

Oral Submission 31 May 2023 – David Whyte

Oxford Street (East) and Marshall Street Railway Cottages HHA

1. Mr Miller's report and Schedule 8D state that the houses in Oxford Street (East) all have central front doors with symmetrical windows on either side. In Mr Knott's oral presentation at the end of 29 May, after viewing pictures showing that only 2 of the 7 Oxford Street houses had this feature, he states he meant that **they had them in the past** and he can see this in the historic aerial photo. So, Mr Knott is not actually assessing the houses "as found"¹.
2. In a report prepared by Adam Wild, Director of Archifact, on the demolition of the municipal pools he states the following²: [emphasis added]
"In accordance with conservation best practice a building or place is assessed as found. Such a process avoids predeterminations as to value and recognises that values are dynamic and can go up and down over time. I am aware from my own professional practice that HNZ recognise this phenomenon and acknowledge that *"heritage values can alter (increase or diminish) with time and circumstance, and that significance may be reassessed if impacted by various factors* (footnote omitted). Accordingly, I undertook my own objective and independent assessment of the Hamilton Municipal Pools which was completed in 2018, and which considered the place **as found.**"
3. There are at least four further examples of Wild repeating the same point that the historic heritage of a building or place is as it is found (or in common parlance, as it looks today, not how it looked on the day it was built or could be made to look again if renovated).
4. As an aside, Wild's report was accepted and Knott's own submissions to retain the pools was rejected and the pools have now been demolished. It is of note that there is no mention in either Mr Miller's Peer review or Schedule 8D that they actually meant that they think the houses had central front doors and symmetrical windows **in the past**, rather than now. If the heritage value is *"used to all have a central front door with symmetrical windows but almost all have since been modified"*, **that** is what should have been stated. Other HHAs state what is there now, not what was possibly there in the past. (For example, Acacia lists building elements supposedly present in the street, but this is not the case for Oxford (East)).
5. I believe it is more likely that actually Mr Miller and Mr Knott looked at the wrong houses, possibly the now deleted Oxford Street (West) HHA as those

¹ Identified by Adam Wild as best practice. 9 May 2023 submission, paragraphs 75-77.

² Statement of Evidence of Adam Wild on Behalf of Hamilton City Council – Community Facilities dated 25 October 2019, page 11, paragraph 34

houses have the gable parallel to the street (which was another feature incorrectly described for Oxford St (East) and have some similarity to the Frankton East houses claimed to be Ellis & Burnand prefabricated houses. Mr Miller did note in his report that he initially thought it was Oxford (West) he was peer reviewing.

6. In Mr Knott's oral presentation at the end of 29 May he also stated that there are three types of "Ellis & Burnand houses": the ready-to-erect (ie prefabricated), the plan book houses (which would have been built by independent builders, not builders employed by Ellis & Burnand) and houses that have elements such as doors and windows made by Ellis & Burnand. Unless I missed it, he did not identify which of the last two types he thought we were.
7. Both Mr Miller and Schedule 8D specifically refer to the houses in both Oxford East and Frankton East as "**Ellis & Burnand prefabricated houses**". If they meant something else, that should have been specified and provided references to support this. There is no mention in the Fletcher Archives of Ellis & Burnand making anything other than the prefabricated wooden houses shown in the 1933 catalogue, farm buildings and components for houses (such as doors and windows).
8. It is of note that Ellis & Burnand appeared to have had a very strong relationship with the Waikato Times with many very detailed media items found on PapersPast in the 1920s and 1930s, including many showing wooden prefabricated buildings but with no mention of another "Ellis & Burnand housing" type.
9. While the 1933 catalogue included some house plans, no reference was ever made to them by either Ellis & Burnand or the media. When Ellis & Burnand produced their 1945 house plan catalogue, it was clearly described as the first edition.
10. Oddly, Mr Knott stated on Monday that the Ellis & Burnand ready-to-erect (or prefabricated) houses were made from Fibrolight.
 - a. Ellis & Burnand were primarily a sawmilling company. The 1933 catalogue states that "*Our ready-to-erect buildings are constructed of*

thoroughly seasoned building timber” and the weatherboards are “Ordinary building quality dry dressed” timber³.

