

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

CHRISTCHURCH REGISTRY

ENV-2018-CHC-

IN THE MATTER the Resource Management Act 1991 (the RMA)

AND

IN THE MATTER of an application made under section 85 of the RMA

BY **REDMOND RETAIL LIMITED**

Applicant

AND **ASHBURTON DISTRICT COUNCIL**

Respondent

**NOTICE OF PERSON'S WISH TO BE HEARD ON NOTICE OF MOTION
ON BEHALF OF HERITAGE NEW ZEALAND POUHERE TAONGA**

11 January 2019

TO: The Registrar
Environment Court
Christchurch

1. Heritage New Zealand Pouhere Taonga (Heritage New Zealand) wishes to be heard on a notice of motion made by Redmond Retail Limited (the Applicant) under section 291(4) RMA for the proposed removal of the Peter Cates Grain Store, Category A Heritage Building (the building) from Appendix 12.1, Table 12-3 Schedule of Heritage Items (Schedule of Heritage Items) in the Ashburton District Plan (the Plan).
 - Location of the Building: 229-241 West Street, Ashburton.
 - Legal Description: TS 193 and Part TS 194 Ashburton Town
2. The notice of motion was served on me on 13 December 2018.
3. Heritage New Zealand opposes this motion and wishes to advance the following matters:
 - Protection of historic heritage is a matter of national importance:
 - The building has significant historic heritage that requires protection; and
 - The grounds for this motion as set out in the RMA have not been met, in that:
 - Inclusion in the Schedule of Heritage Items does not make the land incapable of reasonable use; and
 - Inclusion in the Schedule of Heritage Items does not place an unfair and unreasonable burden on any person who has an interest in the land.

Protection of historic heritage is a matter of national importance

4. The RMA identifies the protection of historic heritage from inappropriate subdivision, use and development as a matter of national importance at section 6(f).
5. The significance of the historic heritage of the building has been identified and recognised by Heritage New Zealand and the Ashburton District Council in order to provide protection for the building from inappropriate subdivision, use and development.

The building has significant historic heritage that requires protection

6. The building was built in the late nineteenth century and stands as an example of Ashburton's past and current links with the agricultural industry. It has architectural value in its distinctive style, particularly with its large curved roof. The building has historical and social significance for its associations with the early grain and seed industry.
7. The building was constructed before 1900, although the exact date is not known. Fronting onto West Street, the two storeyed building is constructed of timber framed walls, stucco and corrugated iron cladding and has a dominant arched corrugated iron roof on curved timber rafters.
8. The building is also a prominent streetscape feature, and is the last remaining grain store in West Street.

Category 2 Historic Place in the New Zealand Heritage List/Rārangi Kōrero (Entry No. 1807)

9. The building is identified as a Category 2 Historic Place on the New Zealand Heritage List/Rārangi Kōrero (the List). The List identifies New Zealand's significant and valued historical and cultural heritage places. The purpose of the List is to inform the public and notify owners of historic places and to be a source of information about historic places for the purposes of the RMA.
10. Category 2 Historic Places are historic places which are considered to be of historical or cultural significance or value.¹

Group A, Schedule of Heritage Items, Ashburton District Plan (Plan ID No. 9)

11. The building is included as a Group A item in the Schedule of Heritage Items of the Plan due to its significant heritage values. Heritage Schedules are a tool used by territorial authorities in order to identify and protect historic heritage as a matter of national importance set out in the RMA. The RMA requires a territorial authority to have regard to any relevant entry on the List when preparing its district plan.²

¹ Section 65(4)(a) Heritage New Zealand Pouhere Taonga Act 2014.

² Section 74 RMA.

