

Decision following the hearing of an application for resource consent under the Resource Management Act 1991

Proposal

To install two digital billboards within new elevations partially above the existing building on the site adjacent to the intersection of Wairau Road and Tristram Avenue.

This resource consent is **GRANTED, subject to conditions**. The reasons are set out below:

Application number	LUC60368727
Site address:	135 Wairau Road, Wairau Valley
Applicant:	Espin Holdings NZ Limited
Hearing commenced:	16 December 2021, 9.30 a.m.
Hearing panel:	Richard Blakey Matt Riley
Appearances:	<u>For the Applicant:</u> Simon Berry, Legal Counsel Charles Maasdorp, Applicant Russ Kern, Lighting Richard Knott, Urban design Ian Munro, Urban design Brett Harries, Transport Andy Carr, Transport Hamish Firth, Planning <u>For the Submitters:</u> George Wood <u>For the Council:</u> Ian Jefferis, Senior Planner Erica Su, Senior Planner Martin Peake, Traffic Engineer Mitra Prasad, Development Engineer (Auckland Transport) Gabrielle Howdle, Landscape Architect Laura Ager, Senior Hearings Advisor
Hearing adjourned	16 December 2021
Commissioners' site visit	24 November and 11 December 2021
Hearing Closed:	25 January 2022

Introduction

1. This decision is made on behalf of the Auckland Council (**the Council**) by Independent Hearing Commissioners Richard Blakey and Matt Riley appointed and acting under delegated authority under ss.34 and 34A of the Resource Management Act 1991 (**the RMA**).
2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with s.113 of the RMA.
3. The application was publicly notified on 7 May 2021. Two submissions were received, from Mr George Wood and from Waka Kotahi NZ Transport Agency (**Waka Kotahi**), both in opposition to the application.

Summary of proposal and activity status

4. The Council's s.42A agenda report (**s.42A report**) described the application as presented for the hearing by the applicant as a proposal to install two freestanding digital billboards partially above the existing building on the site adjacent to the intersection of Wairau Road and Tristram Avenue.
5. The actual description of the billboards, and whether they were free-standing or wall-mounted, as defined through the Auckland Unitary Plan (Operative in Part) (**AUP(OP)**) was an aspect that we sought to determine through the hearing. The description then informs the activity status of the proposal, and whether it would require assessment as either a restricted discretionary or discretionary activity. We therefore address this as a matter of contention later in this decision. In addition to that issue, we are also required to consider whether a consent is required in terms of E27 (Transport) of the AUP(OP).
6. By the end of the hearing it was common ground that the proposal also involves an infringement of the 2m front yard standard applying to the Business – Light Industry Zone (standard H17.6.4(1)), and that this aspect requires consent as a restricted discretionary activity.
7. By way of summary, it is our finding that the application requires consent as a restricted discretionary activity overall.

Procedural matters

8. No procedural matters were brought to our attention during the hearing. We record for completeness however that the application was originally to be heard on 23 August 2021, but that fixture was abandoned at the applicant's request to enable amended plans to be prepared and considered by Council officers, and the hearing was re-scheduled.

Relevant statutory provisions considered

9. In accordance with s.104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and ss.108 and 108AA. We note

that the question of whether ss.104B or 104C apply is the subject of our discussion as to activity status later in this decision.

Relevant standards, policy statements and plan provisions considered

10. In accordance with s.104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the AUP(OP), as identified at section 15 of the agenda report,¹ being:
 - E23 - Signs; and
 - H17 – Business Light Industry Zone.
11. The Council's s.42A report also noted that the provisions of E27 are applicable, but as noted above, this is dependent on our consideration of this matter as set out later in this decision.
12. We did not consider there to be any other matters to be relevant and reasonably necessary to determine the application in terms of s.104(1)(c) of the RMA.
13. Despite all s.104 considerations being "*subject to Part 2*", the Court of Appeal² has held that consent authorities "*must have regard to the provisions of Part 2 when it is appropriate to do so*". The Court of Appeal went on to find that there may be situations where it would be "*appropriate and necessary*" to refer to Part 2 when considering consent applications, including where there is doubt that a plan has been "*competently prepared*" under the RMA.
14. We find that the AUP(OP), in relation to this proposal, has addressed the relevant Part 2 matters and there are no identified issues with the competence of its preparation.
15. We also find that the relevant provisions of the district plan provisions of the AUP(OP) have "*given effect*" to those of the Regional Policy Statement (RPS) contained within the AUP(OP), and in particular with respect to B2.3 of the RPS as highlighted in the s.42A report. Accordingly, we have relied primarily on the relevant zone and Auckland-wide provisions of the AUP(OP) in our consideration of this application.

Local Board comments

16. The s.42A report notes that while a copy of the application material was sent to the Kaipātiki Local Board on two occasions (27 January 2021 and 6 May 2021) no comments were received.

Summary of evidence heard

Agenda report

17. The s.42A report, prepared by Ms Erica Su, the Council's Senior Planner and dated 28 July 2021 (**s.42A report**), was circulated prior to the hearing and taken as read.

¹ With the exception of Chapter E38 (Subdivision) which is no longer applicable for the reasons set out in paras. 6 – 9 above.

² *RJ Davidson Family Trust v Marlborough District Council*, [2018] NZCA 316

Ms Su's report recommended that the application be refused consent because, in summary, *"the proposed billboards are not appropriate in this context and the adverse effects, including actual and potential, far outweigh the positive effects they provide"*.³

18. Notwithstanding her conclusions and overall recommendation, Ms Su prepared a set of draft consent conditions in the usual manner and these were included as Attachment 6 to her report.⁴
19. Ms Su's report drew upon the advice and recommendations of the Council's specialists who had reviewed the proposal: Ms Gabrielle Howdle (Specialist Landscape Architect), Mr Vaughan Turner (Lighting Specialist), Mr Sarishka Ghandi (Traffic Engineer), Mr Martin Peake (Traffic Engineering Consultant), Mr Cyril Lin (Structural Engineer) and Mr John Stenberg (Principal Urban Design Specialist).
20. Ms Su also provided an addendum to her s.42A report (dated 4 November 2021) in response to changes to the plans for the proposal that were supplied by the applicant on 12 August 2021. The amended plans are similar to those subsequently submitted as part of the applicant's evidence and are described later in this decision. Ms Su did make the procedural point in her addendum report that notwithstanding the changes the proposal was considered to remain within the 'scope' of the original application as notified, and so did not require re-notification.⁵
21. Ms Su advised in her addendum report that, based on and adopting the advice of Ms Howdle in respect of visual amenity effects and Mr Peake regarding traffic safety effects that:⁶
 - The proposal will result in moderate-high amenity effects on the streetscape and will visually dominate the scale of the building and the corner of Wairau Road and Tristram Avenue such that the adverse visual and amenity effects would be more than minor; and
 - The proposal will result in adverse effects on traffic safety (similar to those from the original design) due to potential distraction and the overlap of traffic signals when viewed from Hillside Road.
21. Accordingly, her recommendation remained that the application should be refused consent.
22. The legal submissions and evidence presented at the hearing responded to the issues and concerns identified in the s.42A report and the addendum report, the application itself and the submissions made on the application. The submissions and evidence presented at the hearing from all parties is set out in summary form below. Further particular points included in submissions and evidence are addressed within our subsequent assessment of the matters in contention where applicable.

³ Agenda, p. 9

⁴ Ibid, pp. 153-160

⁵ Addendum Report, p. 5

⁶ Ibid, pp. 9 and 10

Applicant

23. **Simon Berry** presented legal submissions in support of the application and introduced the evidence to be presented on behalf of the Applicant. Mr Berry had previously provided a memorandum dated 1 December 2021 which accompanied the Applicant's evidence and set out a summary of that evidence and this was referenced in Mr Berry's submissions. His submissions also addressed:

- The procedural background to the application (including design changes) and the s.42A report and subsequent addendum;
- The statutory and plan context, and relevant legal principles;
- Lighting effects;
- Transportation and traffic safety effects;
- Urban design/amenity effects;
- Planning matters; and
- Positive effects.

24. We refer to the key submission points where applicable in our discussion of the matters of contention later in this decision, where not otherwise addressed in Mr Berry's reply. At this point it is sufficient to note the principal submission made by Mr Berry in his opening that:

9.1 ...it is submitted that it is appropriate that consent be granted to the application on the basis that it is appropriate that consent be granted in terms of the relevant criteria in E23, specifically E23.4.1(A25), the matters of discretion at E23.8.1(1)-(5) and the assessment criteria at E23.8.2, but also achieves the spirit and intent of those provisions.