- b. Fibrolight cladding was first used in the 1940s due to shortage of traditional building materials such as timber⁴ but the prefabricated houses were made from the late 1920s onwards.
11. Mr Miller’s report stated that he had looked at **just one** title for Oxford Street and it showed that **all** the titles had transferred from the developer (Paterson & Paterson) to private owners in the **1920s. This is a complete fabrication.** There are only three houses on the Oxford Street title that were transferred in the 1920s: being 23, 29 and 33. Mr Miller either did not look at the title or he can’t read the title. This error, like all the others, was copied to Schedule 8D.
12. There is a clear copy of this title in Appendix H.
13. [PowerPoint slide of annotated title]
14. I did not hear any comment from Mr Knott on Monday regarding the fabricated reading of the Oxford Street land title. I am very interested to know how two heritage experts with international experience cannot correctly read and accurately document a land title.
15. To reiterate, Mr Miller documented that he and Mr Knott visited Oxford and Marshall Street together in February 2023 and saw central front doors and symmetrical windows on **all** the houses. He did not say that he saw that the houses **used to have them.**
 - a. Three of the Oxford Street houses do not have a door on the front of the houses **at all.**
 - b. One Oxford Street house has French doors on the right side of the front of the house as part of modifications to the front and left side elevation, fully consented in 2002.
 - c. Only **two** of the seven Oxford Street houses clearly match the description with **possibly** a third house, which is not visible from the street, **possibly** having these features.

³ Image on final page of this document.

⁴ <https://www.accurateconsulting.co.nz/types-of-asbestos>

- d. **None** of the Marshall Street houses match this description, although some do have central front doors. In fact, three have a central front door and **asymmetrical** windows.
16. Mr Miller also noted that the gables in all houses were **parallel** to the road. So the houses all look like a basic kids drawing. If the main gables were parallel to the road as described by Mr Miller, this would mean the houses had turned 90 degrees since Mr Knott visited, observed and correctly described this aspect in 2022.
17. Mr Miller's report also noted that **none** of the sections has been subdivided, despite 35A Oxford Street being a **very prominent two-storey A-frame building** on a back section between 35 Oxford and 36 Marshall (two houses in the HHA). For them to have missed this house suggests **Mr Knott and Mr Miller were not in Oxford Street or Marshall Street.**
18. Mr Miller did at least acknowledge that he had no proof of anything when he stated:
- "During the course of the research undertaken into the Marshall and Oxford Street HHA, no further information was located that confirmed a connection with the Railway housing or Ellis & Burnand. There were no property records available that related to the construction of these dwellings. All property records and building permits post-date 1949."*
19. Monday's "explanation" by Mr Knott is the third iteration of our housing typology and heritage values as it appears we are now the **"used to have central front doors with symmetrical windows and looks like the completely undocumented Ellis & Burnand non-prefabricated housing typology."** We await the fourth iteration.
20. Both Mr Miller's report and Schedule 8D change between "all" meaning all twelve houses and "all" referring to just the seven Oxford Street houses. I am not sure if they are being intentionally vague or just can't make up their mind.

Age of Houses

21. The supposed age of the houses being "early 1920s dwellings" is included as a heritage value. When our theme was pre-1930, we did research on this and identified that it is likely that just **four** of the current houses were built in the 1920s.

22. The other Oxford Street and Marshall Street houses were likely built some time in the next two decades with the most recent probably being 31 Oxford Street which is the only one built after the street had been connected to town water, so probably the late 1940s.
23. This is all included in our written submissions.
24. It is possible there were other buildings on the properties before the current houses.
25. Unfortunately, the Council database is inaccurate for houses which were built before some streets joined the Borough in 1949 with a default house age of 1920s, even where there is evidence that the houses were built later.
26. So it appears that just 4 of the 12 houses are “early 1920s dwellings” and just 2 or 3 of the 12 houses match the basic description of what Mr Miller and Knott claim to have seen for all 12 houses when they came to visit in February 2023.

House Type

27. Then let’s look at what the experts think our other heritage values are:
The housing on Oxford Street has **strong similarities** with the **prefabricated** Ellis & Burnand and Railway cottages. **Whilst it cannot be verified, it is likely that they are Ellis & Burnand.**
28. My neighbour spoke about the three distinctive features of Ellis & Burnand prefabricated houses on Monday and I have documented them in both my 9 May submission and in the supporting document for this submission.
29. From his comments on Monday it appears that Mr Knott has now acknowledged that we are not the Ellis & Burnand prefabricated houses shown in the catalogue and media.
30. The two housing typologies which the Oxford Street houses are supposedly similar to, are very different. The only similarity between Railways houses and Ellis & Burnand prefabricated houses are central front doors and symmetrical windows, which, as already noted, are only visible on two Oxford Street houses. And now it appears that Mr Knott has created a third typology being non-prefabricated houses which look like the Wyes Street houses in Frankton East. The Wye Street houses have some similarity to the Oxford (**West**) houses but none whatsoever to the houses in Oxford (East).