12. The purpose of inclusion in the schedule is to manage any activity that may generate adverse effects on historic heritage values. This recognises the public importance of heritage items and seeks to protect these items for current and future generations.
13. Group A items are described in the Plan as being "*considered to be of national or regional significance*"...and the "*loss of these items would be a matter of national or regional significance and of interest to the wider community.*"³ Furthermore the Plan states the Ashburton District Council's wish to "*provide for their long-term conservation and protection.*"⁴

Section 85 RMA

14. The notice of motion to change the Plan as described above in [1] has been made pursuant to section 85 of the RMA and requires that certain grounds are met before any action is taken.
15. Where the Court is satisfied that the grounds in section 85(3B) are met, then it may direct the local authority to amend its plan as set out in section 85(3A)(a)(i).
16. Section 85(3B) states:

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.

17. The Applicant considers that these grounds have been met and therefore the Plan should be amended to remove the building from the Schedule of Heritage Items.
18. Heritage New Zealand does not consider that these grounds have been met, and as such, that
- a) the motion should be declined, and
 - b) the building should remain in the Schedule of Heritage Items.

³ Ashburton District Plan, Section 12 at 12-6.

⁴ Ibid.

Incapable of reasonable use

19. The Applicant's argument under the heading "Incapable of Reasonable Use" is that it is not financially viable to "*strengthen the building to satisfy the earthquake-prone building requirements*" or to "*upgrade and refurbish the building to enable a change of use to as near as reasonably practicable to the NBS*".⁵
20. Inclusion in the heritage schedule seeks to manage activities in order to remedy, mitigate and avoid any adverse effects on historic heritage. This inclusion does not render the land "*incapable of reasonable use.*"
21. "*Reasonable use*" is defined in the RMA as⁶

in relation to land, includes the use or potential use of the land for any activity whose actual or potential effects on any aspect of the environment or on any person (other than the applicant) would not be significant.
22. Currently, there is no proposal included in the application regarding the intended use of the site, and as such we disagree that *reasonable use* is contingent on the demolition of this building. In fact, demolition of the building would have "*significant adverse environmental effects*"⁷ and would therefore in itself not be a reasonable use of the land.
23. The current zoning provides for several permitted activities that could be undertaken in the current building, with strengthening and some internal modifications. This would allow the historic heritage features of the building to be retained whilst also allowing for some re-development of the site for reasonable use.
24. It appears that *reasonable use* is restricted by the Applicant's unwillingness to upgrade the building, rather than any significant potential or actual effects generated by a proposed use.

⁵ Application to Remove the Heritage Listing Provisions of a Building in the Ashburton District Plan at [97].

⁶ Section 85 (6) RMA.

⁷ Notice of Decision for Resource Consent Application LUC15/0006 at [27].

Unfair and Unreasonable Burden

25. The main argument put forward by the Applicant is that it is not economically viable to upgrade the building because the costs to make the building tenantable and insurable will not be met by the anticipated commercial return.
26. At the time of purchase in 2015, the building was entered on the List and also included in the Schedule of Heritage Items in the Plan.
27. The Applicant describes its Director's (Mr Redmond) experience in property development and ownership in Ashburton. The provisions that governed activities relating to the building were operative at the time of purchase and with over 45 years of experience as a "*major commercial building developer and owner in Ashburton*"⁸ any restrictions governing these activities would have reasonably have been understood by Mr Redmond.
28. This knowledge of the planning provisions is further evidenced by the original resource consent application for demolition of the building as a non-complying activity in 2015, where Mr Redmond is named as one of the applicants.⁹
29. Heritage New Zealand considers that when a heritage building that is subject to a number of planning provisions in a district plan is knowingly purchased by an experienced property developer then any "burden" that is imposed by the same cannot be described as unfair or unreasonable.
30. Therefore, Heritage New Zealand disagrees that inclusion of the building in the Schedule of Heritage Items places an unfair and unreasonable burden on the Applicant.

Conclusion

31. If this application is successful, and the building is removed from the Schedule of Heritage Items, then demolition of the building would no longer require a resource consent and could be carried out as of right.
32. The significant historic heritage values of the building have been identified and recognised via inclusion on the List and also in the Schedule of Heritage Items in the Plan.