9.2 To the extent that it is considered relevant, it is submitted such approval would be consistent with and promote the sustainable management purpose of the RMA, particularly insofar as:

(a) The proposal is deserving of consent in that the sustainable management purpose of the RMA is addressed and promoted by granting consent for the proposal subject to conditions, particularly insofar as:

(i) There are no potential adverse effects of the development that cannot be avoided, remedied or mitigated through the imposition of conditions;

(ii) The billboard has been designed and located to ensure that amenity values and the quality of the environment are maintained or enhanced;

- (iii) *The billboard will contribute to the economy and vibrancy of this part of the city, as well as enabling the Applicant to provide for its economic wellbeing; and*
- (iv) *Considered overall, the positive effects of the proposal far outweigh potential negative effects.*

25. **Charles Maasdorp** is a director of Espin Holdings NZ Limited (**Espin NZ**) and Espin Capital Pty Ltd (Australia). Mr Maasdorp advised that he has been involved in the outdoor advertising industry for 15 years. He outlined his company's selection process for the installation of signs, and that this involves seeking specialist advice from traffic engineers, visual amenity experts and lighting engineers to determine whether to proceed with an application. He highlighted that Espin NZ own the subject site and therefore have security of tenure and are able "*to invest more into the screen to maximise integration into the existing building and aesthetic appearance*".⁷
26. In response to questions Mr Maasdorp provided some further clarification with respect to certain particulars of the building and proposed elevations (including materials), and the way the billboards would be incorporated into them.
27. **Russ Kern** is a lighting expert with 28 years' experience, who was engaged to advise on lighting effects of the proposed billboard, including the capacity of the surrounding environment to absorb the luminance of the proposed billboard and the appropriateness of the luminance levels proposed. Mr Berry's submissions summarised the conclusions of Mr Kern's evidence for us as follows:⁸
- (a) *The proposed maximum luminance of the billboard is appropriate for its location and complies with AUP standards;*
 - (b) *Changing digital visual display images with a dwell time of 30 seconds intervals and a 0.5 second transition are similar to a static image and will have less than minor effects on pedestrians, motorists, nearby workers and the occupants of dwellings in the area during daytime and night time operation;*
 - (c) *Coloured images changing on the billboard in a manner set out at in the point above, will not reduce the amenity of the surrounding environment, particularly for commercial building occupants, due to the already high ambient light from street viewing in the vicinity the proposed billboard and low luminance values emitted from the proposed billboards at night;*
 - (d) *Occupants in nearby residential properties will not be adversely affected due to the automated luminance controls proposed for the billboard that adapt to changing ambient light conditions and reduce luminance at night due to the lower nighttime ambient light, and viewing angle providing a limited view of the billboard; and*
 - (e) *Having regard to the above, the lighting effects of the proposal will be less than minor.*

⁷ Maasdorp, para. 17

⁸ Opening submissions, para. 4.2

28. Mr Berry also highlighted that there was no disagreement between Mr Kern and the Council's lighting expert Vaughan Turner,⁹ noting Mr Turner's pre-hearing memorandum outlining his agreement with Mr Kern's evidence. In response to questions, Mr Kern also clarified some statements in his evidence regarding the visibility of the billboards and the night-time luminance standard proposed in the conditions.
29. **Richard Knott** has over 32 years' experience in urban design and planning and has held various senior urban design and heritage positions in New Zealand and the UK. He provided evidence that assesses the landscape, visual amenity and streetscape issues arising from the proposal and concluded that the proposal was appropriate. His evidence was summarised in Mr Berry's opening submissions as follows:¹⁰
- (a) *Given the nature of the existing environment, the billboard installation would have a very low adverse visual effect, equivalent to a less than minor adverse effect on the local environment.*
 - (b) *the addition of the proposed billboards will have little impact on the overall dominance of signage in the area, including after taking into account the signage that have been installed on the site itself by the property's new occupier.*
 - (c) *The installation of the new signage on the building for the new occupier and the large areas of signage for the operator of the Kennard's building exemplify the commercial nature of both the site and surroundings, where signage is expected.*
30. Mr Knott responded to questions related to the significance of the proposed colour of all components of the building, and effects that might arise if this were to change in the future. In this regard Mr Knott was of the view that it would be appropriate for the building to be maintained with colours of a consistent theme, rather than necessarily remaining exactly the same.
31. **Ian Munro** is a self-employed urban designer with 22 years' experience in planning and urban design and we were advised that he had undertaken a peer review of all of the relevant project documentation and reports. This included a review of Mr Knott's assessment and providing input into the redesign process that was undertaken by the Applicant. Based on the re-designed proposal, Mr Munro's conclusions were that the billboards:
- (a) *Are appropriate in terms of the streetscape and surrounding urban environment and will be easily differentiated from the majority of signs along Wairau Road;*

⁹ A pre-hearing memo dated 3 December 2021 was provided by Mr Turner outlining his agreement with Mr Kern's evidence

¹⁰ Opening submissions, para. 6.13

- (b) *Will not be materially more adverse in urban design terms than development that is either permitted within the zone, or could be more generally regarded as anticipated within the zone;*
 - (c) *Will not result in inappropriate or concerning adverse visual or amenity effects in the context of the Light Industry-zone that the proposed billboards will be located in.*
- 32. Mr Munro offered a similar response in terms of the appearance of the building into the future, and that it would be possible to incorporate a condition that allowed for some colour variation for tenant branding.
- 33. **Brett Harries** is a Transport Sector Leader (Australia / New Zealand) at Stantec, with over 39 years' experience as a practising specialist traffic and transportation engineer and authored the Transportation Assessment that accompanied the AEE. Mr Harries' evidence was that:¹¹
 - (a) *The proposed digital billboards can be compatibly and safely integrated into the local traffic environment; and that there is no traffic engineering or road safety reason to preclude their acceptance;*
 - (b) *That the overlap of the proposed billboards it will unlikely generate adverse driver confusion, or cause detracton from the function of the traffic signals at the intersection;*
 - (c) *That the cumulative road safety implications associated with the establishment of the proposed billboards in the same general area as other signs and billboards will be indiscernible;*
 - (d) *The relevant traffic and pedestrian safety, and cumulative effects assessment criteria are satisfied by this proposal, and that the traffic and pedestrian safety aspects of the proposal are consistent with the intent of the AUP; and*
 - (e) *That Ms Su's conclusions with regards the potential road safety effects of this proposal are misplaced and without credible foundation.*
- 34. We enquired with Mr Harries as to the potential relevance of findings expressed by the Environment Court in *Prime Property Group v Wellington City Council*, [2021] NZEnvC 169 (**Prime Property**) with respect to a large digital sign alongside a motorway. Mr Harries observed in reply that the *Prime Property* case was about a section of road where several serious and death crashes had occurred, whereas the present situation location which is affected by mainly non-injury crashes where speeds are low. He also did not consider that the billboards would be visible to drivers as they negotiate the corner into Tristram Avenue (turning right from Wairau Road). In addition, and in terms of proposed conditions, it was his view that given the limited visibility of both billboards, and the curved nature of the main billboard, that it was not necessary for the images to be the same.
- 35. **Andy Carr** is the director of Carriageway Consulting Limited, a specialist traffic engineering and transport planning consultancy with more than 32 years' experience in traffic engineering. Mr Berry's 1 December 2021 memorandum notes that Mr Carr

¹¹ Opening submissions, para. 5.3

has been involved in assessing the road safety effects of around 55 proposed digital billboard installations throughout New Zealand as both a peer reviewer for councils receiving an application and also providing supporting reports for applicants.

36. Mr Carr's evidence provided an independent peer review of the transportation aspects of the application, as well as the Traffic Engineering Report prepared by Stantec and Mr Harries' evidence. As summarised by Mr Berry, Mr Carr's evidence agrees with Mr Harries' conclusions that:¹²
- (a) *[the] crash history of the Site does not indicate any road safety issues that are likely to be exacerbated through the operation of the billboards;*
 - (b) *the billboard will not present a physical obstruction for drivers, and that matters relating to illumination can be appropriately managed;*
 - (c) *the overlapping of one signal head is unlikely to lead to adverse road safety effects; and*
 - (d) *that signage is an outcome of commercially-zoned land, and there is no evidence to suggest that the existing signage in the area creates adverse road safety effects;*
37. In response to questions relating to his recommendations regarding conditions, Mr Carr reiterated that displaying a black image, in the event of malfunction, is a standard clause as opposed to requiring the billboard to switch off, which is an uncommon function.
38. **Hamish Firth** is a director and planner at Mt Hobson Group. Mr Firth has been a planning consultant since 1997. As summarised by Mr Berry, it was Mr Firth's evidence that:¹³
- (a) *Any potential adverse effects of the proposed billboard on the environment are acceptable, that the proposed development is appropriate having regard to the relevant assessment criteria of the AUP, any relevant aspects of Part 2 of the Resource Management Act 1991 and that the sustainable management of resources will be better promoted by granting consent than declining it; and*
 - (b) *Supports the findings of the other specialists, including that:*
 - (i) *the location of the proposed billboards within the Business Light Industry Zone is entirely appropriate and consistent with the outcomes anticipated by the AUP;*
 - (ii) *the surrounding environment in which the proposed billboard will sit is not sensitive to change and the installation of the proposed billboard will not adversely affect the nature of the environment at this site;*

¹² Memorandum, para. 2.26

¹³ Opening submissions, para. 7.1

(iii) *that the lighting of the digital billboard will have a less than minor effect on the visual amenity of the surrounding environment.*

(iv) *that there will be no visible obstruction of the proposed billboard within the surrounding transport environment; and*

(v) *there are no adverse cumulative effects arising from the proposal.*

39. In reply to questions Mr Firth advised that the traffic monitoring condition proposed in his evidence is consistent with other billboard consents. He also endorsed the view of Messrs Knott and Munro with respect to the visual amenity of the billboards, and the advantages inherent in the proposal where the billboards are integral to the building elevations. He also clarified the provisions of the Signage Bylaw with respect to any additional signage that could be applied to blank parts of the building and addition but noted that this would be confined to one sign per business, so any additional future signage would be very limited.

