

IN THE MATTER

of the Resource Management Act 1991 ("RMA" or "the Act")

AND

IN THE MATTER

of a resource consent application by **SEAVIEW HP LIMITED** to the **HUTT CITY COUNCIL** to install a free-standing, double sided digital billboard at 47 The Esplanade in Petone

SUBMISSIONS IN REPLY OF COUNSEL FOR SEAVIEW HP LIMITED

1. INTRODUCTION AND PRELIMINARY MATTERS

Hearing

1.1 On Tuesday, 18 and Wednesday, 19 June 2024, the Panel heard:

- (a) Legal submissions and evidence presented on behalf of Seaview HP Limited ("SHP" or "Applicant") in support of its application to the Hutt City Council ("HCC" or "Council") to authorise the construction and operation of a freestanding, V-shaped, double-sided digital billboard ("Proposed DBBs") at 47 The Esplanade, Petone ("the Site").
- (b) Presentations by the small proportion of submitters who oppose the application:
 - (i) Hutt Cycle Network - Dennis Tripp (via videolink).
 - (ii) Tracey Buick.
 - (iii) Hikoikoi Management Limited ("HML") on behalf of Wellington Tenth's Trust – Richard Te One.
 - (iv) Hutt City Grey Power Association ("Grey Power") - Peter Matcham (via videolink).
 - (v) Petone Community Board – Mike Fisher and Matthew Roberts (via videolink).
 - (vi) Roger Thackery.
 - (vii) Brian Boyer.
- (c) The commentary from the Hutt City Council's ("HCC") expert team.

Directions

1.2 At the hearing, and in the Panel's Minute 4 issued 21 June 2024, the Panel directed that:

- (a) Council provide the necessary materials requested by the Panel by midday, 21 June 2024. These documents were duly received, with thanks.
- (b) A revised set of consent conditions, agreed to the extent possible by the Applicant and HCC, be filed by 3 July 2024.
- (c) Either this Reply or a memorandum requesting an extension be filed by 5 July 2024.

1.3 On:

- (a) Tuesday, 2 July 2024, SHP was granted an extension by the Panel to file this Reply on Wednesday, 10 July 2024 given the need to await Mr Harries' supplementary evidence which addresses traffic safety issues, particularly in response to the presentation made on behalf of the Hutt Cycle Network.
- (b) Wednesday, 3 July 2024, SHP was granted an extension of time to file the revised set of consent conditions, to allow sufficient time to engage with Council in that regard.

1.4 SHP is grateful for that indulgence.

Amendments to the proposal

- 1.5 At the outset we note that SHP is conscious of concerns raised by both Council experts and a number of submitters about the 7m x 3.5m (24m²) digital billboard screens being too large and the 9.1m high structure being too tall, resulting in unacceptable amenity and lighting effects on this part of The Esplanade, particularly at night.
- 1.6 While these claims are not accepted based on SHP's planning and urban design evidence, the Applicant has elected to reduce the overall area of the screens from 7m x 3.5m to 6m x 3m (18m²) so that they comply with the relevant permitted standard 14B 2.1.5(c), which requires a maximum face area of 20m². It is still proposed that the height of the Proposed DBBs structure will be 9.1m.
- 1.7 These amendments were made to attempt to achieve compliance with relevant controlled activity controls in Rule 14B 2.1.5.
- 1.8 SHP has also developed a proposal to enable image time to be provided to the Petone community and for iwi which we return to presently.

Purpose and scope of submissions

- 1.9 SHP's owner and professional advisors have considered very closely the questions asked, comments made, and issues raised by the Panel throughout the hearing. In this Reply, most substantive issues will be addressed largely in line with the topics addressed in our Opening, with HCC and submitters' comments being addressed per subject matter (rather than chronologically per the hearing) to assist the Panel to 'close the loop' on the Opening and to reach its findings.
- 1.10 Our perception is that many matters raised during the hearing were adequately addressed and, on that basis, they are not specifically addressed in this Reply - however, if there are matters that the Panel considers needs to be addressed and have not, we would be happy to do so.

- 1.11 There are two noteworthy amendments to the proposal / proposed conditions that have flowed out of the Panel's questioning that we address at the outset given their importance to the Panel's decision-making.
- 1.12 On that basis, these submissions address:
- (a) Cultural issues (Section 2).
 - (b) Alleged lack of 'public benefits' - proposed conditions (Section 3).
 - (c) The relevance of controlled activity controls (Section 4).
 - (d) Discrepancies in the photo simulations provided by SHP (Section 5).
 - (e) Legal issues (Section 6).
 - (f) Traffic issues (Section 7).
 - (g) Lighting issues (Section 8).
 - (h) Urban and natural character and visual amenity (Section 9).
 - (i) National and regional planning instruments – additional comments (Section 10).
 - (j) Proposed conditions (Section 11).
 - (k) Concluding remarks - the importance of context (section 12).

2. **CULTURAL ISSUES**

- 2.1 Richard Te One appeared for HML and raised two main areas of concern for his iwi and hapu.

Engagement with iwi

- 2.2 Mr Te One expressed concerns with the lack of consultation being undertaken by SHP. The Panel queried whether there had been any engagement with iwi in relation to the proposal to date. Mr Firth advised that HCC had informed the Applicant's consultants that no consultation was required and that none had been undertaken.
- 2.3 The RMA does not, of course, require consultation to occur but it is recognised that it represents best practice, especially as far as iwi and hapu are concerned – the difficulty for the Applicant was that they received no guidance in this regard. But that does not mean that further limited consultation can occur in an attempt to address the key issue raised by Mr Te One, to which we now turn.

The loss of recognition of culture and history

- 2.4 Mr Te One's presentation addressed the history of his iwi with the development of Wellington, including their early engagement with The New Zealand Company.
- 2.5 When asked by the Chairman to clarify the cultural values that Mr Te One considered were affected, Mr Te One spoke eloquently that the key issue is, with development in the greater Wellington Region, including in Petone, there "is nothing left of the cultural landscape" and "there is no sign that there was any pre-European settlement" and that their culture and history

is 'disappearing', to a point where they feel they are becoming invisible and that "we want to bring some of these places back to the surface".

- 2.6 Mr Te One made mention of the Pito-One Pa which Mr Firth has confirmed is approximately 125 metres from the application site, but that the surrounding area was used for cropping, etc. Mr Te One expressed his concern as "to place something else on top of it further hides us away."
- 2.7 Mr Te One also referred to concerns about previous political imagery displayed in Petone that iwi have found objectionable.
- 2.8 The Chairman inquired as to whether the availability of image space / time might assist to address Mr Te One's concerns and Mr Firth had a constructive conversation with Mr Te One in that regard.
- 2.9 SHP wishes to take measures to acknowledge HML's concerns and is willing to offer conditions which allocates at least 2.5% of weekly image display (i.e., 270 images per week):

"...to facilitate recognition and appreciation of Māori cultural and spiritual values in the vicinity of the signage and other sites of cultural significance located between Petone Wharf / Victoria Street, Jackson Street and Te Puni Street, Petone, particularly the Pito-One Pa."

- 2.10 This would be implemented by a Digital Iwi Cultural Benefit Management Plan ("DICBMP"), which would require consultation with HML in relation to the type of imagery, wayfinding or story-telling that would raise iwi's historical and cultural profile and would therefore contribute meaningfully to addressing the concerns about loss of visibility and recognition that Mr Te One expressed.
- 2.11 This condition also enables the DICBMP to specify any agreed restrictions on political images / information that is displayed, which Mr Te One expressed concerns about – no more "Iwi versus Kiwi" slogans!
- 2.12 These conditions reflect SHP's commitment to do what it can to address the concerns expressed – as these do not (or only peripherally) relate to the effects of the Proposed DBBs, the conditions are proffered under the *Augier* principle which the Panel is no doubt familiar with.
- 2.13 In order to provide certainty, the conditions provide a set time frame for agreement to be reached (which can be extended) so that the condition can drop away if agreement cannot be reached.

3. **ALLEGED LACK OF 'PUBLIC BENEFIT' - PROPOSED CONDITIONS**

- 3.1 This leads on to the issue of provision of public benefits which was the subject of discussions during the hearing.
- 3.2 We had originally interpreted Mr Thornton's evidence to require that a public benefit be proven which of course is not the law. However, it became clear that his position is the proposal does not provide sufficient public benefit to outweigh what he considers to be adverse effects. We have no difficulty with that proposition.
- 3.3 The Panel asked a number of submitters whether provision of community messaging (or in Mr Te One's case, messaging for iwi) could provide public benefits that the Panel could consider. In that context, the Panel referred to the Environment Court decisions in *Calder Stewart Development Limited v*

*Christchurch City Council*¹ and *Wilson Carpark v Christchurch City Council*², both cases in which the Court overturned decisions to decline consents for digital billboards in light of offers by the applicants to provide image display time on the digital billboards that related to local businesses, community and non-advertising material on a gratis basis.

- 3.4 In light of the Panel's clear interest in enhancing the existing benefits provided by digital billboards and in light of these cases, the Applicant has offered two sets of conditions by which image display time is made available on a gratis basis:
- (a) Allocating 2.5% of weekly image display time to images, information and/or advertising that relates to Council events, community related messaging; and local businesses – to be implemented via a Digital Petone Community Benefit Management Plan ("DPCBMP") to be prepared in consultation with Council, to ensure that proper processes are put in place to enable these forms of imagery to be displayed; and
 - (b) Allocating 2.5% of weekly image display time to images, information and/or advertising for purposes identified by iwi, as described in the previous section.

Workability and ensuring compliance

- 3.5 It is noted that Mr Thornton requested the opportunity to comment on these conditions to determine whether they were 'workable' from a compliance and monitoring perspective. As part of his response, Mr Thornton commented that he would like to see a condition with 'periodic reporting' and a statement of compliance demonstrating that the agreed percentage of advertising was, in fact, being dedicated to community messaging.
- 3.6 To demonstrate SHP's commitment to ensuring compliance with its obligations under these conditions, SHP has agreed to provide a condition (being Condition 26) requiring SHP to provide a "Compliance Statement" detailing the time and date of images displayed, as well as copies of the images being displayed.
- 3.7 Subsequent to filing the revised conditions on 5 July 2024, it became apparent that Condition 26 in its proposed form omitted to include a time frame for the imagery to be provided. The result of this is that, upon request by the Council, there is a risk of an "information dump", whereby SHP will be required to provide details of all images ever shown during the "lifetime" of the consent in order to achieve compliance with this condition.
- 3.8 As such, it is submitted that, should the Panel consider it appropriate, the following amendments are proposed to Condition 26:

Within 20 working of a request from the Council, the consent holder must submit to the CMET, a "Compliance Statement" which includes a copy of any images displayed on the signage in compliance with the DPCBMP and DICBMP within the month preceding the request, and the date and time that each image provided in accordance with this condition was displayed on the signage in compliance with the PCBMP and ICBMP.

1 *Calder Stewart Development Limited v Christchurch City Council* (ENV-2018-CHC-170) 13 March 2019.

2 [2022] NZEnvC 165.

3.9 Finally, SHP request the following minor amendments be made to the conditions filed on 5 July 2024:

- (a) Conditions 16 – 20, 26 and 27: Reference to “Iwi Cultural Benefit Management Plan” and “ICBMP” be amended to “Digital Iwi Cultural Benefit Management Plan” and “DICBMP” respectively.
- (b) Conditions 22 – 26: Reference to “Petone Community Benefit Management Plan” and “PCBMP” be amended to “Digital Petone Community Benefit Management Plan” and “DPCBMP” respectively.

4. THE RELEVANCE OF CONTROLLED ACTIVITY CONTROLS

4.1 As discussed in both Messrs Thornton and Firth’s evidence, signage is not a permitted activity along The Esplanade; however, provided the relevant permitted activity standards in 14B 2.1.5 are met, signage can be assessed as a controlled activity which the Panel³ must grant consent to and may impose conditions relevant to the specified matters of control in the Hutt City District Plan (“HCDP”).

4.2 The Panel raised a number of queries throughout the hearing in relation to the relevance of the controlled activity status in assessing the current application, in particular:

- (a) The extent to which the Panel can consider a controlled activity as part of its consideration of the application, including whether controlled activities can be treated as a de facto permitted baseline.
- (b) The extent to which the Panel can impose conditions that are more stringent than permitted or controlled activity standards.
- (c) Whether, in light of the provisions of the HCDP, a digital billboard can ever be assessed as a controlled activity on The Esplanade (given Mr Thornton’s position that it cannot be due to the wording of Rule 14B 2.1.5(d)(i) relating to illumination).

4.3 We address each in turn.

Assessment of controlled activities – can they form part of the permitted baseline?

4.4 As to whether a controlled activity can be treated as a permitted baseline for the purpose of assessing a proposal, it is submitted that the law is clear that this cannot be the case. In that regard, we refer to *Kalkman v TCDC*⁴ in which the Environment Court (via Judge Sheppard) made clear (following *Wessim Trusts Partnership v NSCC*⁵):

“...In each case Justice Keith was a member of the Court. If Body Corporate 970101 was to mean that hypothetical controlled activities should be included in the second class of the permitted baseline for deciding resource consent applications, Justice Keiths participation in both appeals would have ensured that controlled activities would have been mentioned in describing that class. They were not mentioned.

...We hold it in as a matter of law that hypothetical controlled activities are not within the permitted baseline.

3 Resource Management Act 1991, section 104A.

4 *Kalkman v Thames Coromandel District Council* A152/2002, at [102].

5 *Wessim Trusts Partnership v North Shore City Council* A112/2002.