⁸ Statement from Mr Redmond (28 August 2018) at [21].

⁹ Application for Land Use Consent, January 2015.

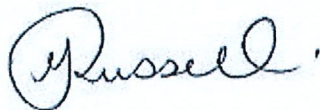
33. Heritage New Zealand does not consider the grounds in section 85(3) have been met in order to provide for the building's removal from the Schedule of Heritage Items. On that basis, Heritage New Zealand opposes this motion for the reasons detailed throughout this notice.

Attachments

34. Heritage New Zealand attaches the following documents to this notice:

- a) copy of Heritage New Zealand Summary Report for List Entry 1807.

Dated 11 January 2019



Melanie Russell

For and on behalf of Heritage New Zealand Pouhere Taonga

Address for service of person wishing to be heard:

Heritage New Zealand Pouhere Taonga

Att: Melanie Russell

64 Gloucester Street, Christchurch 8013

PO Box 4403, Christchurch 8140

Telephone: (03) 363 1885

Email: mrussell@heritage.org.nz



Grain Store (Former), ASHBURTON (List No. 1807)

File: 12009-1134



Grain Store (Former), Milly Woods, 7 February 2018, Heritage New Zealand

Address	229 West Street, ASHBURTON
Legal Description	Sec 193 Town of Ashburton (CT CB15K/1325), Canterbury Land District
Extent	Extent includes part of the land described as Sec 193 Town of Ashburton (CT CB15K/1325), Canterbury Land District and the building known as Grain Store (Former) thereon. Refer to the extent map tabled at the Rārangī Kōrero meeting of 8 March 2018.
Constructed by	Not known
Owner	Redmond Retail Limited

Summary:

The Grain Store (Former) building at 229 West Street, Ashburton, built in the late nineteenth century, stands as a good example of Ashburton's past and current links with the agricultural industry. It has architectural value in its distinctive style, particularly with its curved roof, and an interior which features considerable amounts of native timber, including kauri. It has historical significance for its associations with the early grain and seed industry.

The building was constructed before 1900, although the exact date is not known.¹ Early owners of the site from 1879 through until 1891 include John and Matthew Oram, and the partnership of George Jameson and Albert Roberts.² It is not clear if there was actually a building on the land parcel TS 193 at the time of the dissolution of the Jameson and Roberts' partnership in 1883, though a warehouse and grain store was on their adjoining land parcel TS 194 on the corner of Burnett and West Streets.³ Albert Roberts continued the business until 1891, the successors being Rollitt & Co.⁴ Throughout the 1890s Rollitt & Co advertised for farmers to store grain at their 'New Grain Stores, West Street, Ashburton' and by this time the current building was built, possibly incorporating an earlier structure.⁵ By this time there were a number of grain stores lining West Street, as the *Cyclopedia of New Zealand* reflected in their 1903 publication, '...to-day Ashburton itself presents the appearance of a healthy, prosperous inland town, and that it is the centre of a rich agricultural district can be seen by a glance at the large grain stores situated in the neighbourhood of the railway'.⁶

Fronting onto West Street, the two storeyed Grain Store (Former) building is constructed of timber framed walls, stucco and corrugated iron cladding and has a dominant arched corrugated iron roof on curved timber rafters. The upper part of the principal façade contains a central sash window with fixed side panes, topped by a round arched ventilator, from which a flag pole extends vertically above the roof line. The ground floor of this street facing façade contains large paned modern glazing and a wide square loading entry door, being modifications carried out in the mid twentieth century.