Submitters

40. **George Wood** is a resident of Forrest Hill and a former Mayor of the North Shore City Council and has been a councillor for the North Shore Ward, and is presently a local board member on the Devonport-Takapuna Local Board. Mr Wood confirmed however that his submission and evidence, in opposition to the proposal, was made in a personal capacity.

41. Mr Wood outlined his understanding of current proposals for the upgrading of cyclist and pedestrian facilities in the proximity of the Tristram/Wairau Road intersection, and the safety hazards faced by non-vehicular modes through this intersection, particularly during peak periods. He noted that:¹⁴

Cyclists and pedestrians crossing Tristram Avenue when coming down Wairau Road find this location, during peak traffic times, a place of great difficulty when traffic is banked back to this intersection. Once the area of Tristram Avenue between the Northern Motorway and Wairau Road becomes congested at peak traffic times cyclists and pedestrians have to weave through the banked up traffic queued out over the intersection.

42. In Mr Wood's view, current congestion effects and impacts on cyclist and pedestrian safety would be exacerbated by the distraction effects associated with the new billboards. He highlighted the conclusions set out in *Prime Property* which in his opinion supports the premise that the billboards should not be installed.
43. Mr Wood also noted his concern at the commencement of his address that Waka Kotahi were not in attendance but nevertheless considered that their submission should be taken into account. In response to questions he reiterated his concern that the billboards would result in additional distraction to motorists within a congested intersection environment, and that in his opinion the south-facing billboard would remain visible throughout a turning movement from Wairau Road to Tristram

¹⁴ Wood, p. 5

Avenue. He remained of the view that congestion would also be exacerbated by drivers being distracted by the billboard while in the traffic queue.

44. **Waka Kotahi** - As highlighted by Mr Wood, and commented upon by Mr Berry in his opening submissions, Waka Kotahi had made a submission in opposition, citing concerns related to effects on the adjacent state highway and the on/off-ramps that connect to it. However, while we are required to have regard to their submission, they did not provide any evidence in support of their submission or attend the hearing. As a major public body that is responsible for the safe and efficient operation of the state highway network, we expect that had Waka Kotahi remained concerned about the effect of the billboards on the operation of the network, such evidence would have been prepared and presented.

45. In this regard we agree with Mr Harries' assessment of that submission, that:¹⁵

A submission was received from Waka Kotahi that raised a number of broad road safety concerns regarding the implications of the proposed billboards to the safety of the adjacent intersection and the nearby Tristram Interchange. The matters raised in the submission lack specificity and appear to be primarily based on perceptions or conjectures. My evidence is that the submissions reveals little in the way of technical foundational support for the issues that have been posited.

46. The matters raised by Waka Kotahi in their submission were also addressed in Mr Berry's opening submissions,¹⁶ and we accept his submission point that as they have not produced evidence to support the case advanced in their submission, that no weight should be given to it.

Council reply

47. Council officers provided a response to the evidence presented during the hearing. Their responses are summarised below:

- (a) **Martin Peake**, the Council's consultant traffic engineer, spoke to a written statement dated 17 December 2021 (which was made available to the parties following the adjournment of the hearing). His statement helpfully identified those aspects with which he was now satisfied as follows:¹⁷

- The north-facing billboard is acceptable because "*it would not overlap with the traffic signals and would generally be out of the general field of vision of southbound Wairau Road motorists when close to the traffic signal intersection of Wairau Road / Tristram Avenue / Hillside Road*".
- The cumulative effects from the existing billboard at 134 Wairau Road and the proposed south-facing billboard "*are largely addressed by the proposed increased dwell time of images to 30 seconds*".

¹⁵ Harries, para. 2.13

¹⁶ Opening submissions, paras. 1.21 – 1.26

¹⁷ Position statement, p. 1

His main concern was with respect to *“the safe operation of Hillside Road due to the appearance of the proposed digital billboard behind the primary and tertiary traffic signals for the Hillside Road through movement”*. His memorandum went on to describe more fully the reasons for that concern which we will address later in this decision.

- (b) **Mitra Prasad** outlined that Auckland Transport were not opposed to digital signage as a rule, and sought similar approvals for its own buildings on occasion. But he emphasised that concerns remained with respect to the present proposal in proximity to a busy intersection, and the potential effects on vulnerable users of the intersection in this area, and care is needed not to assume that all motorists and users will operate in the same way. Mr Prasad advised that he adopted Mr Peake’s evidence insofar as the main issue is at the Hillside Road intersection, but acknowledged that he hadn’t looked into the matters to the same detail as Mr Peake.
- (c) **Ms Su** responded to a number of matters arising in respect of her s.42A report. Ms Su advised in terms of consent matters that she remained of the view that the billboards did not fit within the parameters of E23.4.1, as the addition does not fit the normal meaning of a building elevation and is essentially a sign on a roof (which is not permitted). She also considered that where doubt exists about the need for a consent, in terms of the traffic/access matter, then it would be appropriate to apply this consent category to the proposal.

In respect of traffic issues, and even if Hillside Road were the only area of contention between the traffic engineers, then she recommended taking a more cautious approach on the basis of potential increases in congestion and delay through the intersection more generally, given that this is one of the busiest intersections on the North Shore. In her view, the addition of any distracting elements to this road environment was not appropriate.

In terms of visual effects, Ms Su remained concerned as to the prominence of the billboards on a busy corner location, along with what she described as a top-heavy appearance to the site which would add to visual dominance impacts. She did acknowledge however that a larger building could be contemplated for the site as a permitted activity, if compliant with the 2m front yard standard.

Ms Su also recommended that if consent were granted, then certification should be required regarding the automation of luminance levels, as well as restrictions regarding the visual appearance of the building.

Overall, she considered that the proposal should not be approved due to potential effects on congestion and traffic delay which would not be acceptable in this location.

- (d) **Ian Jefferis**, the Council’s Senior Planner, advised that in his view the submission from Waka Kotahi was helpful and it was disappointing that they did not attend the hearing.

Adjournment

48. In light of the unavailability of the Council's landscape architect, Ms Howdle, we undertook a short adjournment prior to the Applicant's reply to determine whether we had any questions that would require her response following her return to work in the new year. We determined that we did not and we therefore resolved that we did not seek any further responses from the Council.
49. Mr Berry subsequently advised that his reply on behalf of the Applicant would be provided in writing in the new year. The hearing was adjourned accordingly.

Applicant's reply

50. Mr Berry's reply on behalf of the Applicant (dated 21 January 2022) was received by the Panel on 24 January 2022. The reply addressed the various matters arising during the hearing, relating to lighting issues, traffic safety effects, urban design/amenity issues, planning issues and the proposed conditions, and we refer to these aspects of the reply later in this decision.

51. The Applicant's principal and concluding submission was that:

7.1 It is the Applicant's submission that none of the issues raised or presented by the Council have seriously called into question the appropriateness of the proposal or should deter the Panel from granting consent.

7.2 Having regard to the above, it is submitted that it is appropriate that consent be granted for Espin's application subject to the conditions proposed on the basis that such approval would be consistent with and promote the sustainable management purpose of the RMA, particularly insofar as:

(a) The proposal is deserving of consent in that the sustainable management purpose of the RMA is addressed and promoted by granting consent for the proposal subject to conditions, particularly insofar as:

- (i) There are no potential adverse effects of the development that cannot be avoided, remedied or mitigated through the imposition of conditions;*
- (ii) The billboards can be installed in a manner that ensures that amenity values and the quality of the environment are maintained or enhanced; and*
- (iii) The billboards will contribute to the economy and vibrancy of this part of the city, as well as enabling the applicant to provide for its economic wellbeing.*

52. We determined that on the basis of the reply that there were no outstanding matters and we directed that the hearing be closed on 24 January 2022. A note to the parties to this effect was issued on 25 January 2022.