If Mr Brabant's point is that they should be, then as the Kalkmans are not represented by counsel who might present contrary arguments, this is not an appropriate case for the possible development of the law to be addressed."

(Emphasis ours.)

- 4.5 In short, neither controlled activity status nor controls can be treated as a permitted baseline. Having said that, given that controlled activities cannot be declined, it is submitted that the activities that are provided for as controlled activities in a district plan send a strong signal as to the nature of activities that are contemplated (within the bounds of the matters of control) such that it is appropriate for consent authorities (including this Panel) to place some weight on that status in assessing the appropriateness of a proposal, particularly in terms of the pattern of development envisioned and provided for.
- 4.6 Thus, in summary, although controlled activity status cannot be considered to be a permitted baseline, it is submitted that that favourable activity status is relevant in exercising your planning discretion on this application.

Imposition of conditions – can a condition be imposed that is more restrictive than a permitted activity standard?

- 4.7 The Panel asked Mr Firth whether a condition could be imposed on a sign that complied with the permitted activity standards, for example, imposing a condition requiring the Proposed DBBs to be lower than the maximum permitted height of 8m. Mr Firth did not think such a condition could be imposed; we (as counsel) made a comment to the effect that a consent authority could impose a condition but probably would not do so.
- 4.8 Returning to that issue, the case law is clear that, once a consent for a discretionary activity is applied for, the council's jurisdiction to impose conditions is not restricted by permitted activity standards, matters of control (for controlled activities) or matters of discretion (for restricted discretionary activities). To illustrate, the Environment Court held in *Zindia Ltd v Marlborough District Council*⁶:

"[55] 'Bundling' is a well-established approach in the consideration and determination of resource consent applications under the RMA. According to this approach, where various activities (in this case, land uses) are closely related but have different activity classifications under a relevant RMA plan, the most restrictive activity classification is applied to all of them. Hence, if one land use is a discretionary activity, but all others in the bundle applied for are controlled or restricted discretionary, all default to be determined as discretionary activities. However, the principle that underlies the bundling approach to consenting also extends to where one aspect of a bundle is classed as a permitted activity when the other activities in the bundle are discretionary. In that scenario, it is also more consistent with the purpose of the RMA to allow for a properly holistic assessment of the effects of all inter-related land uses so that those effects can be properly managed through consent conditions."

6 [2019] NZEnvC 30.

(Emphasis ours.)

- 4.9 In this case, consent for the Proposed DBBs is required as a 'full' discretionary – on that basis, 'everything is in' so that a condition more stringent than applicable standards or controls can be imposed.
- 4.10 In the present case, the Applicant has elected to accept a condition requiring the Proposed DBBs to be sized at 6m x 3m (18m² face area), being less than the 20m² provided for as a permitted activity. On the basis of the above analysis, the Panel could theoretically impose a condition requiring a smaller sign – but it is submitted that the evidence demonstrates that an even bigger sign would be acceptable, so that there is no justification for doing so; hence our comment at the hearing that it could, but probably would not.
- 4.11 Similarly, in assessing the effects of the 9.1m height of the Proposed DBBs, the Panel can have regard to the 8m maximum height contained in the HCDP, but it is submitted based on the evidence that there is no justification for reducing its height.

Can a digital billboard ever be assessed as a controlled activity on The Esplanade?

- 4.12 There was disagreement between Mr Thornton for the Council, and Mr Firth for SHP, as to whether it was possible for a digital billboard to ever qualify as a controlled activity on The Esplanade.
- 4.13 Mr Thornton's position is that a digital billboard cannot be assessed as a controlled activity on the basis that:
- (a) The HCDP was written at a time where digital billboards were not considered, and therefore the rules do not provide for the lighting mechanisms characteristic of digital billboards.
 - (b) The Proposed DBBs are unable to comply with:
 - (i) 14B 2.1.5(d)(i) - namely, that digital billboards by their very nature are unable to be "constantly" lit; and
 - (ii) 14B 2.1.5(e) - namely that the Proposed DBBs will display a variable message and is therefore precluded from complying with this standard.

Scope of "Sign" definition

- 4.14 The term "sign" is defined in the HCDP as:

"...any word, letter, model, sign, banner, placard, board, hoarding, billboard, poster, symbol, emblem, notice, name, image, character, outline, spectacle, display, delineation, announcement, device or representation, or any other means of a similar advertising nature intended to principally attract attention whether a specially constructed device, structure or apparatus, whether painted, printed, written, carved, inscribed, endorsed or projected onto a place or otherwise fixed or attached to any wall, roof, fence, rock, stone, structure, canvas or stationary vehicle. Aerial signs (for example, blimps) and free standing signs are included"

(Emphasis ours.)

- 4.15 Given that billboards and freestanding signs are both included within this definition, and notwithstanding his view that digital billboards were not envisaged at the time of drafting this definition, Mr Thornton agrees that a digital billboard falls within that definition.

Controlled activity status

- 4.16 Rule 14B 2.2(d) states that the controlled activity status applies:

"In all Commercial Activity Areas, Business Activity Areas, and Community Iwi Activity Area 3 - Kokiri Centres, excluding the Petone Commercial Activity Area 1:

- (i) Any sign erected on sites with frontage to the following roads (except where 14B2.3.c. applies):

The Esplanade and Waione Street, Petone."

(Emphasis ours.)

- 4.17 On the plain language of the HCDP and given the agreement in relation to the application of the definition of "sign" above, billboards, digital or otherwise, fall within the scope of this provision.

Meaning of "constant illumination"

- 4.18 There was disagreement over whether the following permitted standard in Rule 14B 2.1.5(d)(i) can be complied with by a digital billboard. It states:

"If a sign is to be lit, they shall be lit by constant illumination, and shall not flash. Such signs may be lit by directional illumination or lit from within."

- 4.19 First, it is quite plain that this rule was drafted with 'traditional' billboards in mind. These are lit from below or above by spotlights and the clear intention of that rule is to ensure that that light is constant, not flashing – the same applying if the billboard were internally lit (which would be unusual).

- 4.20 Digital billboards were clearly not in the contemplation of the people who drafted that rule and, as Mr Kern explained, the technology that underpins digital billboards is quite different – the internal lighting system is 'constant' to the extent that it is always "on".

- 4.21 As for the reference to "flashing" (which was clearly not necessary from a drafting perspective) on and off to attract attention to the billboard, which would clearly be distracting, Section 10(1) of the Legislation Act 2019 states that:

"The meaning of legislation must be ascertained from its text and in the light of its purpose and its context."

- 4.22 Applying a purposive interpretation, it is clear that the intent was to ensure that the lighting of billboards would be constant and will not "flash". Read in the context of the entire rule, it is submitted that the rule was intended to ensure that the light source does not alternate between being lit and unlit. This is consistent with the rest of this rule, which requires the light source not to flash – the two requirements are essentially saying the same thing with the requirement not to 'flash', driving home the more general requirement.

- 4.23 By contrast, the screens of digital billboards do not 'flash' where the 0.5 second cross-dissolve is implemented, as this dissolve exists specifically to ensure that there is no 'flashing' between the images.
- 4.24 The Proposed DBBs satisfy both requirements so that the purpose of the rule is achieved. It is submitted that Mr Thornton's interpretation is 'a stretch' that need not occupy any more of the Panel's time.
- 4.25 This interpretation is also consistent with the interpretation adopted taken by HCC in assessing other resource consent applications for digital billboards, for example:
- (a) 476- 486 Jackson Street, Petone (RM210012) – while located within the General Business Activity Area zone, this area is subject to the same permitted standards as the Petone Commercial Area – Activity Area 2 (Mixed Use) zone. This digital billboard was located with a front to Waione Street and was therefore subjected to the same "baseline" controlled activity status as the Proposed DBBs pursuant to rule 14B 2.2(d). This consent was assessed as a controlled activity, meaning that it complied with all of the "permitted" standards, including 14B 2.1.5(d)(i).
 - (b) 529 High Street, Hutt Central (RM230218) – this consent concerned a section 127 application to convert the billboard from static to digital. This digital billboard is located within the Central Commercial Activity Area; however, it is still subject to the same permitted activity standards as the Proposed DBBs, including 14B 2.1.5(d)(i). In this decision, HCC's in-house processing planner stated:⁷

"It should also be noted that digital signs are a permitted activity within the District Plan."

- 4.26 It is therefore submitted that, when a consistent approach is taken to the assessing of digital billboards in this area, it is clear that digital billboards are capable of constant illumination and do not "flash" in the manner that the rule sets its face against and therefore can comply with 14B 2.1.5(d)(i).

Variable messaging

- 4.27 Permitted standard 14B 2.1.5(e) states:

*"No sign shall have any parts which are moving.
This shall not preclude however any sign with a
variable message, suspended signs or flags."*

(Emphasis ours.)

- 4.28 We further note that Mr Thornton does not consider that the Proposed DBBs will satisfy this requirement on the basis that:⁸

"Variable message to me suggest a message that varies or changes. With a digital billboard, the message displayed will change every 8 seconds.

I therefore consider it unlikely to be meet clause e."

- 4.29 It is readily apparent that, in striving to make his unsustainable argument, Mr Thornton has simply mis-read or mis-interpreted this standard which

7 Hutt City Council Decision (RM230218) - 529 High Street, Hutt Central (29 September 2023) at para. 6.1.

8 Summary of Evidence by Elliot Thornton dated 19 June 2024.

plainly states that signs with variable messages are not precluded from compliance with this standard. As such, it is submitted that the Proposed DBBs can comply with 14B 2.1.5(e).

5. PHOTO SIMULATIONS

- 5.1 The Panel noted an apparent discrepancy between the Proposed DBBs plans and the visual simulations provided by the SHP. Clarification was sought as to the extent of this discrepancy.
- 5.2 When D.sol Design Solutions (now Building Consents) were contacted to confirm the accuracy of the photo simulations, it confirmed that the photo simulations were not accurate given:

"There was no survey information to use. We rely on visually taking approx. levels and measurements from the photos. This may be an approx. height of a car, building etc and these objects may be closer to or further away from the billboard. In this case the height of the building is hard to use as the floor level is different to the level of the area where the billboard will be, eg there is a carpark with presumably a slope, there is a kerb to a planter, then we don't know the planter level. All of these things combined mean we can't say this simulation is accurate."

- 5.3 Given the revisions to the Proposed DBBs screen sizes, Building Consents has prepared a revised set of plans (See **Attachment A**). An updated visual simulation has also been provided; however, the same issues identified above are equally applicable to the updated photo simulation provided.
- 5.4 It is therefore submitted that the Panel can be confident the plans provided are accurate; however, the photo simulations provided are to be considered as a 'general representation' of what the Proposed DBBs will look like, rather than a fully accurate representation.

6. LEGAL ISSUES

HCDP and Part 2 of the RMA

- 6.1 The Panel queried whether the HCDP can be considered to have been competently prepared, given the following "gaps" identified in the HCDP:

- (a) The absence of standards to give effect to Policy 14B1.3(c):

"To manage the size, location, frequency and appearance of signs at the interface between commercial/industrial activity areas, and all other activity areas".

- (b) The lack of definition or mapping of the 'coastal environment' or 'sites of cultural significance' in the HCDP.

The absence of standards to give effect to Policy 14B1.3(c)

- 6.2 As regards point (a) above, it is acknowledged that there is no specific permitted activity standard limiting the frequency of signs; however, 14B2.2(d) does identify the following locations whereby an otherwise permitted sign must be assessed as a controlled activity (notwithstanding compliance with permitted standards):

"(d) *In all commercial activity areas, business activity areas, and Community Iwi Activity Area 3 – Kokiri Centres, excluding Petone Commercial Activity Area 1:*

Any sign erected on sites with frontage to the following roads (except where 14B 2.3.c applies)

-

The Esplanade and Waione Street, Petone.

Eastern Hutt Road from Reynolds Bach Drive to Pomare Rail Overbridge.

Randwick Road.

Victoria Street, Ewen Bridge, Railway Avenue, Woburn Road and Queens Drive intersection.

State Highway No.2, both at and south of the intersection of State Highway No.2, Hutt Road and The Esplanade.

Hebden Crescent and State Highway No.2.

Melling Bridge and Melling Link Road."

(Emphasis ours.)

- 6.3 One of the relevant matters that the HCDP reserves control over is consideration of:⁹

The extent to which the frequency of signs on the site, and movement of signs detracts from visual amenity values of sites in the residential, recreation or rural activity areas, or the Community Iwi Activity Area 1 - Marae.

- 6.4 It is not necessary to set out each instance whereby Policy 14B1.3(c) has been given effect to. Rather, we rely on the above example, given this is applicable to the Site, which is an interface between a commercial area and another activity area (being the foreshore, which is a recreational activity area).

HCDP does not 'cover the field'

- 6.5 As regards the absence of definition or mapping of the 'coastal environment' or 'sites of cultural significance', we refer to paragraph 3.12(b) the Opening Submissions, which we consider may be of relevance here, namely:

"There may be instances where the document concerned does not "cover the field," and the decision-maker will have to consider whether Part 2 provides assistance in dealing with the matters not covered;"

- 6.6 It is acknowledged that these omissions may be considered "gaps" in the HCDP, and therefore the Panel may consider recourse back to Part 2 to be necessary. Should the Panel take this position, we refer to paragraph 15.43 – 15.51 of Mr Firth's evidence in chief, where he has provided an assessment of Part 2 of the RMA.

9 14B 2.2.1(d)(i).