In 1901 the building was in the ownership of well-known Christchurch flour millers and grain merchants, Wood and Co, and then from 1901 to 1924 it was owned by established grain merchant Hugo Friedlander.⁷ Murdoch Bruce took over in 1924 and in 1965 the property was transferred to Buchanan's (Merchants) Ltd.⁸ By the 1980s the building was taken over by Peter Cates Ltd and was operated by that firm until it was sold in 2015.⁹ Over the years the other grain stores on West Street and the railway station itself have been demolished. The West Street façade of the surviving Grain Store was altered in the mid 1960s, with the ground floor wall being demolished and replaced with a new wall, windows and doors. Interior alterations have also been made. The building was added to at the rear in the mid 1900s and side and rear in the 1960s or 1970s but these additions are not part of the extent of the List entry. In 2017, an application for demolition of the building was declined.¹⁰

¹ W H Scotter, *Ashburton: A History of Town and Country*, 1972, illustration 25, opp. p. 161.

² Certificate of Title CB39/237; *Ashburton Guardian*, 20 Jan 1891, p. 2.

³ *Press*, 10 Mar 1883, p. 3.

⁴ *Ashburton Guardian*, 17 Jan 1891, p. 3.

⁵ For example, *Ashburton Guardian*, 10 Feb 1893, p. 4; Scotter, illustration 25, opp. p. 161; *Cyclopedia of New Zealand [Canterbury Provincial District]*, Christchurch 1903

⁶ *Cyclopedia of New Zealand [Canterbury Provincial District]*, Christchurch, 1903, p. 812.

⁷ Certificate of Title CB39/237.

⁸ Certificate of Title CB29/237.

⁹ Certificate of Title CB39/237 and CB15K/1325; URL <https://www.cates.co.nz/company-history/> (accessed 17 January 2018)

¹⁰ Heritage New Zealand File 12009-1134.

Further Reading

Ross, J E, *Focus on Ashburton*, 1977

Scotter, W H, *Ashburton: A History of Town and Country*, 1972

Silverwood, Beatrice, *Ashburton Borough Centenary: Our Heritage 1878-1978*, p. 1978.

Other Names	Peter Cates Grain Store; Cates' Grain Store; Cates Grain Store
Key Physical Dates	Late nineteenth century: Original construction Mid 1960s: alterations to façade 1960s/1970s: rear and side additions (not part of extent) 2010: Damaged following earthquake of 4 September 2010
Uses	Agriculture – Granary/Grainshed (Former) Manufacturing - Manufacturing & Processing – other (Former) Trade – Office building/Offices (Former) Trade – Retail and Commercial – other (Former) Trade – Warehouse/Storage area (Former) Vacant - Vacant
Associated List Entries	-
Protection Measures	Ashburton District Plan, Operative (25 August 2014), Appendix 12-1: Schedule of Heritage Buildings/Items, District Plan ID Number 9, Peter Cates Grain Store, Group A.
Recommendation	Technical change required: Board Paper reference: BCC paper HP 191/1981 <i>Change Name; Change Address; Add Legal Description; Clarify Extent</i>

Attachments

Technical Change Request

List Entry Record

List Number: 1807

Site Reference: P3018



HERITAGE NEW ZEALAND
POUHERE TAONGA

Name: Peter Cates Grain Store

Other Names:

Name	Year From	Year To
Cates Investments Ltd building		

Location: 229-231 West Street, ASHBURTON

List Entry Legal Description: town sec 193 pt 194 Ashburton Town

Local Authority: Ashburton District

Summary:

List Entry Status: Listed

List Entry Type: Historic Place Category 2

List Number: 1807

Date Entered: 26 November 1981

Extent of List Entry:

Chattels

District Plan Listing: District Plan DP No. 32, A.3 Schedule of Heritage Items, A.3.1 Category A (internal and external protection), Ashburton District Plan, Ashburton District Council, October 2001, p.A-61

Maori Interest: Unknown

Heritage NZ Office: Canterbury/West Coast Office

Other Information: Please note that entry on the New Zealand Heritage List/Rarangi Korero identifies only the heritage values of the property concerned, and should not be construed as advice on the state of the property, or as a comment of its soundness or safety, including in regard to earthquake risk, safety in the event of fire, or insanitary conditions.