Principal issues in contention

53. After an analysis of the application and evidence (including proposed conditions), undertaking a site visit, reviewing the s.42A report, reviewing the submissions and concluding the hearing process, the proposed billboards raise several issues for consideration. As previously noted, these have been somewhat narrowed as a result of the hearing, at least in respect of the expert traffic evidence. Accordingly, we have defined the principal issues that are in contention to be:
- The consents required to give effect to the proposal;
 - Transport safety effects;
 - Urban design/amenity issues; and
 - Reliance on conditions of land use to address considerations.
54. For completeness, we also note our findings with respect to lighting effects, although as highlighted in Mr Berry's reply these did not appear to be matters in contention per se.

Main findings on the principal issues in contention

Introduction

55. Our main findings on the principal issues that were in contention are set out below. By way of introduction to our discussion as to the required consents and matters of contention arising, we briefly describe the proposal as set out in its final form as presented in the Applicant's evidence as follows:
- (a) The proposal will be undertaken on a site of 685m² located on the north-eastern corner of Wairau Road and Tristram Avenue, and which contains an existing single-storey building.
 - (b) The proposal involves an addition to the building of a second 'storey' comprised of four facades that form a 'V' to the Wairau Road frontage (rounded on its southern side). Two digital billboards of landscape orientation will be incorporated into the 'V'-shaped facades, of which the curved south-facing billboard will measure 15m wide by 5m high, and the flat north-facing billboard will be 12m wide by 3m high.
 - (c) The facades incorporate a capping component at the top of the proposed first floor elevations, to better define these elevations and to reflect the wide horizontal band which runs around the building at the junction of the ground floor and first floor.
 - (d) The billboards will have a minimum display time of 30 seconds and a minimum transition time of 0.5 seconds.
56. The billboards will also be subject to maximum luminance levels in accordance with the standards of the AUP(OP).

57. Further particulars in respect of the physical building and operation of the billboards were set out in the Applicant's reply through additions or amendments to the proposed conditions as follows:
- (a) The images displayed on the two billboards will transition from one image to the next at the same time, and that two different advertisements can be displayed on the two billboards.
 - (b) The existing downlights on the building facing Tristram Avenue will be removed.
 - (c) No additional billboards will be placed along the southern and northern elevations.
 - (d) For the duration that the billboards are affixed to the building, the colour of the ground floor and upper section of the building shall be the same or substantially similar.

Reasons for consent

58. The reasons for which consents were required under the AUP(OP) appeared to remain as a matter of contention between the Applicant and the Council. As previously noted, however, it was common ground by the time of the hearing that a consent was required in respect of the front yard set-back requirement, whereby the billboards and associated new building elevation along Tristram Avenue would be within the 2m front yard specified by H17.6.4(1). This aspect requires consent as a restricted discretionary activity.
59. The matters that were in contention are discussed below.

Activity status of the billboards

60. Ms Su made initial queries to the applicant's agent, Mr Firth, on 31 August 2021 (in response to the change to the design of the billboards), as to "*whether the proposed billboards fall within billboards identified in activity table E23.4.1, ... my question is whether they can be considered as billboards on a building façade, as the structure on top of the roof appears to have solely been proposed to provide support to the billboards*".¹⁸
61. Mr Firth's response¹⁹ was that:

There is no definition of the 'façade' under the AUP(OP). A 'side or rear building façade' is defined as a building façade not being a street facing façade, and a 'street facing façade' is defined as 'a wall or façade of a building that faces directly, or obliquely, the front boundary of the site'. Therefore, a wall of a building can be considered to be a façade and as such, the cladding proposed on the second storey of the building presents and acts like a wall. In my view, the proposed boards can be considered to be 'billboards on a street,

¹⁸ Addendum report, pp. 39 and 40

¹⁹ Letter dated 8 September 2021, p. 43 of the Addendum report

side or rear façade’ and therefore, consent is required under Rule E23.4.1(A25).

62. We note that Rule E23.4.1(A25) prescribes the status of three different billboard types within the Light Industry Zone, as follows:
- (a) Free-standing billboards (restricted discretionary activity);
 - (b) Billboards on a side or rear building façade (permitted activity); or
 - (c) Billboards on a street facing building façade (restricted discretionary activity).
63. The conclusion reached in Ms Su’s addendum s.42A report was, however, that none of the above categories applied, such that the proposal was a discretionary activity under Rule C1.7(1),²⁰ for the reasons that:

The two LED screens, while described as wall-mounted, are in my opinion, billboards not provided for in the relevant E23 activity table. This is because Chapter J1 provides a definition of billboards which include the sign and any associated frame and supporting device, whether permanent, temporary or moveable, whose principal function is to support the message or the notice. As the LED screens do not appear to be supported by any other means than the proposed cladding, it is considered that the cladding forms part of the billboards. As such, the billboards are being installed on the roof of the existing building on the site and this is not provided for.

64. Mr Firth’s evidence appeared to revert from his earlier advice to the Council, suggesting that consent was now required as ‘free-standing billboards’,²¹ while Mr Munro identified that they qualified as ‘billboards on a street facing building façade’,²² and proposed an interpretation of this phrase.
65. Mr Berry’s submissions advised that consent was sought for ‘wall mounted billboards in the Business – Light Industry Zone’ under E23.4.1(A25) as a restricted discretionary activity,²³ although this description did not appear to align with any of the categories under (A25). This was later described as ‘wall mounted billboard located on a street-facing façade’.²⁴ Mr Berry submitted that we should rely on Mr Munro’s interpretation of the wording of the AUP(OP), that “*the rule applies to billboards that are on a façade that is street-facing (i.e. can be seen from the street), rather than the rule have limited applicability to billboards that are located on a front elevation*”²⁵ and that “[a]s the billboard is located on a façade which can be seen from the street, it is submitted that the application is consistent with Rule E23.4.1(A25)”.

²⁰ C1.7(1): “Any activity that is not specifically classed in a rule as a permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited activity is a discretionary activity unless otherwise specified by a rule for an overlay, zone or precinct or in an Auckland-wide rule.”

²¹ Firth, para. 4.13(a)

²² Munro, para. 4.3

²³ Opening submissions, para. 1.9(a)

²⁴ Ibid, para. 1.13

²⁵ Ibid, para. 1.14

66. As noted at the hearing, we were unclear why we were presented with new interpretations of what a 'street facing building façade' was, when a definition for this term is already contained in the AUP(OP), being:

A wall or façade of a building that faces, directly or obliquely, the front boundary or boundaries of the site. In the case of a curved or circular wall or building it must be 45 degrees either side of that point of the wall that is nearest to the front boundary.

67. It therefore seems plain to us that the billboards face both directly and obliquely to the front boundaries of the site (both to Wairau Road and Tristram Avenue) with a 45 degree angle, and so are on a 'street facing building façade'.²⁶
68. While we were still unclear whether the interpretation offered by the Applicant was appropriate when the billboards themselves seemed to form part of the elevation (and a structure atop a roof, as noted by Ms Su), rather than being affixed to an elevation, we consider that the AUP(OP) does not make any particular distinction in this regard. To all intents and purposes, the billboards and the surrounding structure will clearly read as building elevations and be subject to Building Act requirements.
69. For completeness, it seems clear that the proposal is not 'free-standing billboards', or 'billboards on a side or rear building façade'. In respect of the former, Mr Berry's reply submissions referred to Mr Firth's evidence, noting that:²⁷

Mr Firth explained that the term 'freestanding' means "not attached to or supporting by another structure." In that regard, it is apparent, as a matter of fact, that the proposed billboards are not 'freestanding' billboards of the nature envisaged by Section E23 of the AUP – and which we all know as a billboard supported by a pole or other structure; not one that abuts a building and takes advantage of the type of mitigation that the surrounding feature provides.

70. For all the above reasons it is our conclusion that the proposal is a restricted discretionary activity under the third column of E23.4.1(A25).

Vehicle crossing

71. The Council also considered that because the access to the site was within a 'Vehicle Access Restriction', the new billboards as a new activity on the site, and as the existing crossing is used to provide vehicle access across part of the site that has access to an 'Arterial road' (per standard E27.6.4.1(3)(c)), the billboards would require consent as a restricted discretionary activity under Rule E27.4.1(A5).
72. Mr Firth disagreed that this was a relevant reason for consent, as the proposal does not require or propose either the construction of a new vehicle crossing or the use of the existing crossing. He also noted that the associated assessment criteria all relate to access matters, which were not relevant to the proposal.²⁸

²⁶ Based on the definition of a street facing building façade, if the Wairau Road elevation were placed at 46 degrees or more to the boundary (i.e., 1 degree more than proposed) it would appear to be a permitted activity.