- 6.7 It is acknowledged that, at the timing of filing Mr Firth's evidence, SHP's position was that the Site did not fall within the 'coastal environment'. Subsequent to this, we accepted that it is open for the Panel to assess the application on the basis that it was within the coastal environment. On that basis, Mr Firth has prepared supplementary evidence that provides a more detailed assessment of Part 2 of the RMA, including an assessment against section 6(a), to the extent it relates to the coastal environment.
- 6.8 Given Mr Firth's position on section 6(a), it is submitted that, when assessed against Part 2 of the RMA, the Panel can still be confident that the proposal is consistent with Part 2 of the RMA, subject to the imposition of appropriate conditions.

The appropriate weighting to be accorded to various 'planning documents' referred to and whether they form part of the future environment

- 6.9 During the course of the hearing, the Panel queried the status and weight the following documents were to be given when assessing the application:
- (a) Petone 2040;
 - (b) Cross Valley Connections;
 - (c) The Esplanade Optimisation Plan; and
 - (d) The Te Ara Tupua project.
- 6.10 The Panel queried the extent to which these documents, including the increased uptake of cyclists anticipated on the Te Ara Tupua route, could be considered as part of the existing environment for the purpose of determining the application.
- 6.11 We address each in turn in light of the legal principles relevant to identifying / assessing the future environment.

Relevance to the existing and future environment

- 6.12 The relevant legal test applying to the Panel's consideration of "the environment" for the purpose of assessing potential adverse effects is driven by the broad definition in section 2 of the RMA in light of relevant case law, in light of the assessment of the future environment as set out by the Court of Appeal in *Queenstown Lakes District Council v Hawthorn Estate Limited* ("Hawthorn").¹⁰
- 6.13 The Court in *Hawthorn* considered that most of the words used in the definition would, in their ordinary usage, connote the future, and considered it unlikely that the legislature intended the enquiry to be limited to a fixed point in time¹¹ and that this must apply in assessing effects. The Court summarised its position as follows:¹²

"In summary, all of the provisions of the Act to which we have referred lead to the conclusion that when considering the actual and potential effects on the environment of allowing an activity, it is permissible, and will often be desirable or even necessary, for the consent

10 *Queenstown Lakes District Council v Hawthorn Estate Limited* (2006) ELRNZ 299 (CA).

11 Hawthorn at [42].

12 Hawthorn at [57].

authority to consider the future state of the environment, on which such effects will occur."

- 6.14 Having said that, the Court of Appeal in *Hawthorn* recognised that the future state of the environment may be informed by matters beyond permitted activities and likely to be implemented resource consents, such as relevant objectives and policies. In this regard, it stated:¹³

"...It will not be every case where it is necessary to consider the future environment, or where doing so will be at all complicated..."

Difficulties might be encountered in areas that were undergoing significant change, or where such change was planned to occur. However, even those areas would have an applicable policy framework in the district plan that, together with the rules, would give considerable guidance as to the nature and intensity of future activities likely to be established on surrounding land. In cases such as the present, where there are a significant number of outstanding resource consents yet to be implemented, and uncontested evidence of pressure for development, the task of predicting the likely future state of the environment is not difficult."

(Emphasis ours)

Petone 2040

- 6.15 Petone 2040 is described by HCC as:

"...[A] planning framework to guide development and supporting infrastructure, and implementation timeframes."

- 6.16 Mr Dennis confirmed by way of email on 20 June 2024 that the Petone 2040 was approved by HCC resolution and adopted in May 2017. We have been unable to obtain a copy of this document and therefore cannot comment on the specific content of the document.
- 6.17 As to the extent to which it provides guidance directly relevant to the Panel's assessment, we refer to the comments by Mr Coolen, who accepted that its relevance was purely from a contextual basis. He considered that Petone 2040 contributes to a likely or designed vision for future and is used to guide the drafting of future plans. Mr Coolen acknowledges that it provides context for potential future Petone.
- 6.18 This is consistent with Mr Firth's evidence in chief, which describes the Petone 2040 plan at paragraph 12.25 as *"...indicative of what HCC sees as being an appropriate direction for Petone..."*

Cross Valley Connections

- 6.19 The Cross Valley Transport Connections document, referred to by submitters, concerns a business case for:

"...improving the transport system in southern Lower Hutt (the Project Study Area) for the next 20 years."

13 Hawthorn at [60] and [61].

- 6.20 This business case was approved by Waka Kotahi in August 2021. This Cross Valley Connections has been discussed by Mr Harries at paragraph 7.4 of his evidence in chief, in which he commented:

"While there currently appears to be little in the way of any confirmed detail regarding the form, function and operation of The Esplanade in relation to the [Cross Valley Connections Link], the stated intents are to:

- (a) reduce its traffic demands, (predominantly by shifting east-west traffic demands to the [Cross Valley Connections Link]);*
- (b) increase its priority for buses (predominantly by way of bus lane extensions); and*
- (c) enhance its operational safety (predominantly by way of a reduced speed limit). 7.5 At this stage, timing is uncertain as work has yet to be undertaken to confirm the feasibility and design of both the [Cross Valley Connections Link] and Petone Granada Road projects."*

- 6.21 Since the time of filing Mr Harries' evidence, there does not appear to have been any further developments in regard to the Cross Valley Connection link.

Esplanade Optimisation Plan

- 6.22 The Esplanade Corridor Optimisation Study referred to by Hutt Cycle Network is a study by Jacobs New Zealand Limited, the purpose of which was to:¹⁴

"...better understand the transport problems on the corridor and develop a programme of works to address these issues. This included using evidence based data to inform the development of a range of high level treatment options for optimising The Esplanade Corridor before any major transport infrastructure (such as the Cross Valley Link) is constructed in the vicinity."

- 6.23 Beyond that, the provenance of this document is unknown – what is clear, however, is that it has not a document that has HCC's imprimatur via RMA or LGA processes.
- 6.24 Petone 2040, the Cross Valley Connections and the Esplanade Optimisation Study are non-statutory documents that set out a particular, potential future outcome for Petone / The Esplanade, based on a specific scope of study. These are not binding documents. It is therefore submitted that these documents cannot be considered as reflective of the future environment in terms of the dicta in *Hawthorn* and, in that context, can be accorded little legal weight.
- 6.25 Having said that, to the extent that they express a vision for Petone / The Esplanade that provides some insight as to the community's aspirations for the area, the Panel is entitled to consider those documents under section 104(1)(c) of the RMA, assigning such weight as is considered appropriate. It will be worth considering whether these documents envisage a bright,

¹⁴ Jacobs New Zealand Limited *The Esplanade Corridor Optimisation Study* (6 August 2021), at p 6.

vibrant future for The Esplanade or have an aspiration to wrap the area in tissue paper as most submitters seem wont to do.

Te Ara Tupua

- 6.26 As regards the 'Te Ara Tupua - Ngā Ūranga ki Pito-One', this project has been granted consent and is underway. It can therefore be considered to form part of the existing environment.
- 6.27 In that regard, it is submitted that the 'existing environment' that the Te Ara Tupua denotes is one where vehicle volumes are reduced due to the introduction of this shared path.
- 6.28 This is reflective of a possible future where the adverse effects of the Proposed DBBs on traffic safety, including in respect of vulnerable road users such as pedestrians and cyclists, is even less than it currently is, given the anticipated reduction in vehicles.

Weight to be given to HCC reports

- 6.29 The Panel queried the level of weight that should be given to the reports of Messrs Upton and Wanty, given that they were not present at the hearing, nor did they produce evidence.
- 6.30 To assist, we refer to the Supreme Court's findings in *Ian Croad Autos Ltd v Retail Motor Trade Association Inc*¹⁵ in which the Court noted:¹⁶

"But s 30 does not entitle the Appeal Authority to take into account documentary material without giving other parties to the inquiry the opportunity to comment on it at the hearing. If the wide construction placed upon s 30 by the Appeal Authority is correct, he would be entitled to have regard to any material which might come to his knowledge without giving a party to a public hearing the opportunity for comment on that matter."

- 6.31 It is submitted that the reports of Messrs Upton and Wanty should be given minimal weight. While Mr Thornton commented that these reports informed Ms McRae and Messrs Coolen and Benner's assessments, these reports were not produced as evidence and therefore the Panel were not afforded the opportunity to discuss the findings with their respective authors.
- 6.32 Further, these reports have effectively been superseded by changes to the proposal and by the more recent evidence provided by Ms McRae and Messrs Coolen and Benner. It is therefore submitted that little to no weight should be given to the reports of Messrs Wanty and Upton.

7. TRAFFIC SAFETY

Brett Harries' qualifications re 'human factors'

- 7.1 As part of his submission Mr Matcham, on behalf of Grey Power, questioned whether Mr Harries had the appropriate qualifications to address the 'human factors' element of road safety.
- 7.2 We refer to Mr Harries' evidence in chief, whereby he describes his experience as it related to 'human factors' associated with driver behaviour:

15 [1979] 2 NZLR 80

16 At [86].

"1.6 *As part of this broader experience, I have gained significant experience and expertise in human factors associated with driver behaviour, and the safety-related driver responses to various traffic environments. Much of this expertise has been obtained through my involvement as an expert vehicle crash analyst. I have qualifications in vehicle crash analysis from Northwestern University in Chicago and am one of a small handful of professional engineers in New Zealand that, through qualifications and experience, has been accepted as an expert vehicle crash analyst in the High Court of New Zealand.*

1.7 *I describe this background in crash analysis because it is directly relevant to the assessments I routinely undertake in relation to the driver behavioural and performance responses to potential visual stimuli that make up the traffic environment, including those that are directly related to the driving task (for example, traffic control devices, other road users, road layout, etc.), and those which form parts of the fabric of the wider driving environment (such as surrounding activities, people, scenery, buildings, and of course advertising signs and billboards)."*

- 7.3 It is submitted that Mr Harries has the appropriate credentials to address the 'human factors' element of road safety. It is further submitted that neither the Council nor any submitters provided evidence from a suitability qualified 'human factors' expert. In the absence of any other evidence, it is submitted that Mr Harries' evidence in that regard should be afforded significant weight.

8 second dwell time

- 7.4 The basis for Mr Harries recommendation of an eight second dwell time has been traversed in detail, both in Mr Harries' evidence and during the hearing. As such, we do not propose to address this matter further, suffice to note that Mr Harries has provided 10 examples within the Wellington Region of digital billboards with eight second dwell times. The most notable of these examples is the digital billboard at 4 Hutt Road, just "down the road" from the Site.

Precautionary approach

- 7.5 During the hearing, Commissioner Jones queried whether there was any policy guidance or traffic safety documentation that provided objective guidance about when one might apply the precautionary approach. On this, Mr Benner commented that his assessment of dwell time tied back to the Waka Kotahi 'Vision Zero' guidance.
- 7.6 It is submitted that, through his reliance of Vision Zero as a guiding document, Mr Benner's approach to assessing the risk associated with an eight second dwell time is incompatible with that required by the RMA. Mr Benner has not taken a precautionary approach; he has taken a "no-risk" approach.
- 7.7 Vision Zero, as forming part of the wider Waka Kotahi Road to Zero vision, is a 'no risk' strategy. Road to Zero takes a baseline approach of 'Zero DSIs' (being, Deaths and Serious Injuries) which results in an opposition to anything that could present any level of risk (even acceptable levels of risk) and could stop Waka Kotahi reaching its goal of zero DSIs. The reality is that the only way to get to zero DSIs is for a no-risk approach to be taken. If a

"mitigating risk" approach was taken – zero DSIs would not be the goal, the goal would be a "reduction" or even a "significant reduction" in DSIs. Therefore, the fact that Waka Kotahi's aim is zero DSIs axiomatically means that they are taking a 'no-risk' approach.

7.8 The fact that Mr Benner has taken a 'no-risk' approach is further supported by the fact that, in response to the Panel's query as to whether the precautionary approach taken by Mr Benner was "too precautionary", Mr Thornton acknowledged that even though the severity of crashes will be low given the low speed, per Mr Benner's advice, that the risk of nose to tail increases with more distraction. Given this, Mr Thornton comment that you "still don't want to see any crashes, so a precautionary approach is taken" (our emphasis).

7.9 In terms of the RMA, the law is clear. The RMA is not a "no-risk" statute. In *Land Air Water Assn v Waikato Regional Council*¹⁷, the Environment Court stated:

"Since life cannot be made completely safe for anybody, a no-risk approach is (logically) impossible. There is also authority that the RMA is not a "no-risk" statute and therefore it is not the role of this Court to ensure that Telecom's cell site can operate with absolute safe[t]y."

7.10 The Court went on to say:¹⁸

"The measure of risk and its assessment and the acceptable degree of risk avoidance are matters of fact, in each particular case. The Court is required to exercise its discretion in the circumstances of each case. Such circumstances include:

- (i) Evidence of adverse effects or risk to the environment, rather than mere suspicion or innuendo;*
- (ii) The gravity of the effects, regardless of scientific uncertainty, if they do occur;*
- (iii) Uncertainty or ignorance regarding the extent, nature, or scope of potential environmental harm;*
- (iv) The effects on the environment - whether they are serious or irreversible;*
- (v) Recognition that the Act does not endorse a "no-risk" regime;*
- (v) The impact on otherwise permitted activities."*

(Emphasis ours.)

7.11 As such, the basis for Mr Benners position that 30 seconds is an appropriate dwell time is incompatible with the RMA. Further, Mr Benner's recommendation appears to be founded on an arbitrarily chosen number, based on the assumption that at 50km/h a driver would see one – two images, therefore at 25km/h this would double to 2- 4 images. Mr Benner

17 *Land Air Water Association v Waikato Regional Council* EnvC A110/01 at [517]; citing *Shirley Primary School v Telecom Mobile*; citing *Aqua Marine Limited v Southland Regional Council*.