General Nature of Wahi Tapu:

Section 66(1) & 66(3) Assessment:

Section 23(1)	Registered under previous legislation (HPA 1980)
Section 23(2)	Registered under previous legislation (HPA 1980).

Section 66(1) Detail:

Section 66(3) Detail:

Statement of Wahi Tapu:

Report Execution Time: 08/01/2018 14:52:10

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Pātaka List Entry Record



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



Search Copy

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
Redmond Retail Limited

Interests
9981706.2 Mortgage to Bank of New Zealand - 27.2.2015 at 2:38 pm

Transaction Id 52702268
Client Reference rburgess002

Search Copy Dated 17/01/18 10:54 am, Page 1 of 1
Register Only

Certificate of Title CB15K/1325 (refer also to associated diagram below)

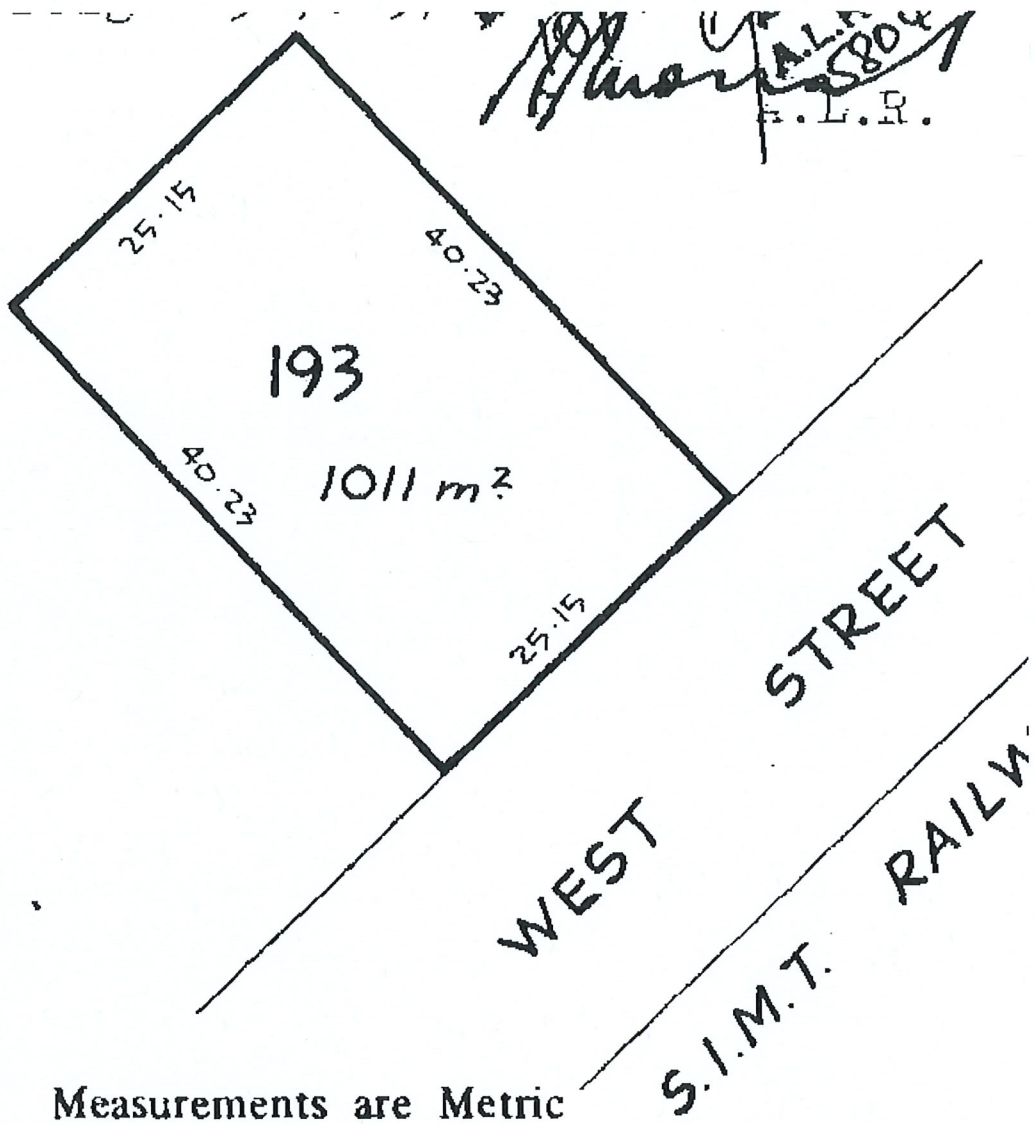


Diagram associated with Certificate of Title CB15K/1325

Board minute extracts:


Paper HP 191/1981

File HP 6/1/4

8

C Buildings

Ashburton Borough

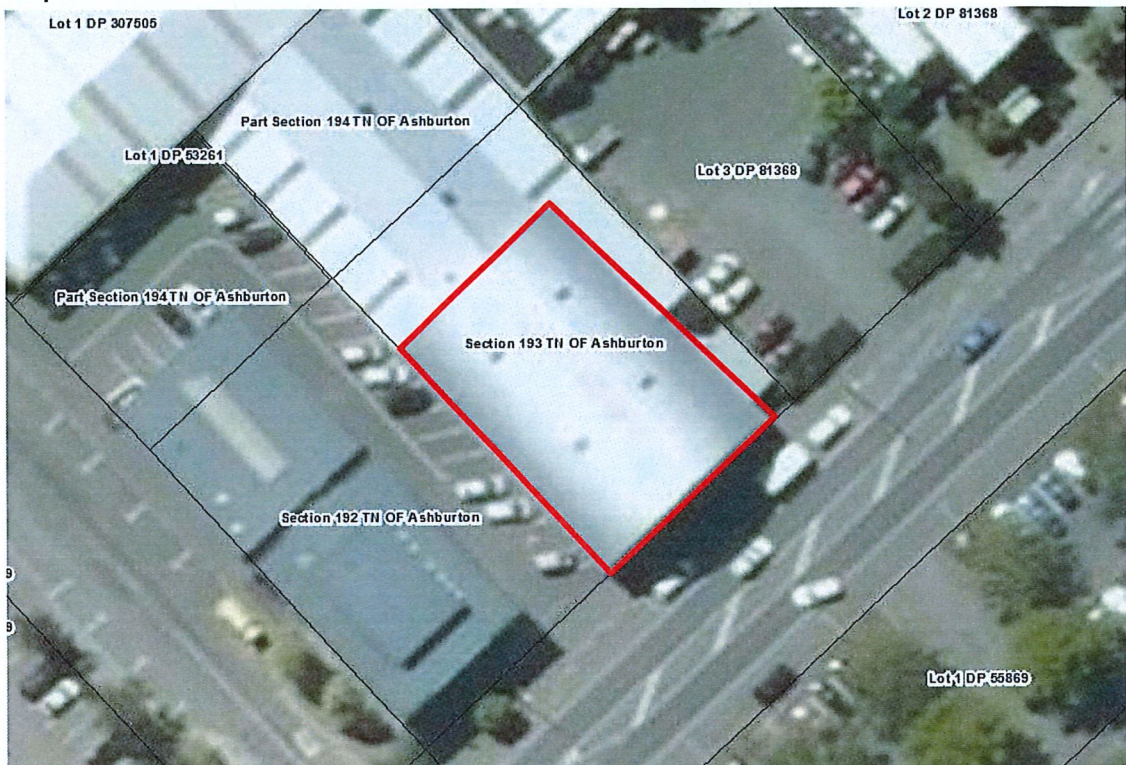
Historical Society and Museum Building, 118 Cameron Street.	C
ANZ Bank (formerly Bank of Australasia), cnr East Street and Tancred Street	C
 Peter Cates Grain Store, West Street.	C
Westburn Courts, cnr West Street and Burnett Street.	C
St. Andrew's Church, (Presbyterian) cnr Park Street and Havelock Street.	C
Former St. Andrew's Church.	C
Presbytery, Winter Street, Ashburton.	C
House, (H.D. Acland) 105 Walnut Avenue, Ashburton.	C
Canterbury Roller Flour Mill Original Mill building, West Street, Ashburton.	C
Canterbury Roller Flour Mill Original Concrete Store, West Street, Ashburton.	C