31. Apart from the two clearly visible Oxford Street houses with central front doors and symmetrical windows, the other houses have minimal similarity other than being weatherboard houses with iron roofs.
32. The five Marshall Street houses are all very different from each other with 36 Marshall Street being a two-storey house.
33. All of the houses are small with minimal stylistic features. They are not particularly distinctive, unique, or rare.

Railway Cottages

34. Railway housing has a very distinct typology. These twelve houses do not look like Railway housing. This has been covered in depth in our previous written submissions and I will not bore you with these details again.

Historic Heritage Value of "Strong Similarities"

35. In his March 2023 report, Mr Miller confirmed that there is no connection to Railways housing nor proof of a link to Ellis & Burnand housing.
36. However then, his report (which is copied to Schedule 8D) notes that he thinks the houses have "strong similarities" to Railway Cottages and Ellis & Burnand houses. Mr Miller appears to be saying that he thinks the Patersons copied the Oxford Street houses from the "popular" Railway or Ellis & Burnand housing and this is a heritage value.
37. Mr Miller does not explain how the builder copied features of a housing type that was not around until the **late** 1920s into houses that he also claims were built in the **early** 1920s.
38. Significantly, none of the reports from experts has offered an explanation as to why houses perceived as displaying "similarities" (strong or otherwise) to another housing style can be considered to have historic heritage value. This is akin to someone painting a copy of the Mona Lisa and expecting this copy (no matter how good) to be valued as highly as the original painting.
39. Gu notes in his Peer Review that:
~~"Under the heading Historic Qualities in the Historic and Cultural Heritage Assessment Criteria set by the Waikato Regional Policy Statement (10A, 2016, updated 2018),~~ **the heritage place or area needs to have a direct association with, or relationship to, a person, group, institution, event or activity that is of historical significance to Waikato or the nation."**
40. Quite correctly, Gu does not mention heritage being recognised because it looks like something else, even if it was a "strong similarity".

41. If the houses in Oxford Street (East) bore strong similarities to the Railway houses in Frankton Railway Village, they would have the majority of the unique features seen in these houses. I.e multi-paned sash windows (not casement), very decorative and ornate multi-posted porches, same size weatherboards and a central front door.
42. If they had strong similarities to Ellis & Burnand prefabricated houses, they would have the flat weatherboard profile, regular vertical battens and be very small (less than 60m²).
43. And, if for a moment, you believe there is a housing typology called Ellis & Burnand **non**-prefabricated housing, and the Frankton East Houses are these. Then the common features of those houses are highly decorative windows and roof ventilators. They are similar to Californian bungalows and are all very solid-looking with heavy porches.
44. The houses in Oxford (East) have **none** of these features.

Historical Connection between Marshall and Oxford Street

45. No reason is given for the supposed heritage value of the five Marshall Street houses. (Note that the street was developed separately from Oxford Street.)
46. As noted in other submissions, there is no logical connection between the five houses on Marshall Street and the seven houses on Oxford Street. This is the only HHA that has a small number of houses on two streets that do not connect. Mr Adam Wild notes this in his June 2022 peer review when he points out this HHA is an oddity in having two different streets.
 - e. I wonder at the proposal of the HHA *Oxford Street East* et al as a perceptible HHA when it comprises houses addressing different streets and the sense of collective value is accordingly disrupted. This can be contrasted with proposed HHA *Riro Street* or proposed HHA *Springfield Crescent* which comprises Lots facing each other that can be perceived collectively.
47. Until writing PC9 submissions, none of my Oxford Street neighbours were aware of what the Marshall Street houses looked like other than the one directly behind them.

Visibility

48. Most of the Oxford Street and some of the Marshall Street houses are partially or fully obscured and so cannot be seen clearly from footpath or road. This contrasts noticeably with other HHAs such as Hayes Paddock and Frankton Railway Village.

49. The lack of visibility may also be part of the explanation of how Mr Knott initially erroneously identified these 12 houses as NZ Railways housing (note that he said they were railway cottages, not that they looked “similar to” railway cottages) and then Mr Miller and Mr Knott have now erroneously identified the houses as all having a central front door with symmetrical windows and a “strong similarity to Ellis & Burnand prefabricated houses”.