18 *Land Air Water Association v Waikato Regional Council* EnvC A110/01 at [519].

then conceded that he had taken an “overly cautious” approach and “chose” 30 seconds as the appropriate dwell time.

- 7.12 We also note that submitters have relied on materials provided by Waka Kotahi, such as the “Safe System for Walking” guidance, which is described as:¹⁹

“Road to Zero 2020–2030, New Zealand’s road safety strategy, adopts Vision Zero and is guided by the Safe System approach. The strategy tells us what New Zealand needs to do to make improvements in road safety. It sets us on a path to achieve Vision Zero, a New Zealand where no one is killed or seriously injured on our roads; where everyone, no matter their age or ability can get around safely; and a road system that improves people’s health and well-being, and the places and spaces we love. Enabling people to walk safely is a key part of achieving this strategy and ensuring walking is a key element of a balanced transport system.”

- 7.13 The submitters have therefore relied on the same “no-risk” approach that has guided the Council when making their assertion in relation to traffic safety effects.
- 7.14 It is therefore submitted that Mr Benner has taken a flawed approach to determining his recommended dwell time for the Proposed DBBs. The Council’s recommendation of a 30 second dwell time not only reflects a “no-risk” approach to dwell time is incompatible with the RMA, but is based on ad hoc calculations that are unsubstantiated by evidence, resulting in an inappropriately inflated dwell time that vastly exceeds what is required to achieve appropriate traffic safety outcomes.
- 7.15 As addressed in the hearing, Mr Harries conclusion that eight second dwell times is supported by 12 years of experience with digital billboard operating with eight second dwell times with no adverse effects on traffic safety. It is therefore submitted that the Panel can be confident that an eight second dwell time is appropriate.

CAS database and underreporting

- 7.16 A concern raised by Hutt Cycle Network and Grey Power was the reliability of the Waka Kotahi CAS database, instead suggesting that it was more appropriate for Ministry of Health (“MoH”) data to be relied upon when attempting to ascertain whether digital billboards were resulting in accidents.
- 7.17 On this, Mr Harries made the following comments:
- (a) The Waka Kotahi CAS database is “generally envied” by other jurisdictions of the basis that it:
 - (a) *provides a fully coordinated national database of recorded crashes;*
 - (b) *captures a high proportion of all crashes that are thought to occur; and*

19 Waka Kotahi ‘A Safe System for Walking’ <https://www.nzta.govt.nz/walking-cycling-and-public-transport/walking/walking-standards-and-guidelines/pedestrian-network-guidance/walking-in-new-zealand/a-safe-system-for-walking/>.

- (c) captures a high level of detail and enables close interrogation and cross-referencing of crash factors and likely crash causes.

- 7.18 Mr Harries acknowledges certain instances whereby crashes may not be included in the CAS database and the potential reasons for the asserted discrepancies between the CAS database and the MoH data.
- 7.19 Ultimately, however, Mr Harries confirms that he recognises and compensates for potential under reporting within the CAS database in each of his traffic assessments and concludes:

"For these reasons, I certainly do not consider that there is some under-lying deficiency with the CAS database that would undermine the veracity of the road safety analyses that I have described in my EIC. Indeed, it is instead widely considered a particularly powerful and useful tool that is routinely applied by Waka Kotahi, all local authorities, and all transportation consultants in New Zealand on essentially every sort of development project and roading project in New Zealand."

Vulnerable road users - Cyclists

- 7.20 The thrust of the Hutt Cycle Network evidence presented was that The Esplanade is a hostile traffic environment and that a small lapse of concentration – referenced by 1:100,000 cycle movements – would result in one fatality per year. Hutt Cycle Network's position was that the introduction of the Proposed DBBs can only make matters worse.
- 7.21 The Panel sought clarification from Mr Harries that digital billboards have no impact on cyclist's safety. Mr Harries indicated that commuter cyclists like to be on the road and that research looks at driver performance from a number of perspectives, e.g., ability for the driver to stay in his lane, etc. It was found when a digital billboard is in existence there may be small effects, but the differences are so negligible that the difference was, in reality, imperceptible. Mr Harries considered that it is unlikely that a driver would look at a digital billboard for so long as to put cyclists at risk.
- 7.22 Mr Harries has addressed the issue of cyclist safety along The Esplanade again in section 6 of his supplementary evidence. We do not propose to repeat this in detail here; suffice to note that Mr Harries maintains his position that:
- (a) Traffic lanes on The Esplanade are currently adequate to accommodate vehicles and cyclists.
 - (b) Current road cyclist safety performance for The Esplanade near the Site is good, demonstrated by the absence of any recorded crashes over the past decade.
 - (c) While the submitters may not "like" the shared pathway, it provides a safe, appropriate alternative to riding on the road.
 - (d) There is anticipated to be a further reduction in vehicle volumes with projects like the Cross Valley Connections Link being implemented.
 - (e) 12 years of digital billboard operations have not resulted in any recorded cyclist related crash being attributed to their operation.

Perceived risk

- 7.23 The issue of 'perceived risk' was raised by Hutt Cycle Network, who was concerned that the 'perception' of risk deters individuals from active modes, and that the addition of the Proposed DBBs would further exacerbate this perception of risk.
- 7.24 It is submitted that local perceptions of risk are not themselves effects on the environment for the purpose of assessing a proposal. On this, we refer to the Environment Court's decision *Contact Energy Limited v Waikato Regional Council* in which the Court commented that:²⁰

"Parliament has provided for resource consent appeals to be decided by the Environment Court, which is a judicial body, a court of record. It would not be consistent with those provisions for the outcome of appeals to be influenced by the number of people who express opposition to a proposal, or who perceive themselves to be at risk or concerned about the possible adverse effects. Because the Court has the same duty in respect of a decision appealed against as the primary decision-maker." It acts on its findings based on evidence of probative value in having regard to the matters directed by section 104 and making the discretionary judgment to grant or refuse consent conferred by section 105 for best achieving the purpose of the Act defined in section 5. There is ample scope in that process for the Court's decision to be influenced by adverse effects on the environment which are shown on evidence to be well founded. However there is no place in that process for the Court to be influenced by mere perceptions of risk which are not shown to be well founded.

(Emphasis ours.)

- 7.25 Both SHP and the Council's traffic experts agree that the adverse effects of the Proposed DBBs on vulnerable road users, such as cyclists, will be low. Further, both (relevant) empirically based research and "on the ground" data of digital billboard operations, clearly demonstrate that there are no identifiable traffic safety risks attributable to digital billboards. As such, it is submitted that, while the submitters concerns about perceived risk may be genuine, these risks are not well-founded. Rather, as described by Mr Harries, they are based on "perception alone". It is therefore not appropriate for the Panel to include these perceptions of risk as part of its assessment of potential adverse effects associated with the Proposed DBBs.

Policy 57 of the Greater Wellington Regional Policy Statement

- 7.26 Hutt Cycle Network commented that the inclusion of the Proposed DBBs would be contrary to Policy 57 of the Greater Wellington Regional Policy Statement, which states:

"57: When considering an application for a resource consent ... for subdivision, use or development, particular regard shall be given to the following matters, in making progress towards achieving the key outcomes of the Wellington Regional Land Transport Strategy:

...

20 *Contact Energy Ltd v Waikato RC* (2000) 6 ELRNZ 1 (EnvC) at [254].

(d) *provision of safe and attractive environments for walking and cycling;*"

- 7.27 The key concerns appeared to be that while The Esplanade is a hostile road environment for cyclists, the shared cycle path already present along The Esplanade is not an attractive option. As a result, cyclists choose to ride on the road, despite its alleged hostility, and that the establishment of the Proposed DBBs would put those cyclists who choose to ride at risk.
- 7.28 Hutt Cycle Network provided extracts to the decision in *Re New Zealand Transport Agency*²¹. The case concerned the decisions of the Environment Court in respect of an application for resource consents and Notices of Requirement sought by HCC, Wellington Regional Council, New Zealand Transport Agency, Kiwi Rail for the "Riverlink project", which comprised a vast array of works, including (but not limited to):
- (a) Works reshaping the Hutt River.
 - (b) Works on various local roads.
 - (c) A cycling and pedestrian network.
 - (d) Relocation of network utilities.
 - (e) Earthworks and vegetation removal.
- 7.29 It is submitted that Policy 57, the Wellington Regional Land Transport Strategy and the *Riverlink* decision are primarily focused on the development of new road networks and active mode networks themselves. That said, it is acknowledged that whether a cycleway is "safe and attractive" can encompass consideration of other factors, such as external risks.
- 7.30 There is agreement between the Council and Applicant's experts that the Proposed DBBs will not generate unacceptable traffic safety effects on either vehicle users or vulnerable road users (including cyclists). In fact, on the only point of "disagreement" (for lack of a better term), being the dwell time, HCC accepted that the adverse effects would be acceptable and conceded that they had taken an "overly cautious approach" to dwell time.
- 7.31 Ultimately, the fact remains that there is an adequate shared cycle path along The Esplanade that removes the need for cyclists to cycle along the road. The fact that certain cyclists do not find the cycleway to be an "attractive option" does not alter the fact that it is a safer, alternative means to travelling along The Esplanade that removes the risk of death or injury by virtue of colliding with a vehicle.
- 7.32 Going further, even if cyclists, despite the presence of the cycleway, choose to cycle on the road, as evidenced by Messrs Harries and Benner, the digital billboard will not generate any unacceptable risks to those cyclists.

Consideration of relevant research

- 7.33 There were assertions by submitters that Mr Harries has, in effect, cherry picked the evidence he has relied upon in forming his opinion on the acceptability of the traffic safety effects. Further assertions were made the Mr Harries has "ignored" the research relied on by Waka Kotahi in the *Prime Property* case, resulting in an "unbalanced" assessment of relevant research.

21 [2022] NZEnvC 161.

- 7.34 Mr Harries is a well-respected traffic engineer and, in our submission, one of the leading traffic engineers in regard to digital billboards. We therefore take exception to assertions that Mr Harries has not been “balanced” in his review of international research on the effects of digital billboards on traffic safety.
- 7.35 As the traffic engineer engaged by the Applicant in the *Prime Property* case, Mr Harries has confirmed he is familiar with the research provided by Waka Kotahi and has considered it when determining what research is relevant to his assessment.
- 7.36 Further, Mr Harries has provided a detailed overview of his approach to determining what research is relevant in section 3 of his evidence in chief and again in his supplementary evidence. It is submitted that the Panel can be confident, given Mr Harries’ vast experience with digital billboards, and the comprehensive “selection process” detailed in his evidence, that Mr Harries has taken a balanced approach to his review of international research.

Wachtel report

- 7.37 The Panel referred to research undertaken by Jerry Wachtel, querying its relevance to the current proposal. We refer to Mr Harries’ supplementary evidence which discusses Mr Wachtel’s research and concludes that Mr Wachtel’s compendium of research is of limited relevance to the current proposal, to the extent that they:²²

- "(a) *infer road safety effects, primarily on the basis of glance durations, without real world validation of those effects; and/or*
- (b) are not applicable to digital billboards located in the sort of traffic environment that is proposed in this case (i.e. low-speed non-motorway / non-freeway); and/or*
- (c) are not applicable to the manner in which the proposed billboards will operate (i.e. with images static while being displayed; 0.5 second cross-dissolve transitions; and controlled and managed luminance)."*

8. LIGHTING

Brightness

- 8.1 The brightness of the Proposed DBBs is an issue raised by both HCC and several submitters, including Ms Buick and Mr Boyer, who presented at the hearing. On this issue, Mr Kern advised that while the nighttime luminance limit initially proposed by the Applicant was 250cd/m², the reality was that the actual luminance level would be well below this limit. Mr Kern advised that this limit is generally provided to account for the ‘dusk / dawn period’ where there is a change in ambient lighting. Mr Kern referred to the digital billboard in Waione Street as an example, whereby he measured the luminance value of this digital billboard at night, which was 111cd/m².
- 8.2 Mr Kern agreed that a digital billboard with a luminance value of 250cd/m² at nighttime would be too bright. He therefore confirmed he was comfortable with reducing the nighttime luminance limit from 250cd/m² to 125cd/m².

22 Supplementary evidence of Brett Harries dated 10 July 2024, at [3.8].

Condition 28 of the revised conditions filed with the Panel has been amended to reflect this.

Technical discussion

- 8.3 There was a lengthy technical conversation between Mr Kern and the Panel. The topics discussed included:
- (a) The use of LEDs in the Proposed DBBs and the comparative “brightness” of other appliances that use LEDs.
 - (b) Calibration of the ambient light sensors, which Mr Kern indicated should be by reference to the maximum brightness, rather than the average, which is the approach taken in the AS/NZD standards.
 - (c) Light spill associated with the Proposed DBBs and other light sources in the area.
 - (d) Impacts of other light, including artificial light, on the ambient light sensor of the Proposed DBBs.
- 8.4 We do not propose to repeat this discussion here as we consider Mr Kern has provided sufficient information in respect of the technical issues raised. Further, in the absence of any evidence from the Council or any other submitters in terms of lighting effects, the Panel should give full weight to Mr Kern’s evidence.