²⁷ Reply submissions, para. 5.3

²⁸ Firth, paras. 4.17-4.19

73. Rule E27.4.1(A5) applies to “*Construction or use of a vehicle crossing where a Vehicle Access Restriction applies under Standards E27.6.4.1(2) or E27.6.4.1(3)*”. Standard E27.6.4.1(2) says E27.6.4.1(3) applies where, at (b), “*a new activity is established on a site*”, and so at first glance might seem to be applicable. However, E27.6.4.1(3) addresses circumstances where “*vehicle crossings must not be constructed or used to provide vehicle access across that part of a site boundary*” which is within a Vehicle Access Restriction.
74. In this regard, we observe that the proposal does not involve the construction of a new vehicle crossing, and nor would the billboards themselves require the use of, or generate movements across, the existing vehicle crossing to the site at Wairau Road. Therefore, while the billboards will in spatial terms be located adjacent to an arterial road(s) and within a Vehicle Access Restriction area, we find that no consent requirement arises under E27.4.1(A5) as the proposal involves neither the construction or use of a vehicle crossing.
75. If we are wrong in respect of this matter (i.e., that a consent requirement does arise), then we record our agreement with a key aspect of the reply submission of Mr Berry on this point that:²⁹

The billboard activity does not generate traffic and the nature of any traffic related to the sign, i.e., a vehicle visiting once every three months for maintenance, was incidental to the billboard activity.

76. Accordingly, if a consent was required under E27, it would have not affected the findings that we have otherwise reached in respect of the proposal overall.

Summary and relevant matters of discretion

77. In summary, we find that consent is required for the following reasons:
- (a) Rule E23.4.1(A25): For two billboards on a street facing building façade, as a restricted discretionary activity; and
 - (b) Rule H17.6.4(1): For a building within the 2m front yard set-back, as a restricted discretionary activity.
78. Because we conclude that the proposal is a restricted discretionary activity, we are required to consider the proposal within the frame of the relevant matters of discretion.
79. For signs, these are set out at E23.8.1 and are (1) visual amenity; (2) scale and location; (3) lighting and traffic and pedestrian safety; (4) duration of consent; and (5) cumulative effects.
80. We have also had regard to the corresponding assessment criteria at E23.8.2, and have incorporated the relevant criteria into our findings on each topic in our discussion below.

²⁹ Reply submissions, para. 5.5

81. The front yard infringement is subject to the matters of discretion at H17.8.1(4) (and C1.9(3)). However, as this aspect did not appear to be a significant issue we do not set out the relevant provisions but confirm that we have had regard to them in reaching our findings regarding the urban design and visual amenity aspects of the proposal, and adopt Mr Firth's assessment of them as set out in his Attachment 1.

Transport safety effects

Introduction

82. The effects of the proposed billboards on transport safety was the primary issue of contention arising during the hearing. However, as previously noted, the scope of this issue appeared to narrow considerably by the end of the hearing, following the advice from Mr Peake that the issue relates to the overlap of visibility between the Hillside Road traffic signal and the south-west facing billboard.
83. A wider range of issues as existing at the commencement of the hearing were helpfully addressed in Mr Berry's reply, and because some of these remained clearly of concern to Mr Wood, we address these briefly first. We note from the outset that all witnesses were in agreement that images shown on the billboards should not resemble a traffic signal,³⁰ and the relevant condition of consent was amended in this regard to confirm this undertaking (and which reflects the permitted activity standards for billboards at E23.6.1(13) of the AUP(OP)).

Relevance of the *Prime Property* case

84. As previously noted, we sought comment from Mr Harries as to the relevance of the *Prime Property* case, which he considered were quite different in terms of their context and the safety aspects to be addressed.
85. We agree with Mr Berry's submission that the present application can be distinguished from *Prime Property* for a number of reasons:³¹
- (a) In *Prime Property* the proposed digital billboards were located adjacent to Hutt Road, which adopts the State Highway speed limit of 100 km/h. This compares to the traffic environment adjacent to the subject site where speeds are often lower than the speed limit of 50 km/h due to traffic congestion (and we note Mr Wood's evidence was that this congestion was very common).
 - (b) Hutt Road has a high crash record, whereas Mr Harries' evidence is that in the present matter the number of recorded crashes is low, with no recorded death or serious injury crashes.
 - (c) The location of a digital billboard in *Prime Property* near a 100km/h road was almost unique, whereas there are approximately 540 digital billboards adjacent to numerous 50km/h roads.³² It was Mr Harries' evidence that in the past 10

³⁰ As noted in the reply submissions at para. 3.10.

³¹ Reply submissions, para. 3.3 – 3.5

³² Of which 240 are large format digital billboard screens (per Harries at para. 5.20 and Mr Peake at p. 5).

years there is not one crash that has occurred in New Zealand that has been attributed to distraction from a digital billboard (as discussed further below).

Research regarding driver distraction

86. The traffic witnesses referred to a range of papers to support their respective positions regarding the proposed billboards (although we note that while these were in respect of distraction issues generally, none appeared to be specific to the issue relating to the overlap of signs and traffic signals that we address shortly).
87. Mr Harries provided an in-depth analysis of the research, including providing an understanding of the specific matters addressed within the various papers. As noted by Mr Berry, Mr Peake acknowledged that he had not been able to obtain or review all the research cited.³³ On this point alone it seemed self-evident that Mr Harries' detailed analysis of the relevant research was to be preferred. While Mr Peake highlighted a paper relating to driver distraction in a general sense (i.e., not specific to digital billboards),³⁴ this did not appear to connect digital signage with causes of a crash, as noted in Mr Berry's reply. He also noted that while Mr Peake was also concerned with the potential under-reporting of distraction caused by digital billboards, this was an issue that Mr Harries' evidence had effectively pre-empted, and we consider that Mr Harries' evidence on this point was also thorough and well-reasoned.
88. Mr Berry also highlighted the lack of evidence demonstrating any adverse distraction effects associated with digital billboards, noting that through Mr Harries' monitoring of billboard operations he "*is yet to find an intersection where billboard has an effect on the crashes that have occurred*".³⁵ Furthermore:³⁶

Mr Carr's evidence concurred with Mr Harries in that it was possible to do studies which compare crash rates before digital billboard installation and after installation, or also to compare the crash rates of intersections near to one another where one has a digital billboard and the other does not. This does not require any knowledge of the factors contributing to the crash – just whether there has been a change in crash rate, or it somehow differs from another location. In both cases, no evidence of any difference in crash rates is observed.

89. The point appears to be at least partly acknowledged by Mr Peake, where he states:³⁷

Whilst the studies presented may, in general, indicate that there are no safety issues associated with digital billboards, these studies do not necessarily reflect the specific situation with the proposals at 135 Wairau Road and the overlapping with the primary and tertiary signals for quite some distance on the approach to the intersection. Therefore, in my view the conclusion that

³³ Peake Position Statement, p. 2

³⁴ Ibid, p. 2

³⁵ Reply submissions, para. 3.8

³⁶ Ibid, para. 3.9

³⁷ Peake Position Statement, p. 4

there would be no safety issues for this location with the digital billboard cannot necessarily be inferred.

90. In summary, Mr Peake's approach acknowledges that there is no history of safety-related effects with digital billboards, but suggests that there may be in this case due to the overlap aspect. As we set out below, we do not consider this characteristic to be significant (nor a circumstance of "some distance"), nor of significant moment when considered in terms of the range of signage examples in proximity to intersections highlighted at Appendix A to Mr Harries' evidence. We also consider that the issues of concern to Mr Peake, and noted by Mr Prasad, can be appropriately addressed through the monitoring processes specified as part of the conditions proffered by the Applicant in its reply.