Ashburton County

Bishop House, Graham's Road, Tinwald.	C
Riversdale (dwelling), Riversdale Station, Fitzgerald Road, Hinds.	C
Riversdale farm buildings (3), Riversdale Station, Fitzgerald Road, Hinds.	C
Akaunui (formerly house of Edward Grigg), Akaunui Station, Longbeach Road, Hinds.	C
Longbeach Cob Cottage Longbeach, Longbeach Road, Ashburton.	C

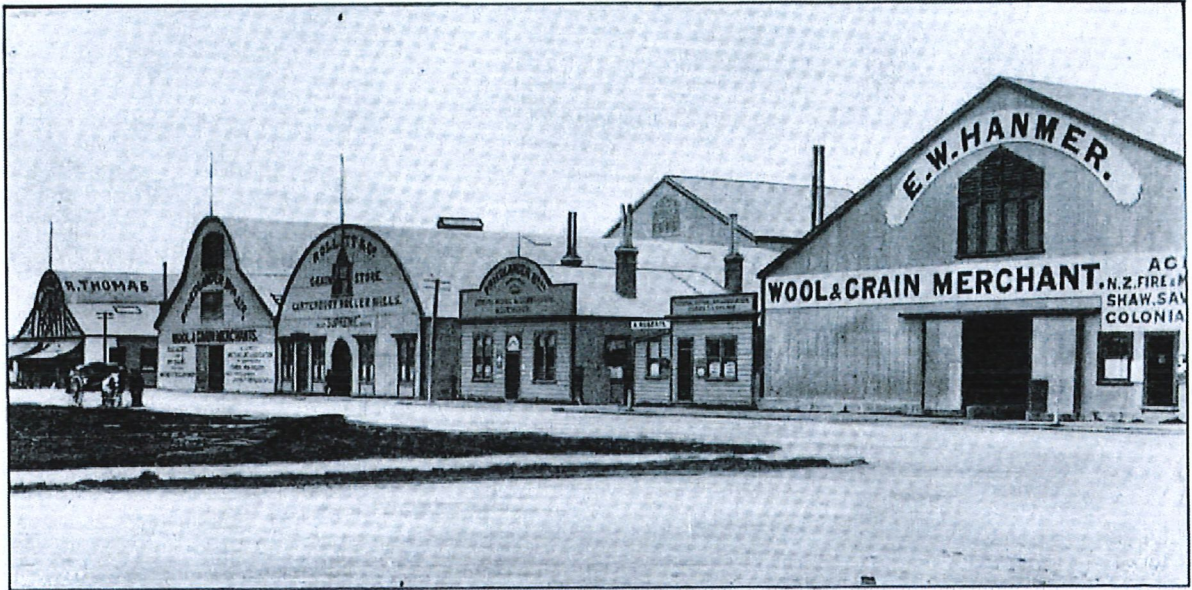
BCC paper HP 191/1981

Map of Extent



Extent includes part of the land described as Sec 193 Town of Ashburton (CT CB15K/1325), Canterbury Land District and the building known as Grain Store (Former) thereon

Images



WEST STREET, FROM THE NORTH.

E. F. Harris, photo.

Cyclopedia of New Zealand [Canterbury Provincial District], Christchurch 1903, p. 812.



Peter Cates Grain Store building, Ann McEwan, Heritage New Zealand, 12 May 1993



Grain Store (Former), Milly Woods, 7 February 2018, Heritage New Zealand