9. URBAN AND NATURAL CHARACTER AND VISUAL AMENITY

Effect of amendment to the proposal

- 9.1 As previously addressed, the size of the Proposed DBBs screens was a key concern for both the Council and many submitters. As a result, notwithstanding SHP’s position that the original sizing was acceptable from an effects perspective, SHP as confirmed it is willing to reduce the size of the Proposed DBBs screen to 6m (h) x 3m (w), resulting in a total screen area of 18m² for each screen.
- 9.2 It is submitted that with this revision, the Proposed DBBs now fall below the permitted standard 14B 2.1.5(c)(iii), which requires a maximum area of 20m² for each screen.
- 9.3 Per our discussion above, while controlled activities cannot be treated as a permitted baseline, they do provide a strong planning signal as to what is appropriate in the area.
- 9.4 As such, it is submitted that a digital billboard with a screen area of less than 20m² can be seen as appropriate or anticipated within the Site and surrounding environment.
- 9.5 It is also submitted that a reduction in the area of the Proposed DBBs screens results in a corresponding reduction in the overall effects generated by the Proposed DBBs. Mr Knott has confirmed that the urban and visual effects generated by the Proposed DBBs would be lessened by this reduction of screen size. As a result, the concerns raised by Council in terms of the effects of the size of the Proposed DBBs screens on the natural and urban character and visual amenity must be considered in light of this proposed revision.

Urban character v natural character of The Esplanade

- 9.6 In terms of the natural character of The Esplanade, there was agreement between Ms McRae, and Messrs Coolen and Knott that there was a distinct separation between the coastal environment / natural character on one side of The Esplanade and the urban character on the other. They do not come together as a single place and are quite distinctive.
- 9.7 It was also agreed that the natural character was limited to the foreshore side of The Esplanade, ending at the road corridor. The Panel queried the sensitivity of the environment's amenity values to change. Ms McRae responded that the built environment has a low sensitivity to change and the foreshore side had a moderate sensitivity.
- 9.8 In terms of the urban character, Mr Coolen described the character along The Esplanade as:
- (a) At the eastern end of The Esplanade the environment was predominantly coastal environment on the foreshore side and on the urban side, the built environment was lower in density.
 - (b) At the western end, the density of the built development increases and urban element is much more noticeable. Mr Coolen described this area as "almost feels like an industrial area" and that the advertising at this end is "louder."
- 9.9 The Panel made several queries to Knott, Coolen and McRae about their opinions on what constitutes the natural and/or urban character of The Esplanade area and the impact of the Proposed DBBs on those areas. We do not propose to repeat this discussion in detail – suffice to note that:
- (a) Mr Knott considered that if there was a conflict between values on either side of The Esplanade that would have been addressed via HCDP given the quite substantial development on urban side of The Esplanade.
 - (b) Ms McRae acknowledged that the natural character of the area was not high at any point - that Area A has low natural character values with Areas B – C having higher values than Area A, but still not high.
 - (c) Further, in response to the Panel's query as to whether the installation of the Proposed DBBs would change the overall character of the area from low/moderate value to low, or would it remain the same, Ms McRae stated that the Proposed DBBs would probably not alter the overall character of the area as a whole, rather maybe just a small part of it, at both daytime and nighttime.
 - (d) Mr Coolen advised that his urban character assessment predominantly concerned Areas B and C and accepted that the further away from the Proposed DBBs, the less the effects of the Proposed DBBs on the urban character there would be.
- 9.10 Ultimately, it is submitted that there is a general acceptance that the Proposed DBBs would be installed in the distinctly urban part of The Esplanade and, in any event, The Esplanade was an environment with, at best, moderate natural character. Per Mr Knott's evidence, and particularly given the reduction in the overall size of the proposed Proposed DBBs, the Panel can be confident that the Proposed DBBs will not generate unacceptable effects on the natural or urban character of The Esplanade.

Scope of assessment

- 9.11 Ms McRae stated at the hearing that the scope of her evidence was largely focused on peer reviewing Mr Knott's night-time assessment on natural character effects. Notwithstanding this, when the Panel asked whether Ms McRae had turned her mind to the assessment of effect on day-time comparative to nighttime, Ms McRae responded that effects on natural character at daytime will be the same/similar as nighttime. It is submitted that the assessment undertaken by Ms McRae does not provide sufficient justification for this conclusion.
- 9.12 As such, given Mr Knott is the sole expert whose natural character assessment included proper consideration of the effect of the digital billboard during the daytime, it is submitted that it is appropriate for Mr Knott's evidence to be given greater weight in this regard.

10. NATIONAL AND REGIONAL PLANNING INSTRUMENTS

- 10.1 The Applicant's position on the relevance of the following national and regional planning instruments has been outlined in the table prepared in response to Minute 3. As such the following section only proposes to address policies where further commentary is considered necessary.

NZCPS

Policy 1

- 10.2 In light of the Council's position that the proposal was inconsistent with Policy, the Panel queried whether Policy 1 of the New Zealand Coastal Policy Statement ("NZCPS"), which provided details what might be included in the 'coastal environment', was a directive or descriptive. Mr Firth advised that he considered it to be descriptive, namely that it was a guide, in order to assist decision makers in determining what might be 'coastal environment' within their district.
- 10.3 As a result, Mr Firth considered that proposal is 'neutral', being neither consistent nor inconsistent with Policy 1. After some discussion, the HCC team appear to accept this as well.

Policy 14

Policy 14 of the NZCPS concerns the restoration of the coastal environment. the Panel queried how this policy could be applied in the current environment, to which McRae responded that restoration could occur through planting of vegetation already found within the environment. Ms McRae did, however, acknowledge that it would be difficult to restore the natural landforms, given the presence of The Esplanade road corridor.

Along this line of question, the Panel further queried whether the drafting of Policy 14 was intended to encourage restoration rather than restrict / discourage development that does not restore. Ms McRae commented that the drafting suggested it was intended to be read as encouraging restoration, rather than restricting development that did not actively restore the coastal environment.

Policy 13 and 15

- 10.4 Upon questioning by the Panel, Ms McRae agreed that, in terms of Policies 13 and 15 of the NZCPS, The Esplanade did not have "outstanding natural character" nor would the Proposed DBBs generate "significant adverse effects". Given this, for consistency with these policies, it was necessary for

development “avoid, remedy or mitigate other adverse effects of activities” on natural character, natural features and natural landscapes the coastal environment.

- 10.5 In *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, the NZCPS avoidance policies have a directive character.²³ The Supreme Court said that the term “avoid”, as used in the NZCPS, has its ordinary meaning of “not allow” or “prevent the occurrence of”, meaning that the policies at issue in that appeal provided “something in the nature of a bottom line”.²⁴ The Court went on to note that: ²⁵

“...what was to be avoided with regard to those policies was, in that case, the adverse effects on natural character and that prohibition of minor or transitory effects would not likely be necessary to preserve the natural character of coastal environments.”

- 10.6 In *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board*²⁶, the Supreme Court said the standard was protection from material harm, which can include temporary harm.²⁷ The *Trans-Tasman* case made clear that the concepts of mitigation and remedy may serve to meet the “avoid” standard by bringing the level of harm down so that material harm is avoided.²⁸

- 10.7 The Court in *Trans-Tasman* went on to say that decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean:²⁹

- “(i) material harm will be avoided;*
- (ii) any harm will be mitigated so that the harm is no longer material; or*
- (iii) any harm will be remedied within a reasonable timeframe so that, taking into account the whole period harm subsists, overall the harm is not material ... ”*

- 10.8 The Court also referenced *Sustain Our Sounds Inc v The New Zealand King Salmon Co Ltd*³⁰ in that “adaptive management may also have a role to play, again if the effect is to avoid material harm”.³¹ The Court held that before considering an adaptive management regime, there must first be an adequate evidential foundation to assure that it will achieve the goals of “sufficiently reducing uncertainty and adequately managing any remaining risk”. Provided that threshold is met, the overall question is then whether any adaptive management regime can be considered consistent with a precautionary approach. This depends on:

“...an assessment of a combination of factors:

23 At [64].
24 *King Salmon* at [132].
25 *King Salmon* at [145].
26 [2021] NZSC 127.
27 *Trans-Tasman* at [252].
28 *Port Otago* at [65].
29 *Trans-Tasman* at [261].
30 [2014] NZSC 40.
31 *Sustain Our Sounds* at [125].

- (a) *the extent of the environmental risk (including the gravity of the consequences if the risk is realised);*
- (b) *the importance of the activity (which could in some circumstances be an activity it is hoped will protect the environment);*
- (c) *the degree of uncertainty; and*
- (d) *the extent to which an adaptive management approach will sufficiently diminish the risk and the uncertainty."*

10.9 In the most recent Supreme Court decision, *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112, the Court considered each of the preceding cases and, in light of these cases, concluded:

[68] All of the above means that the avoidance policies in the NZCPS must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any development, whether measures can be put in place to avoid material harm to those values and areas.

(Emphasis ours).

10.10 It is submitted that the evidence of Mr Knott clearly demonstrates that the inclusion of the Proposed DBBs will not result in "material harm" to the natural character values of the area. Further, SHP has proposed a number of mitigation measures, such as lighting controls and community and iwi messaging to mitigate or remedy any potential adverse effects on natural character.

NPS-UD

10.11 The Panel asked Messrs Firth and Thornton about whether they considered the NPS-UD to be relevant. During the course of the hearing, it was agreed by both planners that the NPS-UD is not relevant.

11. PROPOSED CONDITIONS

11.1 The Applicant has reviewed the proposed consent conditions circulated as part of Mr Firth's evidence in light of the various comments raised by the Panel, the Council and the submitters.

11.2 Per the Panel's request, SHP engaged with HCC in order to reach agreement (to the extent possible) on a set of consent conditions, in the event that consent is granted. A table setting out the conditions that were subject to between SHP and Council, and any resulting amendment has been included as **Attachment B** of these submissions.

11.3 In addition to the conditions already addressed as part of this Reply, the following substantive amendments have been made to the conditions:

- (a) *Condition 1:* has been amended to reflect only one orientation of the Proposed DBBs (and to refer to the revised plans). Council was not asked to comment on this given this condition solely provides amendments to the titles of the relevant application document.
- (b) *Conditions 4 and 5:* Similar to Condition 1, these conditions have been updated to ensure they only reflect one Proposed DBBs

orientation and amended to reflect the reduction in the portrait Proposed DBBs screen area.

- (c) *Condition 8:* Council accepted SHPs removed of the reference to 'filament', given that LEDs do not contain filaments, making this reference redundant.
- (d) *Condition 11 and 14:* SHP accepted Council request that the duplication between conditions 11 and 14 be address through the deletion of condition 11 and the retention of Condition 14 as put forward at the hearing.
- (e) *Condition 14 Advice Note:* SHP has accepted the following addition proposed by Mr Thornton (with further edits for readability purposes):

Advice note:

- *For the avoidance of doubt:*
 - *'Secondary message' means standard text that is lower priority to the main message and provides supporting information for the primary message.*
 - *The minimum letter height only applies to standard text for primary and secondary messages. Legally required text such as disclaimers or terms and conditions and text within images are excluded from meeting this requirement where there is no more than one (1) line of text.*

- (f) Conditions 15 – 27 have been addressed in the sections 2 and 3 above.
- (g) *Condition 31:* Mr Thornton recommended that:
 - (i) The Traffic Safety Reports be require to include an examination of "any relevant data", including the CAS database, rather limit this examination solely to data provided by the CAS database. Further to this, Mr Thornton recommended that the "assessment area" against which data from the CAS database is to be examined be increased from 100m to 200m. Mr Harries did not have any concerns with these recommendations and it has therefore been accepted.
 - (ii) As part of the examination of "any relevant data", that this should specifically include "Ministry of Health data where there may be an under reporting of crash severity with respect to vulnerable road users in particular". Mr Harries has advised that this requirement is onerous and unnecessary. Mr Harries considers that it is unlikely that the MoH data would provide useful guidance as to whether the injuries identified in the MoH data are attributable to digital billboard as MoH data tends to identify trends in injuries, rather than provide specific detail on factors attributable to that injury. In any event, the ability to review MoH data, should it be relevant,

is encompassed by the inclusion of “any relevant data” described immediately above. This recommendation has therefore been rejected.

- (iii) The specific reference to CAS cause factor 356 “attention diverted by advertising or signs” be removed. Mr Harries did not have any concerns with this recommendation as the condition as initially drafted already requires an analysis of “all recorded data”. This recommendation has therefore been accepted and the reference to cause factor 356 removed.
 - (h) Conditions 30 – 33: These conditions have restructured for readability purposes. The substance of the conditions remains the same as previously proposed.
- 11.4 Per Mr Thornton’s recommendation, the condition proposed by SHP concerning the payment of actual and reasonable costs associated with monitoring of conditions has been removed (formerly Condition 23).
 - 11.5 A number of minor typographical amendments have also been made which we do not propose to discuss in detail.
 - 11.6 Finally, Mr Thornton recommended that former Condition 9, which required the digital billboard to be turned off between dusk and dawn be retained. This has been rejected by SHP and Mr Thornton has accepted that the parties will “agree to disagree” on the appropriateness of this condition.
 - 11.7 A full, updated set of conditions were filed on Friday, 5 July 2024. Both a ‘clean’ version and a ‘tracked’ version, which sets out amendments made to the conditions subsequent to the hearing, have been provided. While it was generally accepted that the ‘portrait’ option of the Proposed DBBs was the preferred option and the option to be considered by the Panel, for completeness, a set of conditions for both the portrait and landscape options have been provided.
- 12. **CONCLUDING REMARKS - CONTEXT IS EVERYTHING AND HOW OBJECTIVE REALITY NEEDS TO BE PREFERRED TO SUBJECTIVE PERCEPTIONS AND FEARS**
 - 12.1 A consistent theme that ran through the hearing of the Proposed DBBs application was that “context is everything” – and we submit that this is a sound starting point for the Panel’s overall consideration of the SHP application, along with bearing front of mind the importance of identifying a realistic context supported by probative evidence rather than perceptions of fears or effects, to the extent that they cannot.
 - 12.2 The thing is, the Panel is confronted by two different ‘contexts’.
- The submitters’ and HCC ‘context’**
- 12.3 The context perceived by submitters is that the area of The Esplanade in which the Proposed DBBs would be established displays a set of qualities and characteristics relating to its proximity to the coastal edge that are so sensitive to change and important that they must be preserved, and that the Proposed DBBs would utterly compromise the amenities of the area, particularly at nighttime.
 - 12.4 Another aspect of the submitters’ context was the perceived fear of adverse traffic safety effects for motorists and vulnerable road users and the perception that these traffic safety issues that the Proposed DBBs would exacerbate them. (This is not supported by SHP or HCC experts and Mr

Harries places into context the criticisms made of his analysis in his supplementary evidence.)