Evidence and Research

50. **Unequivocal and documented evidence** of historic heritage values **must** be provided by the Council before an HHA, and its associated restrictions, are placed on properties.
51. Many homeowners were very surprised and upset to be included in proposed HHAs as this is effectively a post-purchase covenant on their property and restricts their future plans. As such **it is imperative that any HHAs are imposed based on evidence, not guesswork, not supposition, not speculation, not personal unproven subjective opinions and not because submitters want to be in an HHA to avoid intensification.**
52. The Council and their consultants have not provided any evidence of heritage values for the Oxford Street (East) and Marshall Street Railway Cottages HHA. In fact, although both Mr Miller and Mr Knott claimed to have visited our HHA in February 2023, neither accurately described the houses.
53. When Oxford (East) was initially, and incorrectly, identified as a Railway workers suburb, I assumed it was a one-off (although very significant) error in the PC9 process. It took just twenty minutes and around \$100 to perform a simple search of all the titles that showed all of the houses had been privately owned at all times. Common sense also indicates NZ Railways did not build staff housing over a kilometre away from any Railway infrastructure. However, Mr Knott failed to identify this, and Oxford (East) was put into an HHA with the theme “Railway Workers suburb” and described as **Railway cottages**. Mr Miller’s review acknowledged that this was incorrect.
54. However, in March 2023, Mr Miller’s peer review report labelled us as Ellis & Burnand prefabricated houses but gave no evidence as to what Ellis & Burnand prefabricated houses looked like and what research he had done on Ellis & Burnand prefabricated housing.
55. And now it appears we are a third typology. It is of note that there is no mention of Ellis & Burnand making any houses, other than the prefabricated houses in the catalogue, in any of the expert reports used to support PC9.

56. Ellis & Burnand (neither the company nor any housing) is not mentioned at all in Ms Hill's Special Character report, the Morris and Caunter report or Mr Kellaway's report on housing types.
57. The only reference to Ellis & Burnand and housing is in Ms Williams 351-page Thematic History where she states that the prefabricated houses were permitted in the Hamilton Borough in 1938.
58. Consequently, to rebut the experts' comments, my wife and I have done extensive research on the history of Oxford Street, Railways housing, Ellis & Burnand prefabricated housing, the Paterson family and the Ellis & Burnand company. We have documented all our research with images and sources of information so everything we have said can be verified.

Removal of Oxford Street (East) and Marshall Street Railway Cottages HHA

59. Through personal connections, I had a historical heritage expert in Perth review our submissions and they commented that they could not believe that Hamilton experts had gotten it so wrong.
60. It appears that after mistakenly thinking there was Railway housing in the middle of Fairfield, the Council and its experts have tried to invent new reasons, **again with a complete lack of research**, to make these houses an HHA. I have documented the many failures and errors caused by the Council making erroneous assumptions and failing to complete due diligence in what has a very significant impact on homeowners. I will leave you to re-read them as otherwise we would be here all day.
61. If, as Mr Knott stated, the houses **were** something significant but have been extensively modified with all but two of the central front doors and symmetrical windows removed, how can they possibly be "the best examples"?
62. Our HHA consists of 12 houses built at different times in two unconnected streets over a 30-year period with no documented history.
63. It is of note that **all of the many submissions made regarding this HHA have been very clear that they oppose the imposition of the HHA**. The lack of any definitive evidence has made it very frustrating when people cannot do simple things like fence their home securely so their child cannot

get onto the road or install a garage to prevent their cars getting broken into, without incurring additional costs through having heritage assessments.

64. If you have not yet completed a site visit, I request that you do so and **please** check that you are at the Croquet Club end of Oxford Street⁵ and thus view the correct houses. **If they all have central front doors with symmetrical windows, you are in the wrong place.**
65. I hope you have read all the evidence in our submissions and remove this fictitious HHA from Plan Change 9.
66. I also request the right to make a **further written rebuttal submission** to any further new evidence provided by either Mr Knott or the Council this week and in their final oral reply on Friday 2 June 2023.

Lead on for Jean

67. If you have no questions for me, my wife is going to speak to our 9 May submission on evidence, research and the QA process for HHAs.

⁵ 23-35A Oxford Street and 28-36 Marshall Street

FOREWORD

OUR "Ready to Erect" buildings are constructed of thoroughly seasoned building timber.

Blocks and stringers are Heart quality, other framing scantling O.B. quality.

The weather boards, flooring, match lining and finishing lines are Ordinary building quality dry dressed.

Materials used for interior lining are: Match lining, wall board, plywood, but if required, rough lining, scrim and wallpaper can be substituted.

The ceilings are 9 feet from the floor and are panelled with wall board or plywood.

Inside woodwork finishing lines are stained and given one coat of varnish.

All outside woodwork receives one coat of priming and one coat of paint before leaving the factory.

Where safe, sink and shelves are shown on the plan, they are supplied fitted in position. The sink is fitted with 1½ in. trap.

In the case of Motor Garages running planks are provided instead of flooring.

All doors are standard 6ft. 8in. x 2ft. 8in. fitted with locks.

Sashes are two light casements, hung, and fitted with stays.

The roof is galvanised corrugated iron (British make).

Spouting and down pipe is supplied with each building.

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