Overlap with traffic signals at the Hillside Road intersection

91. As previously noted, and touched on above, Mr Peake advised towards the end of the hearing that his primary concern was the issue of visual overlap with the traffic signals at the Hillside Road approach.
92. To the extent that this was the primary issue as between the experts, it appeared to us to be one that would be only briefly experienced by a motorist approaching the intersection along Hillside Road. As noted in Mr Berry's reply submissions, we had referred Mr Peake to the visual simulations provided by the Applicant which showed that as a vehicle approaches from Hillside Road, there is no overlap between the traffic signals and the billboard at distances of 100m, 80m and 60m.³⁸ Such an overlap only arises for a short time when a vehicle is 40m from the billboard. In this regard, we agree with his submission that *"at this distance the traffic signal remains prominent because the signal head is visually isolated from everything in its background by its black backing board, and the signal lanterns are inherently very much brighter than a billboard screen"*.³⁹
93. To the extent that this overlap creates a distraction and safety issue, or that the photograph position is at variance to the view of an actual driver as suggested by Mr Peake,⁴⁰ the evidence for the Applicant was that the 'parallax effect' results in the traffic lantern moving in relation to the fixed billboard behind, with the lantern always in front of the billboard, and further visually separated by the black backing board.
94. Mr Peake nevertheless remained concerned that the billboard would reduce the conspicuousness of the lantern, particularly in the position of what he described as the 'dilemma zone', and that the placement of the billboard in this location would not represent best practice. He concluded in this regard that *"[t]he proposed overlap will increase the complexity of the intersection for motorists on Hillside Road which, I*

³⁸ Harries, Figures 6-9 at para. 6.11

³⁹ Ibid, para. 3.14

⁴⁰ Peake Position Statement, p. 6

*believe, could detract from the effectiveness of the traffic signal in a complex environment”.*⁴¹

95. In this regard we consider that Mr Harries’ evidence (and supporting evidence of Mr Carr) is to be preferred over what he describes are “*unsubstantiated perceptions held by the AC (and AT) traffic engineers*”, and accept his view that “*there is no evidential basis to suggest that the brief extent of visual overlap of one traffic signal lantern with the billboard behind will in this case lead to adverse road safety outcomes, when such outcomes are not evident elsewhere*”.⁴² We also think that references to closer or overlapping views between billboards and traffic signals as presenting a ‘dilemma zone’ overstates the challenge to the driving task. We therefore agree with Mr Harries observation on this point, albeit made with respect to potential cumulative effects, which perhaps best underscores the reasons why the crash data to date does not support the notion that digital signage poses an identifiable risk to traffic safety.⁴³

Contrary to the assumption made in the AT Traffic Report that motorists will find it difficult to safely negotiate a road that has a billboard on either side, the reality is that motorists have no such difficulty. Thinking about one’s own driving behaviours and responses in locations with multiple signs (even assuming a level of awareness of the multiple signs in the first place), it is apparent that they do not present even a mild challenge to drivers.

Effects on traffic congestion and cyclist and pedestrian safety

96. We also briefly cover other matters arising from the evidence of Messrs Prasad and Wood, and the response by Ms Su. In this regard there were concerns that even if the effects of potential vehicle crashes arising from driver distraction were not severe, they could be significant for vulnerable road users, and could result in further traffic congestion and delays.
97. Dealing with the latter aspect first, it is apparent that traffic delays would only be occasioned by the billboards resulting in crashes in the first place. As will be evident from our preceding discussion, the risk factor in this regard is not made out, and we are not prepared to decline consent on such precautionary basis, given that evidence for such distraction risks is not available, and when appropriate monitoring processes are proposed to be implemented.
98. The response to the former point is somewhat aligned with that approach, but was also specifically addressed by Mr Harries, where he noted that there is no inherent road safety issue for pedestrians and cyclists, and that “*there has been no record of any crash anywhere in New Zealand that has involved a pedestrian or cyclist, where distraction due to a digital billboard has been a cause or contributing factor*”.⁴⁴

⁴¹ Ibid, p. 11

⁴² Harries, para. 11.18; see also the examples provided by Mr Carr at Figures 1 and 2 at paras. 5.17 and 5.18

⁴³ Ibid, para. 11.21

⁴⁴ Harries, para. 10.21

99. While Mr Peake was in agreement with Mr Harries with respect to the avoidance of impacts for the south-facing billboard, he was of the view that cyclist and pedestrian traffic at the intersection is likely to increase (particularly as facilities for cyclists improve) and that “*should a motorist make a mistake then these vulnerable road users could be at risk*”. Again, however, we prefer the evidence of Messrs Harries and Carr that there is no evidence as to a rising incidence of mistakes by drivers in response to the presence of digital billboards, and no corresponding effects on cyclist and pedestrian safety.

Single or dual displays

100. As previously noted, the applicant’s reply incorporated an amendment to the condition relating to image display, to the effect of allowing two different advertisements to be displayed at one time. This was something that had been intimated by Mr Maasdorp in response to questions, but did not appear to form the basis of the Applicant’s expert evidence⁴⁵ and is different to what is assumed from the plans and perspective illustrations, and the phrasing of the subject condition as attached to Mr Firth’s evidence.⁴⁶
101. We understand that the change to the Applicant’s position in this regard was due to the updated visual perspectives that sought to demonstrate the lowering of image luminance as the angle of view to the billboard increases.
102. Mr Harries did advise in response to questions that the angle of the billboards and legibility will be reduced, as depicted in the revised perspectives, and so as noted in our summary of his evidence previously, he was now less concerned than he was in his evidence that they should show the same image.
103. This issue was noted in Mr Peake’s reply, and he commented in this regard that:
- Whilst the photomontage has attempted to provide an indication of the limited visibility of the north facing billboard from Hillside Road by reducing the brightness on the image, I understand that it is not necessarily a true representation.*
- In this regard, I do not have sufficient information to be unable [sic] to form a firm opinion as to whether having two different images between the north and south facing billboards would be acceptable or not.*
104. Mr Berry’s reply commented in this regard that:⁴⁷
- Mr Peake’s position was that having different images on the two billboards was not a particular concern for him and, based upon the evidence he had heard at the hearing particularly in relation to the angle of the billboard seen from Hillside Road. Mr Harries supported that position. Mr Harries confirmed that the images should change at the same time.*

⁴⁵ E.g., see Harries at para. 3.6

⁴⁶ Firth, Attachment B, proposed condition 6

⁴⁷ Reply submissions, para. 3.15

105. We did not interpret the responses from the witnesses in quite the same way as Mr Berry, and considered Mr Harries reply to be something less than a statement of express support. Similarly, we do not consider that we can take Mr Peake's response as an expression of "no particular concern".
106. In summary, while we accept the general premise that the angle of the billboards, and in particular the northern one as viewed from Hillside Road, may be of lesser luminance in reality, we do not consider that we have sufficient evidence to be satisfied about this aspect of the proposal, and are conscious that the potential to display two different images, at different levels of luminosity, will provide some additional level of complexity to the view through this intersection. It may not be as significant a potential effect as Mr Peake has sought to describe with respect to the overlap issue, but this proposed amendment is a step further than we are prepared to take at this time.

Summary

107. From the preceding discussion it will be apparent that we prefer the evidence of the Applicant in respect of the various matters raised during the hearing with respect to traffic safety. Accordingly, we conclude that *"the extent to which the location, operation, lighting or design of the signs or billboard will have adverse effects on traffic or pedestrian safety"* (in terms of assessment criterion E23.8.2(2)(d)) will be acceptable,⁴⁸ and agree with Messrs Harries⁴⁹ in respect of this matter.

Urban design and amenity issues

108. The urban design and visual amenity effects of the billboard included issues associated with building colour and integration with the existing building and the potential for additional signage. These issues, such as they are, have been largely narrowed further through the Applicant's reply, where conditions were proffered to:
- require that for the duration that the billboards are affixed to the building, the colour of the ground floor and upper section of the building be the same or substantially similar; and
 - ensure that no additional billboards will be placed along the southern and northern elevation.
109. In addition, it was Mr Firth's advice that any additional signage associated with activities in the existing (ground floor) building will be limited and confirmed to what is enabled by the Signage Bylaw.
110. As part of our consideration of such effects, we note the extent of visual effect that may be contemplated for the site as a permitted activity, both in terms of the height and required set back of a new building, and the lack of any requirements relating to

⁴⁸ The assessment criteria also include at (c) *"whether there will be adverse effects on the amenity values of the surrounding area and traffic or pedestrian safety from signs or billboards that are capable of displaying variable images more than once every eight seconds,..."*. This does not appear to be applicable because it is not proposed to show variable images at more than once every 30 seconds.

⁴⁹ Harries, para. 7.8

design considerations. This was explained in detail in the evidence of Mr Munro.⁵⁰ In this regard, the proposed billboards may compare favourably to what could be envisaged as some future unadorned building form, and although we would prefer to approach this matter in a more aspirational way, there is little in the zone provisions to require that. That said, it is clear from the evidence of Messrs Knott⁵¹ and Munro⁵² that the Applicant has responded to their advice and recommendations in achieving an improved form and finish for the proposed elevations, and one that both reflects and enhances the building and the site in which it is located.