- 12.5 The context perceived by Council experts (apart from in relation to traffic) reflects that of the submitters although they have sought to support their position via the expert analysis.

Seaview HP's 'context'

- 12.6 The context that SHP perceives, supported by the evidence of its highly qualified experts, is quite different and, in our respectful submission better reflects reality than perceptions and preconceived ideas. We make the following brief comments in that regard.
- 12.7 The part of The Esplanade in which the Proposed DBBs would be located does not display the characteristics and values (particularly in terms of natural coastal character) claimed by submitters and that many of the issues raised by submitters involves issues of perception rather than reality that is not supportable by probative evidence.
- 12.8 Rather, SHP's perception of context, which in our submission also reflects the reality 'on the ground' is that the area reflects a distinctly utilitarian commercial/industrial character containing a significant amount of signage and which is well lit at night. The Site itself was previously a mill and timber yard, then an NZ Post distribution centre and now a very large Bunnings warehouse. It is dominated by large buildings. Replacement buildings could be built up to the front boundary with signage and lighting. For the reasons outlined earlier, that does not represent strict permitted baseline due to the need for consent but does provide the Panel with guidance as to what the HCDP contemplates and could occur if HCC achieves its objective of attracting restaurants, etc., to the area.
- 12.9 We found the very useful the Panel's technique of viewing The Esplanade in cross-section, with the Petone foreshore on the one side displaying some level of natural character, but with the built area on the other side of The Esplanade displaying a commercial/industrial character where any semblance of natural character is absent.
- 12.10 We submit in this context that the characterisation of the area as some kind of romantic oasis in which people gather in the evening to contemplate nature are overstated and that, in any event, if they do indeed visit the area for that purpose they would be focused on the sea and the beach rather than attempting to achieve glimpsed views of the Proposed DBBs.
- 12.11 Ms McRae had indicated in her evidence that, overall, the existing natural character of the area is "low to moderate". When asked by the Chairman whether, if the Proposed DBBs were installed, the "low to moderate" rating would reduce to low, Ms McRae appropriately conceded that it would "probably not alter the overall character of the area as a whole – may be just a small part of it". We submit that this acknowledgement is very important.
- 12.12 Despite that, in response to a question from Commissioner Devereux, Ms McRae indicated that "no digital billboard of any scale or luminance would be acceptable". With respect, this reflects a fixed view that needs to be considered in weighing her evidence against that of Mr Knott.
- 12.13 SHP's position is that the 'context' must also include what is contemplated for the future (and what the impediments to achieving those goals might be).

- 12.14 The Site is within the Petone Commercial Area – Activity Area 2 (Mixed Use) zone, an area in which the objectives and policies of the HCDP envisage (particularly via the Design Guide introduced into the HCDP by PC29, Vision 2027 and Petone 2040), a transition to a more vibrant, less motor-oriented area with greater life and vibrancy, involving the development of restaurants and cafes, etc. SHP's position is that the Proposed DBBs is entirely consistent with the other activities which would be expected in a Mixed-Use zone and may even act as a catalyst for change in an area which Mr Coolen himself acknowledged is "still finding its feet".
- 12.15 In a series of astute questions put to Mr Coolen, it became apparent that he considered that restaurants, cafes, etc., would be seen as appropriate in this area but would not concede that a digital billboard would be appropriate or add vibrancy to the area. (People who have visited Piccadilly Circus and Times Square might beg to differ.)
- 12.16 When asked why more change had not occurred and what the handbrakes to change are, Mr Coolen responded that HCC "has been bad at long term planning – we need to have the right people at the right time..."
- 12.17 SHP's response is that, as the first mixed use cab off the rank, the Applicant may well just be "the right people at the right time", if only the HCC could get over itself - we venture to suggest that the answer to the Panel's question about handbrakes is simple – the attitude of HCC as manifested in its officers and advisors at the hearing.
- 12.18 To illustrate, Mr Coolen would not accept that HCC's attitude to the application creates something of a "Catch 22" insofar as, if applications such as this are not granted, there is little chance of a proliferation of more innovative pedestrian-oriented commercial activities – and he would not concede that if opportunities such as this were not taken up, that vibrancy and development may never be realised; for some reason he put digital billboards in a category all of their own.

Closing submission

- 12.19 Overall, it is submitted that it is appropriate for the Panel to 'take a helicopter view' of both the here and now and the future that is envisioned in light of the factors outlined above. In that regard, we submit that it is appropriate and safe for the Panel to make findings that:
- (a) The area in the vicinity of the Site is industrial/commercial in character and reflects a moderate to low level of natural character which the Council's expert concedes will not be reduced by the introduction of the Proposed DBBs.
 - (b) The Council's aspirations to make the area more vibrant and attractive and less vehicle-orientated appear to be stalled and that the area will never "find its feet" unless decisions are taken to grant consent to developments such as the Proposed DBBs (which would effectively have no different effects than the restaurants and bars) but are stifled by the negative attitude displayed by the Council.
 - (c) The development does not have any unacceptable effects in terms of what remain of the natural character of the coastal environment in terms of Part 2 of the RMA, and further provides an opportunity for HML to address some of their grievances.
 - (d) Overall, the effects of the Proposed DBBs are acceptable / benign from an amenity and traffic safety perspective such that proving positive effects to outweigh adverse effects is not necessary, but

conditions are nevertheless being offered to provide free image time for community and iwi messaging.

- (e) In short, that there is no reason why the Proposed DBBs should not be installed.

12.20 We therefore submit in conclusion that a grant of consent subject to the conditions proposed is appropriate (and to the extent relevant), would promote the sustainable management.

12.21 SHP, counsel and the SHP witness team wish to acknowledge the very effective manner in which the hearing was conducted by the Panel (although note that the thoroughness of the Panel's questioning is the factor responsible for the length of these reply submissions!). We wish you well for your deliberations.

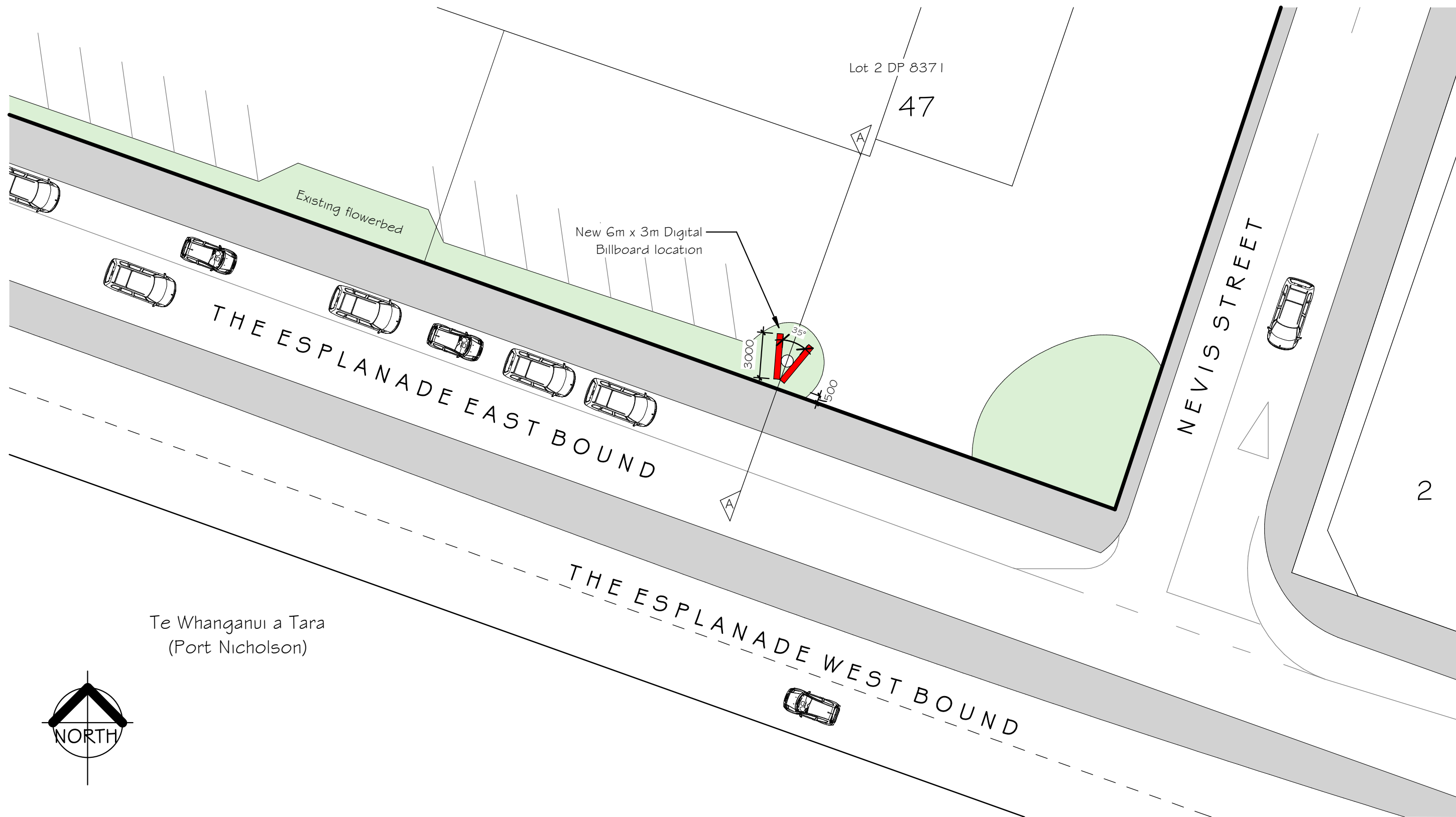
DATED this 10th day of July 2024



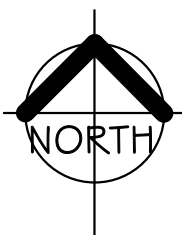
S J Berry / S T Macdonald

Counsel for Seaview HP Limited

Attachment A: Revised digital billboard plans (3 July 2024)

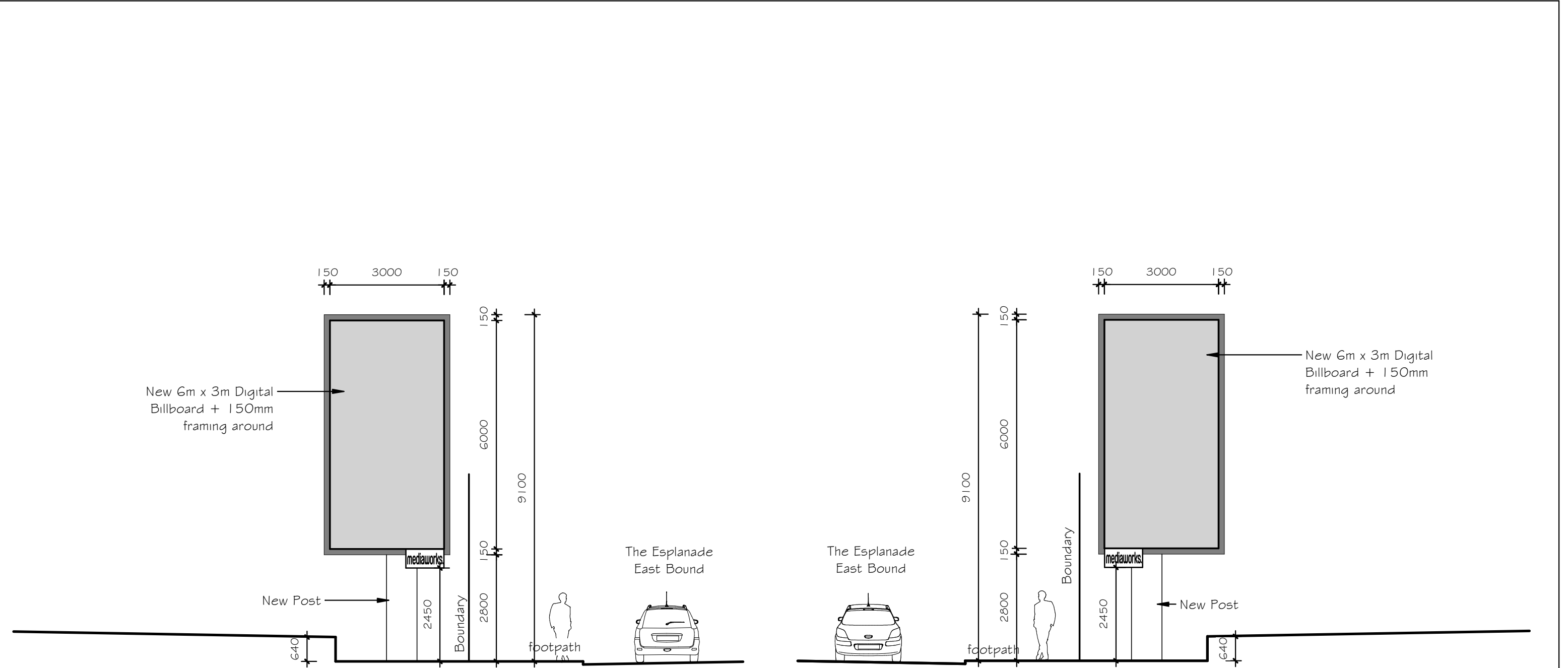


Te Whanganui a Tara
(Port Nicholson)



