

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

IN THE MATTER	of the Resource Management Act 1991
AND	of an application under section 85 and clause 21 of the First Schedule of that Act
BETWEEN	REDMOND RETAIL LIMITED  (ENV-2018-CHC-198)  Applicant
AND	ASHBURTON DISTRICT COUNCIL  Respondent

---

**MINUTE OF THE ENVIRONMENT COURT**  
**(14 March 2019)**

---

**Introduction**

[1] This Minute is issued for the purpose of case management and sets out the timetable for hearing.

[2] The Council, having consulted with the other parties, has filed a memorandum dated 8 March 2019 advising of the essential facts and issues, witnesses to be called and time required for hearing.

**Issues of fact and opinion, and legal issues to be decided**

[3] The memorandum records the following issues in relation to fact and opinion:<sup>1</sup>

The essential issue to be resolved is whether the continued listing of the Cates Grain building in the heritage schedule of the Ashburton District Plan (Plan):

- makes the land incapable of reasonable use; and

---

<sup>1</sup> Memorandum of counsel for the respondent dated 8 March 2019 at [3] and [4].



- places an unfair and unreasonable burden on any person who has an interest in the land.

[4] In determining these questions the court will need to consider:

- the heritage values associated with the building;
- what constitutes a reasonable use of the site;
- under the district plan zoning, what uses can be made of the building;
- is the site capable of any further development with the building remaining in situ;
- whether demolition of the building extensions (1950s onwards) enhances reasonable use of the building;
- whether the owner has reasonably explored alternative options for the reasonable use of the building and the site;
- whether there are other options that could still reasonably be pursued; and
- what is the development potential of the site if the building were to be demolished or otherwise removed.

[5] The legal issues to be decided are:<sup>2</sup>

- whether the owner purchasing this building as a listed heritage building is a relevant consideration under section 85;
- if so, what weight should be placed on that decision in determining whether the heritage listing imposes an unreasonable burden on the owner;
- whether there is a financial threshold for determining whether a burden, imposed by a plan provision, is unfair and unreasonable;
- whether, in considering the costs to the owner of retaining the building, it is relevant that an application for resource consent to demolish the building was declined by the Council.

### Witnesses

[6] Fifteen witnesses will be called:<sup>3</sup>

- Mr Redmond (building owner), Ms May (heritage expert), Mr Skews (building expert), Mr Gwatkin (engineer), Mr Harrison (quantity surveyor), Mr McLeod (valuer) and Mr Hardford (planner) for the applicant;

<sup>2</sup> Memorandum of counsel for the respondent dated 8 March 2019 at [5].

<sup>3</sup> Memorandum of counsel for the respondent dated 8 March 2019 at [6]-[12].



- (b) a planner and heritage expert for the Council;
- (c) a planner and heritage expert for Heritage New Zealand;
- (d) Ms Watson, Mr Hanrahan and Mr Gilkison will give evidence in person in support of their respective submissions; and
- (e) Historic Places Mid Canterbury has not confirmed whether they will call any expert witnesses, but it is likely Ms Luxton will give evidence in person to support its submission.

### Expert conferencing

[7] The parties consider conferencing would be beneficial but did not identify the topic areas for conferencing. Based on the information before the court, I will make a direction that the heritage and planning witnesses conference. The conferences will take place after evidence exchange, as requested, but before the filing of any rebuttal. I consider a two-month period for conferencing (as suggested by parties) to be too long; a tighter timetable is suggested as below. The parties will advise if additional conferences are required.

[8] An Environment Commissioner is available to conference on **29 May 2019** (heritage) and **5 June 2019** (planning).

[9] The heritage conference shall take place first with the planners directed to attend that conference in an observation capacity. The planning conference will follow a week later.

[10] Prior to the conferences, counsel is to confer and agree on an agreed statement of facts. The statement should provide a summary of relevant factual background information suitable for adoption on the basis of the witnesses' opinion evidence. The statement should be sufficiently comprehensive to avoid the need for each expert to re-state such facts.

[11] A conference agenda is also to be prepared prior to each conference identifying the key issues. The agenda for each conference is to be (at least) reviewed but preferably prepared by the relevant experts to ensure it captures the outstanding issues adequately. When preparing the agenda, the experts should consider the interests and concerns of the parties involved. Before filing, a copy of the draft agenda is to be sent to the facilitating Commissioner for their comment.





[12] Counsel are to provide their respective experts with a copy of the Environment Court's Expert Witnesses Code of Conduct (Part 7, Environment Court Practice Note 2014) and Protocol for Expert Witness Conferences (Appendix 3, Environment Court Practice Note 2014) and to brief them on their responsibilities under these. Particular attention is to be drawn to those parts which require experts to express their views independent of counsel and the parties who have engaged them.

### **Hearing dates**

[13] The Council estimates 2-3 days are required for hearing. As there are 15 witnesses I will allow one week. The matter will be heard on or after 1 July 2019, the Registrar will liaise with parties as to an appropriate hearing week.

### **Site visit**

[14] It is the court's preference to undertake a site visit prior to the hearing commencing. I have made a new direction that the respondent confers with the parties and files a memorandum setting out the details of the site visit.

[15] The memorandum should outline details including the estimate of time required. The itinerary should be accompanied by a map and agreed bundle of photographs of the views. If there is good reason for the court to have a guide, that person cannot be a witness and should not be a party.

### **Telephone conference**

[16] It is my usual practice to convene a telephone conference of the hearing date. The purpose of this is to ensure the parties are on-track for the hearing. If any party considers the case would benefit from an earlier conference a request may be made.

### **Directions**

[17] I direct:

- (a) by **Friday 12 April 2019** the applicant will serve its evidence-in-chief;
- (b) by **Friday 3 May 2019** the respondent will serve its evidence-in-chief;



- (c) by **Friday 10 May 2019** the submitters will file their evidence-in-chief;
- (d) the agreed statement of facts and agenda for the heritage conference will be filed **one week** before the conference;
- (e) expert conferencing for heritage will take place during the **week of 29 May 2019** with the planners attending in an observation capacity;
- (f) the agenda for the planning conference will be filed **one week** before the conference;
- (g) expert conferencing for planning will take place during the **week of 5 June 2019**;
- (h) joint witness statements are to be filed with the court no later than **Monday 10 June 2019**;
- (i) by **Friday 14 June 2019** any evidence in reply will be served;
- (j) by **Friday 21 June 2019** the respondent will file the site visit memorandum as per [12] and [13] above and will lodge four hard copies of the compiled evidence and four copies of the common bundle of documents with the Registry:
  - (i) all statements of evidence exceeding 20 pages in length shall be accompanied by a table of contents. The evidence is to be printed single-sided using size 12 font and 1.5 spacing. Appendices are to be tabbed;
  - (ii) at the time of evidence exchange the parties are to provide the Council with four extra copies of the evidence and electronic copies of all evidence are to be emailed to the Registry. The Council is to upload copies of all the evidence to the website upon receipt as previously directed; and
- (k) the matter will be set down for a hearing after 1 July 2019.

[18] Leave is reserved to apply for further directions.



Issued:

**14 MAR 2019**