111. While Ms Su remained of the view that the building shape and the billboards themselves would remain visually dominant and out of proportion, we have no difficulty accepting the evidence of the Applicant in this regard. The overall result is a building that is of somewhat lesser scale than provided for by the zone standards, incorporates a curved alignment to mirror the adjacent road reserve, and utilises a consistent colour palette and materials that are attuned to both the existing building and its surrounding context.
112. The witnesses for the Applicant have also considered “*whether the signs or billboard, in conjunction with existing signs nearby, will create visual clutter or other adverse cumulative effects*”, in accordance with assessment criterion H23.8.2(4). The evidence of Mr Munro appeared to encapsulate the consensus view for the Applicant:⁵³

Overall, I would describe this locality as being quite cluttered by signage, predominantly by way of freestanding signage that proliferates along and close to the street's edges. However, there are no other signs nearby that could overlap of [sic] combine with the proposed signs such that a cumulative effect of any concern might arise. The proposed signs will not be as visually aggressive as these, nor will its effects merge with those signs.

113. Overall, we agree with the analysis provided by Messrs Firth,⁵⁴ Knott⁵⁵ and Munro⁵⁶ for the Applicant with respect to the relevant assessment criteria at E23.8.2(1) and (4), and consider that the urban design and visual amenity effects of the proposed billboards will be acceptable.

Lighting

114. As noted above, we did not discern the lighting of the billboards to be a matter of contention, albeit that we were interested to seek further clarification of aspects relating to illuminance during the hearing. We are satisfied that Mr Berry's reply submissions have accurately captured our conclusions in this respect, where he states:

⁵⁰ Munro, paras. 5.1 and 5.2

⁵¹ Knott, para. 4.4

⁵² Munro, paras. 3.3 – 3.5

⁵³ Munro, para. 5.28

⁵⁴ Firth, Attachment A

⁵⁵ Knott, Attachment A

⁵⁶ Munro, paras. 5.5 - 5.16 and 5.24 - 5.27

2.2 *We reiterate the evidence of Mr Kern that the light sensor mechanism enables the luminance of the billboard to be automatically adjusted according to the light conditions. This ensures that the billboard is never perceived as too bright, as well as providing compliance with the relevant AUP luminance standards. Further, because of the light sensor mechanism, adjustments can be easily made to the luminance of the billboard in response to monitoring / public feedback.*

2.3 *As noted in Opening:*

(a) *There is no disagreement between Mr Turner and Ms Su for [the Council] and Mr Kern of Kern Consultants for the Applicant about luminance compliance and lighting effects.*

(b) *Ms Su's overall conclusion with regards to lighting effects is that:*
"...the adverse effects as they relate to light spill and glare to residential zones and dwellings are considered to be less than minor."

115. Mr Berry highlighted that *"the uncontroverted evidence before the Panel is that the lighting of the proposed digital billboard is appropriate and in compliance with the requirements of Section E23 of the [AUP(OP)] and that lighting is not an issue and is not a valid reason for declining consent to this proposal".*⁵⁷
116. We agree with that submission. We have also had regard to the proposed conditions relating to lighting aspects and consider that they will manage the effects of lighting appropriately.
117. We therefore conclude that there is no aspect of the proposed lighting arrangements for the billboards that would cause a concern with respect to assessment criterion E23.8.2(2), and in particular that the proposed luminance of the billboards will be appropriately controlled to minimise adverse effects on the visual amenity of the surrounding environment during both day and night time (and the transition times between).
118. We note here that we consider the monitoring condition relating to the measurement of luminance post operation of the billboards as originally set out in the draft conditions attached to the hearing agenda, and as amended through the Applicant's evidence and reply submissions, addresses the 'certification' of this lighting as recommended by Ms Su in her reply.

Consent duration

119. For completeness, we note that the relevant matters of discretion and associated assessment criteria for signage require us to consider the duration of any consent granted (E23.8.2(3)).
120. The criteria relating to 'duration' requires us to consider:

whether the duration of a resource consent should be limited, taking into account the future land use and/or transport network changes that are likely to

⁵⁷ Reply submissions, para. 2.4

affect the site or location and result in the signs or billboard being inappropriate from a site development or traffic safety perspective.

121. We are not aware of any such changes that would suggest that the imposition of a duration limit would be necessary. We therefore agree with Mr Firth that the existing zoning and status of the subject road “*are unlikely to change to such an extent that the location of the proposed boards will be inappropriate from a site development or traffic safety perspective*”.⁵⁸

Conditions

122. Because our decision is to grant consent to the application, we have turned our minds to the conditions as initially recommended by Ms Su, and the further amendments addressed through the course of the hearing and those provided within Mr Berry’s reply submission. A number of those have been noted in our discussion in respect of various matters and which have effectively resolved potential areas of concern on which we would have otherwise needed to make findings.
123. We note some matters relating to the conditions for clarity here:
- (a) The conditions included in the Applicant’s reply included a detailed condition relating to the Applicant’s obligation to undertake monitoring of road safety effects (at 18 and 30 months following installation). The reply advises that “[s]uch a condition is not considered to be necessary but is offered on the basis that the Panel may wish to impose such a condition and the wording is preferable to that recommended in the section 42A report”. While we may not have determined that such a condition was required, we accept it as a useful means by which to provide greater surety as to the conclusions we have reached on traffic safety matters (and have previously referred to it in that light), and have included it accordingly.
 - (b) While Mr Carr noted that switching off the billboards was not a typical solution to a malfunction, where they would simply display a solid black image instead, the final conditions provided in the Applicant’s reply retained the original wording. We think there is nothing substantive in whether the billboards are ‘off’ or have a solid black display (and envisage that both options would result in the same outcome). To avoid any possible procedural difficulty in complying with this condition we have provided for both options.
 - (c) We consider that the purpose of the s.128 review condition, relating to “*luminance and traffic safety effects*” is potentially too narrow, and we have added “*(including cyclist and pedestrian safety)*” for the avoidance of doubt as to the scope of any such review.
 - (d) We highlight that, for the reasons set out earlier, we have altered the Applicant’s proposed amendment to condition 8 to preclude the use of different displays across the two billboards.

⁵⁸ Firth, Attachment 1

- (e) We have applied consistent phrasing to the reference to the billboards in order to make it clear that the conditions apply in the plural, and have therefore removed references to “LED display”, “LEDs” or “billboard display”.
124. In other respects the final version of the conditions reflect our further careful review in which we could discern no apparent omission as to the relevant effects or matters to be addressed, and so any additional changes have been of a relatively minor editing nature.

Decision

125. In exercising our delegation under ss.34 and 34A of the RMA and having regard to the foregoing matters, ss.104 and 104C and Part 2 of the RMA, we determine that the resource consent application by Espin Holdings NZ Ltd to install two digital billboards of 15m x 5m and 12m x 3m as part of an associated building addition at 135 Wairau Road, Wairau Valley, is granted for the reasons set out below, and subject to conditions.
126. For completeness, and in case we are wrong in respect of our finding that the proposal is a restricted discretionary activity under E23.4.1, and it is otherwise deemed to be a discretionary activity under Rule C1.7(1), then we confirm that we would have granted consent in accordance with the unfettered discretion afforded to us under s.104B of the RMA, and that we would not have imposed additional conditions of consent.

Reasons for the decision

- I. In terms of s.104(1)(a), the actual and potential effects from the proposal are found to be acceptable as:
 - (a) The scale, form and location of the proposed billboards will be appropriate in terms of the site in which the billboards are proposed and the overall design will relate well to the existing building and its surrounding context.
 - (b) The proposed management of the images to be displayed will be undertaken with use of suitable dwell and transition times, with messages coordinated across the two screens.
 - (c) The proposed luminance of the billboards will be typical of modern digital billboards and are consistent with those already consented in the surrounds. The luminance can also be appropriately managed, adjusted, and switched off in the event of a malfunction. The signs are not proximate to any residential areas or open space users.
 - (d) Although the proposed signage will be located in a position adjacent to a busy and complex intersection, and will be visible in a limited circumstance behind an existing traffic signal, we are satisfied that the location, operation, lighting and design of the billboards will not have adverse effects on traffic or pedestrian safety.

- (e) The proposal will not result in adverse cumulative effects, and we do not consider that it is necessary to limit the duration of this consent to address possible changes in response to future land use or road network changes.
 - (f) The infringement of the building additions with the yard set-back standard for the Light Industry Zone is consistent with the relevant assessment criteria applicable to such matters.
- II. In respect of s.104(1)(b), the proposal is consistent with the relevant objectives and policies of the Auckland-wide chapters of the AUP(OP). In particular:
- (a) The proposal will be consistent with Objectives E23.2.(1) and (2) and Policies E23.4.3.(2), (3), (4), (5) and (6) within Chapter E23 of the AUP(OP). The proposed billboards are found to be appropriate in terms of form, scale and location relative to the size of the site, the existing building and the surrounding environment and the scale of buildings anticipated within the Light Industry Zone.
 - (b) In terms of Objectives H17.2(3) and (4), and Policies H17.3(4) of the Light Industry Zone, the adverse effects on amenity values on the adjacent streetscape and the existing building are acceptable.
- III. With regards to s.104(1)(c), there are no other matters considered relevant or reasonably necessary to determine the application.
- IV. Overall, we find that the proposal merits the granting of resource consent as it will not result in more than minor adverse effects on the environment and is consistent with the relevant objectives and policies of the AUP(OP) and will provide for the sustainable management of the natural and physical resources as required by Part 2 of the RMA.