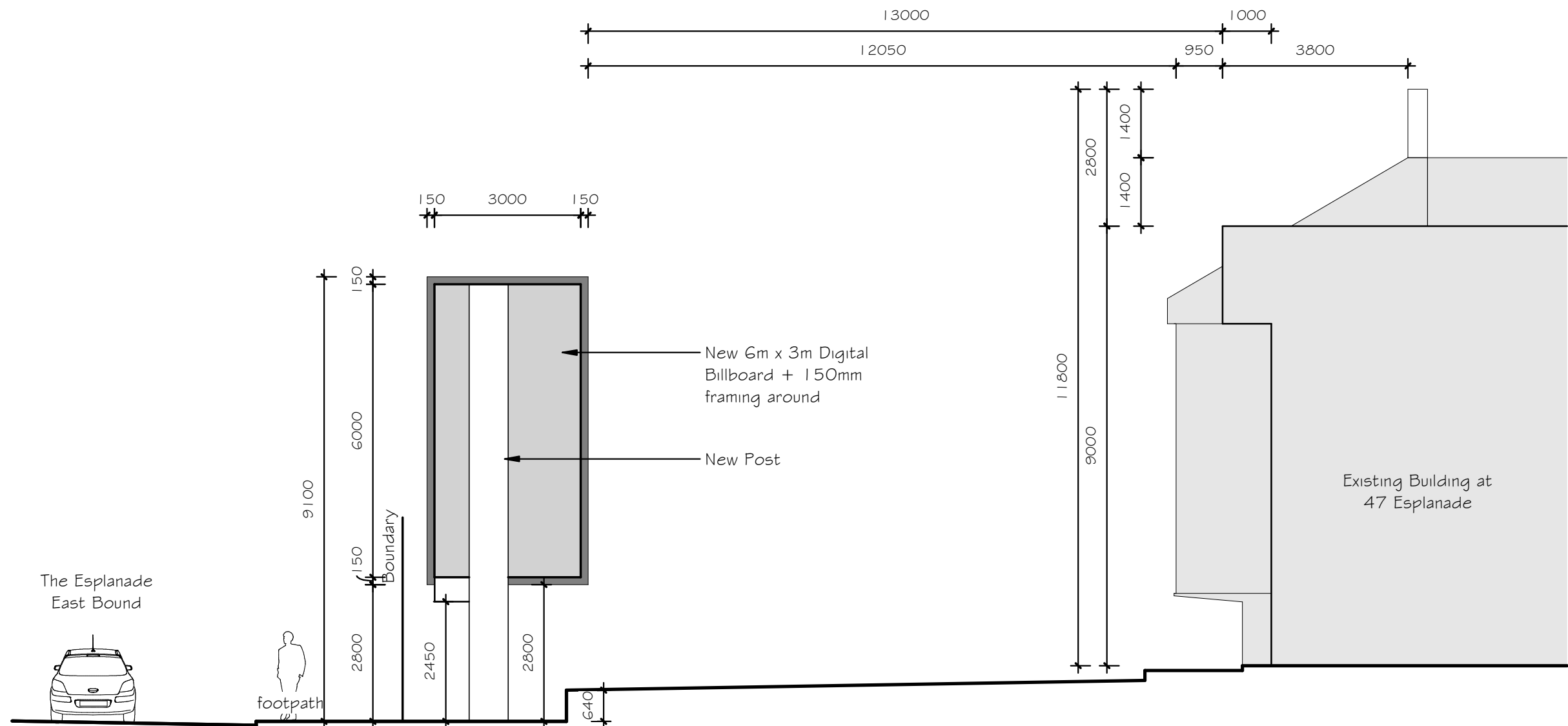
All dimensions to be confirmed on site prior to construction

REV.	DATE	DESCRIPTION	 84B Hurstmere Rd, Takapuna, AKL 0622 Matt • 027 686 2025 • matt@dsol.nz Duane • 021 275 4755 • duane@dsol.nz www.dsol.nz 	New Billboard - 47 The Esplanade, Petone Lower Hutt 5012	Plan View (6x3m)	DRAWING NO. A20	
A	24.08.22	Revision					
B	01.05.23	Updates					
C	03.07.24	Updates				SCALE 1 : 250	REVISION C
D							



All dimensions to be confirmed on site prior to construction

REV.	DATE	DESCRIPTION	 84B Hurstmere Rd, Takapuna, AKL 0622 Matt • 027 686 2025 • matt@dsol.nz Duane • 021 275 4755 • duane@dsol.nz www.dsol.nz	mediaworks.	New Billboard - 47 The Esplanade, Petone Lower Hutt 5012	Elevation Views (6x3m)	DRAWING NO. A21	
A	17.12.21	For Comment					SCALE 1 : 100	REVISION D
B	01.05.23	Updates						
C	02.10.23	Updates						
D	03.07.24	Updates						



All dimensions to be confirmed on site prior to construction

E	03.07.24	Updates
REV.	DATE	DESCRIPTION
A	24.08.22	Revision
B	02.02.23	Updates
C	01.05.23	Updates
D	02.10.23	Updates

d.sol
design solutions
84B Hurstmere Rd, Takapuna, AKL 0622
Matt • 027 686 2025 • matt@dsol.nz
Duane • 021 275 4755 • duane@dsol.nz
www.dsol.nz

mediaworks.

New Billboard -
47 The Esplanade, Petone
Lower Hutt 5012

Section A-A (6x3m)

DRAWING NO. A22	
SCALE 1 : 100	REVISION E

Attachment B: Tables outlining discussions of proposed amendments to conditions with Hutt City Council (prior to 5 July 2024)

Note:

- All amendments are shown using underline for additions and ~~strike through~~ for deletions.
- In terms of the "Revised condition in light of discussions" column, all additions or deletions are reflective of the final tracked form of the condition, as filed with the Panel on 5 July 2024.
- Dates of response provided to assist with order in which communications occurred.

Part A: Table of discussions with HCC in relation to conditions existing at the date of the hearing

Conditions filed with SHP evidence	SHP comment (circulated 2.7.24)	HCC comment (and date comment was provided)	Subsequent amendments as a result of HCC comments (filed 5.7.24)
5. The signage maximum height must not exceed a height of 8m in landscape form or 9.1m in portrait form as measured from the lowest elevation directly beneath the sign (i.e. 'ground level').	• Removed reference to "8m in landscape" so condition only refers to one digital billboard "option". • Portrait orientation is the preferred option.	3.7.24 – • Accepted proposed removal of reference to both billboard orientations.	Revised Condition: 5. The signage maximum height must not exceed ~~a height of 8m in landscape form or 9.1m in portrait form as measured from the lowest elevation directly beneath the sign (i.e. 'ground level')~~ . (Note: a "landscape" version of condition has also been provided; however, as stated at the hearing, the portrait version remains the preferred option.)
8. Any connecting wires or control structures and filament must not be visible from adjacent public spaces.	• Reference to 'filament' removed as LEDs do not have filaments. Wording is therefore redundant.	3.7.24 – • Deletion accepted.	8. Any connecting wires or control structures ~~and filament~~ must not be visible from adjacent public spaces.
~~9. The signage must be switched off between dusk and dawn.~~	• Maintain position that condition should be deleted, given SHP does not propose to turn off screens at night.	26.6.24 – • Council preference is that the signage does not operate at night. Accepts agreement will not be reached on this.	• Condition remains deleted.

Conditions filed with SHP evidence	SHP comment (circulated 2.7.24)	HCC comment (and date comment was provided)	Subsequent amendments as a result of HCC comments (filed 5.7.24)
9. <i>In the event of a malfunction of the LEDs or the control system, the screen must be turned off or be replaced by a blank screen until the malfunction is resolved.</i>	HCC suggestion accepted.	26.6.24 – Request replacement of reference to “blank” with “black” as a white or other coloured screen which may otherwise be ‘blank’ is inappropriate.	Revised Condition: 9. <i>In the event of a malfunction of the LEDs or the control system, the screen must be turned off or be replaced by a ~~blank~~ black screen until the malfunction is resolved.</i>
11. <i>The signage must:</i> a. <i>Use materials that are non-reflective to prevent any sunlight or headlight reflection.</i> b. <i>Contain image content that is static, and does not incorporate flashes, movement, scrolling, animation, full motion video, sequential advertising over multiple frames, multiple advertisements in one frame.</i>	Condition 11(a) deleted as redundant - given digital billboards use LED screens which by nature are non-reflective.	3.7.24 – - Accept deletion of 11(a) as redundant. - Further request that 11(b) be deleted and Condition 14 be retained.	HCC request for deletion of 11(b) accepted and Condition 11 deleted in full.
14. <i>The signage must not:</i> a. <i>Use graphics, colours or shapes that could cause confusion or conflict with any traffic control device or invite or direct a driver to undertake an action that could conflict with any traffic sign or traffic control device.</i> b. <i>Invite or direct a driver to take some sort of driving action.</i> c. <i>Include image content that incorporates flashes or movement, play music or sound, or involve scrolling, animation or other dynamic effects;</i> d. <i>Include multiple advertisements in one frame.</i> e. <i>Include images linked to “tell a story” across two or more sequential images.</i> f. <i>Contain more than one contact detail (for example phone number, email addresses or web address).</i>	Conditions 14 (b) – (e) deleted to avoid duplication with Condition 11, per Mr Harries’ evidence in chief.	3.7.24 - Request this condition remain as is, and Condition 11 be removed.	HCC request accepted and condition retained and renumbered as Condition 13 (with minor typographical amendments).

Conditions filed with SHP evidence	SHP comment (circulated 2.7.24)	HCC comment (and date comment was provided)	Subsequent amendments as a result of HCC comments (filed 5.7.24)
15. ... Advice note: - For the avoidance of doubt: 'Secondary message' means standard text that is lower priority to the main message and provides supporting information for the primary message. - The minimum letter height only applies to standard text for primary and secondary messages. Legally required text such as disclaimers or terms and conditions and text within images are excluded from meeting this requirement.	Accept HCC requested addition (with minor amendment for readability).	26.6.24 – - Any disclaimer and terms and conditions be limited to 1 line only. - Suggested amendment: Advice Note: ... - The minimum letter height only applies to standard text for primary and secondary messages. Legally required text such as disclaimers or terms and conditions and text within images are excluded from meeting this requirement <u>where no more than 1 line of text.</u>	- Condition amended and renumbered as Condition 14. Revised condition: 14. Advice ~~note~~ <u>Note</u>: - For the avoidance of doubt: 'Secondary message' means standard text that is lower priority to the main message and provides supporting information for the primary message. - The minimum letter height only applies to standard text for primary and secondary messages. Legally required text such as disclaimers or terms and conditions and text within images are excluded from meeting this requirement <u>where there is no more than one (1) line of text.</u>

Conditions filed with SHP evidence	SHP comment (circulated 2.7.24)	HCC comment (and date comment was provided)	Subsequent amendments as a result of HCC comments (filed 5.7.24)
<i>Lighting</i> 16. The luminance of the signage must be controlled by an automatic dimming system based on an ambient light level sensor to ensure it does not exceed: a. 5,000 cds/m2 during daytime (between sunrise and sunset). b. 250 cd/m2 during nighttime (between sunset and sunrise). The sign should not result in the illuminance of a roadway by greater than 10 lux. Any monitoring undertaken to determine compliance with this condition must be undertaken by a suitably qualified and experienced professional. ...	2.7.24 Accept amendment to reflect position taken during the course of the hearing.	26.6.24 – 'Nighttime' luminance reduced from 250cd/m² to 125cd/m² per the hearing discussions.	Revised Condition: <i>Lighting</i> 28. The luminance of the signage must be controlled by an automatic dimming system based on an ambient light level sensor to ensure it does not exceed: a) 5,000 cds/m2 during daytime (between sunrise and sunset). b) ~~125~~ 250 cd/m2 during nighttime (between sunset and sunrise). The ~~sign~~ signage should not result in the illuminance of a roadway by greater than 10 lux. Any monitoring undertaken to determine compliance with this condition must be undertaken by a suitably qualified and experienced professional.

