction of the south west side wall and the north west gable end wall the rear wall has displaced outwards at the top by about 10mm. This suggests that there is no tie between the side and rear walls.

The buildings generally appear to be in reasonable condition for their age.

Seismic Strength

We have not completed any calculations in relation to the seismic strength of the building. We have seen an IEP report from Design Engineering which gives a strength of about 11% NBS in the longitudinal direction.

Longitudinal Direction (south east/north west)

Front part of building.

The drawings show that the south east block wall to the front part of the building is well connected to its foundations. The block wall further along was built on the existing foundation with only a nominal connection of the wall to the foundations. Being a relatively long length of wall it will have reasonable in plane strength. However the rear part of the wall has windows above so no effective connection to transfer lateral load to the wall.

The internal partition walls generally do not extend to the first floor structure so have little contribution to the seismic strength.

The first floor does not extend out to the longitudinal walls to transfer load to these walls.

Rear part of building.

There are block walls along each side of the building which drawings indicate are partially reinforced. The drawings show a nominal connection of the block walls to the foundations to the rear building where the walls were constructed on existing foundations. Being a relatively long length of wall it will have reasonable in plane strength but minimal connection and structure to transfer the loads to the walls. The rear wall will have minimal out of plane strength as it has a timber framed wall above and has no effective tie to the remainder of the building.

Transverse Direction (south west/north east)

Front part of building.

As there is minimal connection to the other structure the side walls have minimal out of plane strength.

The internal partition walls do not extend to the first floor structure so have little contribute to the seismic strength.

Rear part of building.

For out of plane loads the walls are connected to the roof support posts however the ability of the walls to span between the posts and the connection to the posts are likely to be minimal. The rear wall will have reasonable in plane strength.

Overall there are minimal lateral load resisting systems in both and therefore the building will have a low seismic strength.

We also note that the block walls adjacent to the boundary have minimal post fire face load strength.

Strengthening requirements:

Strengthening of the building would likely require the following:

Front part of the building:

- Bracing of first floor roof structure

- Longitudinal bracing walls or braced frames on new foundations that extend from the ground floor to first floor level
- Connection of the first floor structure to the longitudinal south west block wall.
- Face load support for the block walls – concrete or concrete block columns on posthole foundations.
- Transverse bracing walls or braced frames, including new foundations, from ground floor to first floor level. Alternatively at the more open rear area use portal frames so the use of the space is not compromised with walls or braces.
- Strengthen the connection of the front facade concrete frame to the first floor structure.

Rear part of building:

- Bracing of the roof structure for both longitudinal and transverse direction loading
- Face load support for the side wall and rear wall block walls –concrete or concrete block columns on posthole foundations. We note that the rear gable wall will still have minimal fire resistance with respect to prevention of fire spread to neighbouring property as the lightweight wall above the block wall is unrated. To meet fire rating requirements this wall will need to be replaced.
- Longitudinal and transverse portal frames on new foundations (not braced frames which would compromise the use of the space)

We have discussed the strengthening works with a building contractor. They have advised a provisional estimated strengthening cost of \$500,000 for the work as outlined above. This does not include fitout items, partition walls etc that will need to be reinstated in some areas.

There is also a provisional estimate cost for general remediation construction work of \$50,000.

Additional structural portals, frames etc will impact on the space and will likely restrict movement and access for machinery around the building.

Summary

The buildings appear to be in reasonable condition for their age.

There are minimal seismic load resisting systems in both the longitudinal and transverse directions to both parts of the building. Significant strengthening work will be required to lift the seismic strength of the buildings to a reasonable level.

The extent of strengthening work required is extensive with provisional cost estimates of \$500,000 for strengthening and \$50,000 general remediation work. It may be not be economical to strengthen the buildings.

We note that the comments made are based on observations from a walkover inspection and review of the drawings made available. Further inspections would be required to confirm that the structure has been built in accordance with the drawings. The report also does not consider upgrades for access & facilities for the disabled and fire egress etc.

If you require any further information or explanation please contact us.

Yours sincerely,

TM CONSULTANTS LIMITED



TRM Gwatkin