Conditions

Under ss.108 and 108AA, this resource consent is subject to the following conditions:

General conditions

1. Except as amended by the conditions which follow, this consent must be carried out in general accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the Council as resource consent number LUC60368727:
 - (a) Application Form and Assessment of Environmental Effects prepared by Mt Hobson Group, dated December 2020, as amended by the letters from Mt Hobson Group dated 12 August 2021 and 8 September 2021.
 - (b) *Re: Proposed LED Billboard 135 Wairau Road, Wairau Valley, Auckland*, prepared by Lough Associates Consulting Engineers, reference: 5440, dated 23 March 2021.

- (c) *Illuminated LED Billboard Lighting Effects Report, Proposed Billboards 135 Wairau Road, Glenfield, Revision A*, prepared by Kern Consultants Limited, reference: 3395, dated 1 August 2020.
- (d) *Traffic Engineering Report Proposed Digital Billboards, 135 Wairau Road Prepared for Espin Holdings NZ Limited*, prepared by Stantec Limited, reference: 310203611, dated November 2020.
- (e) *Digital Billboard 135 Wairau Road, Wairau Valley Urban Character Assessment*, prepared by Richard Knott Limited, dated 4 December 2020.
- (f) Drawings as follows:

<i>Drawing Reference</i>	<i>Drawing Title</i>	<i>Author</i>	<i>Dated</i>
S1 of 4 Revision 22	-	Espin Holdings NZ Limited	23/11/2021
S2 of 4 Revision 22	Site Plan Aerial Underlay	Espin Holdings NZ Limited	23/11/2021
S3 of 4 Revision 22	Site Plan	Espin Holdings NZ Limited	23/11/2021
S4 of 4 Revision 22	Elevations	Espin Holdings NZ Limited	23/11/2021

- 2. Under s.125 of the RMA, this consent lapses five years after the date it is granted unless:
 - (a) The consent is given effect to; or
 - (b) The Council extends the period after which the consent lapses.
- 3. The Consent Holder must pay the Council an initial consent compliance monitoring charge of \$684 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

Advice note:

The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent(s). In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The Consent Holder will be advised of the further monitoring charge. Only after all conditions of the resource consent(s) have been met, will the Council issue a letter confirming compliance on request of the Consent Holder.

Malfunction of the billboards

4. The Consent Holder must ensure that in the event of any malfunction of the billboard(s) or the control system, the billboard(s) must be either switched off or display a solid black colour until the malfunction is repaired.

Billboard Message Display

5. Image content on the billboards must be static, and must not incorporate flashes, movement, animation or other dynamic effects.
6. A split display (i.e., two or more advertisements) must not be displayed at any one time on either of the billboard displays.
7. Images used in the billboard displays must not use graphics, colours (red, green, orange, white or yellow), text or shapes in isolation or in combinations such that they can be reasonably considered to resemble, cause confusion with, or distract from a traffic control device; nor invite or direct a driver to take some sort of driving action.

Advice note:

The purpose of Condition 7 is to manage the content on the billboard where it forms the background or foreground of, or appears alongside, a traffic control device that could be found in the road environment. The content of the billboard is to be managed to ensure that any individual element or combinations of elements do not resemble, confuse or distract from traffic control devices in these locations. The purpose of the condition is not to prohibit the use of a particular colour, but to manage the use of those colours to avoid confusion with traffic control devices.

Image Transition and Dwell Time

8. The images displayed on the billboards must transition from one image to the next at the same time (for the avoidance of doubt, the images displayed on each billboard must be the same).
9. The transition from one image to the next must be via a 0.5 second dissolve.

Advice note:

A 'dissolve' is a transition between images where one image fades out while at the same time another image fades in.

10. The display time for each image (the dwell time) must be a minimum of 30 seconds.
11. Images must not be linked to "tell a story" across two or more sequential images (i.e., where the meaning of an image is dependent upon or encourages viewing of the immediately following image).

Maximum luminance

12. The luminance of the billboards must not exceed the following:
 - (a) 250cd/m² between sunset and sunrise (night-time); and

(b) 5,000cd/m² between sunrise and sunset (day-time).

13. The luminance level of the billboards during daylight hours must vary to be consistent with the level of ambient light and ensure that the billboards are not significantly brighter than the ambient light level and is only illuminated to the extent necessary to ensure that it is legible. To achieve this, the brightness of the billboards must be automatically controlled with an in-built detector/sensor.

Removal of downlights

14. Prior to the operation of the billboards, the four external downlights on the existing building façade facing Tristram Avenue must be removed.

Additional billboards

15. Further billboards must not be placed on the ground or first floor of the building:

- (a) along the southern elevation as it faces Tristram Avenue; or
- (b) on the eastern elevation as it faces the Open Space Zoned land.

For the avoidance of doubt, nothing in this condition restricts the rights of the owners or occupiers of the building to erect a sign that complies with the Auckland Council Signage Bylaw 2015.

Building colour

16. For the duration that the billboards are affixed to the building, the colour of the ground floor and upper section of the building must be the same or substantially similar.

Monitoring of luminance

17. The Consent Holder must monitor and record the maximum 'intensity' of the LED display of the billboards produced as a result of the automation required by Condition 13 within two months following the commencement of the display of images, and annually thereafter to certify that the luminance of the billboards is in accordance with Conditions 12 and 13 above.

- (a) The method of recording the levels must be to the satisfaction of the Council's monitoring team.
- (b) To undertake the work required by this condition, the Consent Holder must engage an independent lighting practitioner to record and confirm the luminance readings of the billboards at a minimum of three times including:
 - i. One recording between 11.30am and 12.30pm;
 - ii. One recording during the hours of darkness; and
 - iii. One recording during dawn or dusk.
- (c) The Consent Holder must submit a luminance certificate report to the Council within 40 working days following the commencement of the operation of the billboards.

Review by Consent Holder

18. The road safety effects of the billboards must be reviewed at the Consent Holder's expense by a suitably qualified traffic engineer within 18-months and 30-months from commencement of operation of the billboards. The review must examine all recorded crashes that have occurred within the 100m sections of Wairau Road north, Wairau Road south, and Hillside Road, and the 50m section of Tristram Avenue, all as measured from the location of the billboards. For each of the 18-month and 30-month periods, the individual Traffic Crash Reports for every recorded crash must be examined by the suitably qualified traffic engineer to identify any that make reference in any way to the presence of the digital billboards. The findings of each review must be reported to the Council within 20 working days of each of the 18-month and 30-month anniversaries.
19. If the reports identify any crashes that could reasonably have been caused or contributed to by the digital billboards, the Consent Holder must develop measures to mitigate any further crashes (such as, for example, increased dwell time, further controls on image content, reduced lumination, etc.) which must be forwarded to the Council for consideration. Following consultation with the Council, the Consent Holder must implement the solutions recommended by the suitably qualified traffic engineer. If any changes to the operation of the billboards are required, then the review requirements under Condition 18 shall be extended by a further 12-month period.

Advice note:

The initial 18-month period is required to enable sufficient time for the first 12-months of crash data to appear within the Waka Kotahi Crash Analysis System.

Review Condition under s.128 of the RMA

20. Under s.128 of the RMA, the conditions of this consent may be reviewed by the Council at the Consent Holder's cost:
 - (a) on an annual basis following the commencement of the consent in order to deal with any adverse effect on the environment which may raise or potentially arise from the exercise of this consent and which it is appropriate to deal with at a later stage, in particular adverse effects in relation to luminance and traffic safety (including cyclist and pedestrian safety).

Advice notes

Finalised Structural Design

1. *The consent holder is advised that detailed structural design for the support of the billboards will need to be provided as part of building consent application(s).*

General

2. Any reference to number of days within this decision refers to working days as defined in s.2 of the RMA.
3. For the purpose of compliance with the conditions of consent, “the Council” refers to the Council’s monitoring officer unless otherwise specified. Please email monitoring@aucklandcouncil.govt.nz to identify your allocated officer.
4. For more information on the resource consent process with Auckland Council see the Council’s website: www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions, can be found on the Ministry for the Environment’s website: www.mfe.govt.nz.
5. If you disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to s.357B of the RMA. Any objection must be made in writing to the Council within 15 working days of receipt of the Council invoice.
6. The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.



Richard Blakey (for and on behalf of the Commissioners)

Chairperson

Dated: 2 February 2022