19. Once operation of the digital billboards has commenced, the consent holder must provide the CMET with a Traffic Safety Reports at the following frequencies: 12 months; and 24 months. The reports must include: - An examination of the Waka Kotahi Crash Analysis System for all recorded crashes within 100m of the approaches to the digital billboard, with particular reference to any crashes with the cause factor 356: "attention diverted by advertising or signs", to establish whether there is an identifiable increase of recorded crashes with interpretation having regard to the likelihood that any such increase may be attributable to the operation of the digital billboard. - Recommendation of any measures that will be undertaken to avoid, remedy or mitigate any identified effects. Such measures might include one or more of the following: - Reductions to the daytime and/or night time luminance levels; - Adjustments to the transition time; - Increases in the image dwell time; and - Further controls on the image content. - Be undertaken by an independent Traffic Engineer/CPEng that is experienced in the preparation of traffic safety reports.	- Condition restructured for readability and workability purposes. - Accept HCC request to increase CAS database examination "area" from 100m to 200m. - Accept HCC request to delete reference to WK CAS database "cause factor 356: "attention diverted by advertising or signs""	26.6.24 - - Increase the "area" of examination within the CAS database from 100m to 200m. - The traffic safety report should not be limited to one specific reporting code in the CAS but more broadly an analysis of all CAS incidents to determine any correlation with the signage - Therefore, request deletion of reference to "cause factor 356: "attention diverted by advertising or signs"" 3.7.24 - - Expand the scope of data analysis required as follows: "An examination of any relevant data including of the Waka Kotahi Crash Analysis System (CAS) for all recorded crashes within 200m..." - Include a specific requirement to review MoH data as follows: "....attributable to the operation of the digital billboards. In particular, this review should include Ministry of Health data where there may be an under	- Accept inclusion of "any relevant data including" to expand scope of assessment. - Reject inclusion of a requirement to review Ministry of Health ("MoH") data. This is onerous and unnecessary. The MoH data, if it considered relevant, would be encompassed by the reference to "all relevant data". See Mr Harries supplementary for discussion of MoH data. - It is unlikely that MOH data will provide any valuable guidance on whether digital billboard contribute to injuries given MoH data tends to reflect general trend in injuries, rather than specific factors contributing to those injuries. - Reject retention of "(a) Review operation of digital billboard" as this has been amalgamated into the restructured condition. Its retention would result in unnecessary repetition. Revised condition: 31. ~~22.~~ Once operation of the ~~digital billboards~~ signage has commenced, the consent holder must <u>engage an independent chartered professional traffic engineer that is experienced in the preparation of safety assessments to provide the CMET with a Traffic Safety Report</u> ~~Reports~~ at the following frequencies: 12 months; and 24 months. ~~The reports must include:~~ 32. <u>The Traffic Safety Reports, including any recommended mitigation measures (if relevant) must be submitted to the CMET within 30 days of the 12-month and 24-month anniversaries of commencement of the digital billboard operations.</u>
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<i>The costs of the Traffic Safety Reports and implementation of any mitigation measures must be met by the consent holder.</i> 20. <i>The Traffic Safety Report, including any recommended mitigation measures (if relevant) must be submitted to Council within 30 days of the 12-month and 24-month anniversaries of commencement of the digital billboard operations.</i> 21. <i>If the Traffic Safety Reports find that further mitigation measures are considered necessary, then these must be implemented to the satisfaction of the CMET.</i> 22. <i>If the assessment in Condition 19 above, or the CMET identifies a pattern of recorded crashes and/or complaints made in respect of traffic safety matters, the consent holder must, within 10 working days of being advised of this pattern, propose to the CMET, measures that will be undertaken to immediately avoid, remedy or mitigate the cause of the pattern of digital billboard-related crashes. Such measures might include one or more of the following:</i> <i>Reduction to the daytime and/or night time luminance levels;</i> <i>Adjustments to the transition time;</i> <i>Increases to the dwell time; and/or</i> <i>Further controls on image content.</i>		<u>reporting of crash severity with respect to vulnerable road users in particular."</u> Re-insertion of HCC wording (per the conditions provided as part of the section 42A report) as follows: "(a) Review operation of digital billboard".	~~The Traffic Safety Report must include:~~ <del>An examination of any relevant data including the Waka Kotahi Crash Analysis System (CAS) for all recorded crashes within 200m ~~100m~~ of the approaches to the digital billboard, with particular reference to any crashes with the cause factor 356: "attention diverted by advertising or signs", signage, to establish whether there is an identifiable increase of recorded crashes that in the professional opinion of the traffic engineer has been, or is indicative of having been, or is indicative of having regard to the likelihood that any such increase may be been, attributable to the operation of the digital billboard signage.</del> ~~Recommendation of any If a Traffic Safety Report reveals an identifiable increase in crashes that is attributable to or is indicative of having been attributable to the signage, then recommendations will be proposed to the CMET of measures that will be undertaken to immediately avoid, remedy or mitigate any identified effects the digital signage-related crashes. Such measures might include one or more of the following:~~ ~~Reductions to the daytime and/or night time luminance levels;~~ ~~Adjustments to the transition time;~~ ~~Increases in the image dwell time; and/or~~ ~~Further controls on the image content.~~ ~~Be undertaken by an independent Traffic Engineer/CPEng that is experienced in the preparation of traffic safety reports.~~ ~~The costs of the Traffic Safety Reports and implementation of any mitigation measures must be met by the consent holder.~~ ~~The Traffic Safety Report, including any recommended mitigation measures (if~~
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Conditions filed with SHP evidence	SHP comment (circulated 2.7.24)	HCC comment (and date comment was provided)	Subsequent amendments as a result of HCC comments (filed 5.7.24)
			~~relevant) must be submitted to Council within 30 days of the 12-month and 24-month anniversaries of commencement of the digital billboard operations.~~ 33. If the Traffic Safety Reports find that further mitigation measures are considered necessary, then these must be implemented to the satisfaction of the CMET. ~~If the assessment in Condition 19 above, or the CMET identifies a pattern of recorded crashes and/or complaints made in respect of traffic safety matters, the consent holder must, within 10 working days of being advised of this pattern, propose to the CMET, measures that will be undertaken to immediately avoid, remedy or mitigate the cause of the pattern of digital billboard related crashes. Such measures might include one or more of the following:~~ ~~a. Reduction to the daytime and/or night time luminance levels;~~ ~~b. Adjustments to the transition time;~~ ~~c. Increases to the dwell time; and/or~~ ~~d. Further controls on image content.~~ 34. <u>The costs of the Traffic Safety Reports and implementation of any mitigation measures must be met by the consent holder.</u>

Conditions filed with SHP evidence	SHP comment (circulated 2.7.24)	HCC comment (and date comment was provided)	Subsequent amendments as a result of HCC comments (filed 5.7.24)
<i>Compliance monitoring and costs</i> 24. The consent holder must pay to the Council the actual and reasonable costs associated with the monitoring of conditions (or review of consent conditions, or supervision of the resource consent as set in accordance with section 36 of the RMA), including an initial consent compliance monitoring charge of \$xxx (inclusive of GST). <i>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 required to ensure compliance with the resource consent. In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, must be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge.</i>	Accept HCC request to delete condition.	26.6.24 - HCC requested this be deleted.	Condition deleted in full.

Part B: New conditions included after date of hearing

Condition	HCC comment – received 3.7.24	SHP subsequent amendments post HCC comments
<i>Iwi Cultural Benefit Management Plan</i> 15. <i>The purpose of this condition is to provide for the use of a proportion of the media time on the signage to facilitate recognition and appreciation of Māori cultural and spiritual values in the vicinity of the signage and other sites of cultural significance located between Petone Wharf / Victoria Steet, Jackson Street and Te Puni Street, Petone, particularly the Pito-One Pa.</i>	- HCC of the view that this condition does not mitigate adverse effects, particularly on natural coastal or urban character, and does not offer sufficient positive effects to counterbalance adverse effects. Based on the condition, it is unclear if the benefits will be realised. 2.5% is 270 ads per day based on 8 second dwell time vs 10,530 third party adverts. This results in very limited content.	- HCC does not make any suggested amendments / requests for deletion or addition. See reply submissions for SHP's full response. - Condition retained.
16. <i>In furtherance of the purpose of the foregoing condition, the consent holder must make available, on a gratis basis, no less than 2.5% of the media time on the signage across the week (both day and night at the discretion of the consent holder) for the display of images and / or information to be utilised in general accordance with a Iwi Cultural Benefit Management Plan (ICBMP) provided for by the following condition.</i>	2.5% at the discretion of the consent holder could be between the hours of 2am and 3am, meaning this would have very limited visibility. Suggest this condition be more specific on the time of day, frequency of imaging to be an effective positive contribution.	- Do not accept – Specification of times as requested by HCC can create logistical issues for sign operators. Balance must be struck between ensuring the benefit of displaying images is realised and not placing undue restrictions on the consent holder. A percentage figure provides reasonable flexibility. - Condition also commits to "both day and night", mitigating concern that all images will be in hours of limited visibility. - Condition retained.
17. <i>In accordance with Condition 17 hereof, the consent holder must, and following consultation with representatives of Hikoikoi Management Limited (HML), prepare a ICBMP with the purpose of achieving as far as practicable the purpose of that condition. As a minimum, the ICBMP must provide for:</i> <i>a. The display of images and/or information related to the history of Māori occupation and historical activities in the area described in Condition 16 hereof.</i> <i>b. The process by which images and/or information are to be provided by HML (or it's representative) as agreed by the</i>	No comments provided on this condition.	Condition retained.

<i>parties to the operator for display on the signage.</i> <i>c. Any agreed restrictions on the content of political messaging.</i>		
18. <i>The ICBMP must be provided to the Council for certification within 50 working days of the commencement consent in terms of section 116 of the RMA (or such longer period as agreed by the consent holder and HML).</i>	No comments provided on this condition.	Condition retained.
19. <i>In the event that:</i> <i>a. representatives of Hikoikoi Management Limited do not agree to engage with the consent holder within 15 working days of the commencement of the consent; or</i> <i>b. agreement cannot be reached in relation between the consent holder and HML as to the ICBMP –</i> <i>the consent holder is not required to comply with Conditions 16-19 above.</i>	It is more appropriate for Hikoikoi Management Limited to comment on this; however, 15 working days is not much time. Further, if Hikoikoi Management Limited do does not engage in time, then this is no longer a positive effect, and no mitigation for cultural effects. I suggest seeking confirmation from Hokoikoi Management Limited and other iwi groups as to whether this addresses their concerns regarding cultural effects.	- Mr Firth engaged with Hikoikoi Management Limited (HML) at the time of the hearing, resulting in this suite of conditions. - There appears to be a misinterpretation of this condition - this condition provides 15 working days for HML to <i>agree</i> to engage, not for all discussions to be completed within 15 working days. This ensures that the consent is not frustrated if the consent holder is HML does not want to engage. - Condition retained.
20. <i>The consent holder must ensure that the ICBMP is available upon request.</i>	As suggested by Mr. Berry at the hearing, I would like to see a condition with periodic reporting and submission of a statement of compliance that the agreed % of advertising has been dedicated for this purpose.	- Accepted in part - periodic monitoring is considered unnecessary; however, the consent holder is willing to accept an obligation to provide a compliance statement to demonstrate compliance with consent conditions. New Conditions - Condition retained and new conditions 26 and 27 inserted: 26. <i>Within 20 working of a request from the Council, the consent holder must submit to the CMET, a "Compliance Statement" which includes a copy of any images displayed and the date and time that each image displayed on the signage in compliance with the PCBMP and ICBMP.</i> 27. <i>Notwithstanding the above, in the event that an ICBMP is not required to be</i>

		<i>prepared pursuant to condition 20, the consent holder will not be required to provide a copy of the ICBMP.</i> <u>(Note: subsequent amendments to Condition 26 have been proposed in the reply submissions filed 10 Jul 2024.)</u>
<u><i>Petone Community Benefit Management Plan</i></u> <i>21. The purpose of this condition is to provide for the use of a proportion of the media time on the signage to provide for messaging to provide for and promote the interests of the Petone community, including (without limitation) the Council, the business community, and community and voluntary groups (including groups pursuing cultural or recreational pursuits).</i>	- Remain of the view that this condition does not mitigate adverse effects, particularly on natural coastal or urban character, and does not offer sufficient positive effects to counterbalance adverse effects. 2.5% is 270 ads per day based on 8 second dwell time vs 10,530 third party adverts.	- HCC does not make any suggested amendments / requests for deletion or addition. See reply submissions for SHP's full response. - Condition retained.
<i>22. In furtherance of the purpose of the foregoing condition, the consent holder must make available, on a gratis basis, no less than 2.5% of the media time on the signage across the week (both day and night at the discretion of the consent holder) available for the display of images and / or information to be utilised in general accordance with a Petone Community Benefit Management Plan (PCBMP) provided for by the following condition.</i>	2.5% at the discretion of the consent holder could be between the hours of 2am and 3am, meaning this would have very limited visibility. Suggest this condition be more specific on the time of day, frequency of imaging to be an effective positive contribution.	- Do not accept HCC suggestion - Specification of times as requested by HCC can create logistical issues for sign operators. Balance must be struck between ensuring the benefit of displaying images is realised and not placing undue restrictions on the consent holder. A percentage figure provides reasonable flexibility. - Condition also commits to "both day and night", mitigating concern that all images will be in hours of limited visibility.
<i>23. In accordance with Condition 23 hereof, the consent holder must, following consultation with Council representatives, prepare the PCBMP with the purpose of achieving as far as practicable the purpose of Condition 22. As a minimum, the PCBMP must provide for:</i> <i>a. A display on the digital billboard of images, information and/or advertising related to:</i> <i>i. Council organised events;</i> <i>ii. Community - related messaging; and/or</i>	No comments provided on this condition.	Condition retained.

iii. Local businesses. b. The process by which images, information and/or advertising falling within the scope of the PCBMP is to be provided to the operator for display on the signage.		
24. The PCBMP must be provided to the Council for certification within 50 working days of the commencement of the consent in terms of section 116 of the RMA (or such longer period as agreed by the consent holder and the Council).	Why does Council get 50 working days and iwi get 15 working days.	- There appears to be a misinterpretation of this condition - this condition provides 15 working days for HML to <i>agree</i> to engage, not for all discussions to be completed within 15 working days. This ensures that the consent is not frustrated if the consent holder is HML does not want to engage. - Condition retained.
25. The consent holder must ensure that the PCBMP is available upon request.	No comments provided on this condition.	Condition retained.