

WELLINGTON CITY COUNCIL

DECISION OF INDEPENDENT COMMISSIONER

IN THE MATTER OF: The Resource Management Act 1991

And

An application for a land use consent lodged with Wellington City Council (Service Request No. 513399) pursuant to Section 88 of that Act by

APPLICANT: New Zealand Fruitgrowers' Charitable Trust (the Applicant)

SITE: The site is located at 2 Jervois Quay, Wellington Central, Lot 11 DP 11204

PROPOSAL: To erect an electronic billboard on the existing support structure located on the roof of the building known as the Huddart Parker Building

OWNER: Huddart Parker Building Limited

HEARING DETAILS: The publicly notified application was heard by Independent Commissioner Gina Sweetman, under authority delegated by the Wellington City Council, on Wednesday 7 December 2022 in Room 16.11 – Level 16 of Wellington City Council.

Commissioner Sweetman undertook a site visit before, during and after the hearing.

The hearing was adjourned on Wednesday 7 December 2022 and closed on 21 December 2022.

Consent is declined.

**HEARING
ATTENDANCE**

The following people attended and presented evidence at the hearing:

For the Applicant:

- Matt Conway, Legal Counsel
- Katherine Viskovic, Legal Counsel
- Alistair Aburn, Consultant Planner
- Keith Mackenzie, Applicant
- Frank Costello, Out of Home Advertising Consultant
- Adam Wild, Heritage Consultant
- Richard Knott, Heritage Peer Reviewer and Urban Design Consultant
- Russ Kern, Lighting Consultant

For Wellington City Council (WCC):

- Elliott Thornton, Consultant Planner
- Sarah Duffell, Urban Designer
- Noël Luzzi, Senior Advisor, Heritage and Urban Regeneration, Cultural Heritage

Submitters:

- Scott Hamilton, General Manager of the Intercontinental
- Tony Rose, owner of the complex occupied by the Intercontinental
- Hamish Wesley, Managing Principal for Boffa Miskell's Wellington Office
- Jos Coolen, Urban Design Consultant, Boffa Miskell
- Katie Maxwell, Planning Consultant, Boffa Miskell

Others in attendance:

Krystle Leen – Business Support, Resource Consents provided support. There were also a number of spectators to the hearing.

1 Description of the proposal

(1) The applicant's assessment of effects on the environment (AEE) includes a description of the proposal in Section 2.3. Mr Thornton's s42A report also addresses the proposal in paragraphs 12 to 16. In summary, the application as it stood at the time of the hearing is described as follows:

- To erect a digital rooftop billboard¹, which would be attached to existing historic sign support framework.
- The sign would have dimensions of 13m x 4m
- The sign display would be on a rotating basis, featuring both public information and commercial advertising.
- There would be up to six different displays, with an image display time of 8-seconds (minimum) and a 0.5 second dissolve transition between images.
- Illumination levels would be automatically managed so that the screen is responsive to changes in ambient lighting levels.
- That the applicant would establish a deferred maintenance reserve fund, that would use profits from billboard rental payments to provide general maintenance of the Huddart Parker Building.

¹ Which I refer to as the sign, digital billboard and billboard through this decision

- (2) There was disagreement between the Applicant and Mr Thornton as to whether the proposal involved reinstatement of rooftop signage (the Applicant's position) or new signage (Mr Thornton's position). Mr Aburn's position was that there is acknowledged historical presence of a sign in the same position as now proposed; and his reference is therefore to reinstatement of a sign. There was no disagreement that there used to be signage located on the support structure.
- (3) Through and following the hearing, the following clarifications and refinements to the proposal were also made, as expressed through the applicant's proposed conditions²:
- The signage would not have a depth of more than 130mm, excluding the support structure
 - Additional design information for the sign would be provided, including cabling, control boxes and associated equipment, and the colour palette, and the final design and display of the temperature and time.
 - The luminance of the signage must not exceed 100cds/m² from one hour after sunset until one hour before sunrise. Monitoring to determine compliance must be undertaken by a suitably qualified and experienced professional.
 - Certification of the sign luminance to be provided prior to the operation of the sign.
 - A requirement to monitor luminance after six months and provide a report to the Council.
- (4) I have made my decision based on the proposal as set out above.

2 The Site, Surroundings and Relevant Background

- (5) The applicant's AEE includes a description of the site, surroundings and the background in section 2. Mr Thornton's s42A also describes this in paragraphs 5 to 10. Ms Stevens' report and Mr Wild's evidence also provide useful context on heritage matters.
- (6) Pursuant to s113(3) of the RMA, I adopt these descriptions and do not repeat them. There were some clarifications made through the hearing process about the site, surroundings and background.
- (7) The particularly pertinent points that I do consider worthy of stating in respect to the site, its surroundings and relevant background are:
- The original sign and its support framework were legally established through a consent granted on 21 August 1963.
 - The digital billboard is proposed to be located on the existing support framework.
 - The previous sign was removed sometime between 2009 and 2013.
 - The support structure has existing use rights, but the previous sign does not³.
 - What was a billboard sign at 86 Customhouse Quay is now more akin to an art installation.
 - The Huddart Parker Building 1925 is scheduled as a heritage-listed place in the Wellington City Operative District Plan (the Operative District Plan) and the Wellington City Proposed District Plan (Proposed District Plan) and the site lies within

² Appendix 1 – Proposed Conditions amended at the hearing, dated 20 December 2022.

³ Mr Thornton originally was of the view that the structure did not have existing use rights, but changed his position during the hearing, as articulated in his hearing notes and summary dated 7 December 2022.

Post Office Square Heritage Area⁴, also scheduled in the Operative and Proposed District Plan. Other scheduled heritage buildings in the vicinity are:

- AMP Society Building 1928
- Government Life Building 1931
- Clarrie Gibbons Building 1910-1920
- Wellington Harbour Board Head Office 1892
- Wellington Harbour Board Shed 1895-96

3 Relevant Planning Provisions

Wellington City Operative District Plan

- (8) The site is located in the Central Area under the Operative District Plan. The site is also subject to the following notations:
- Heritage Areas – Post Office Square Heritage Area Ref. 16
 - Heritage Building No. 155
 - Central Area Viewshaft #15
 - Ground Shaking
- (9) In section 3.1 of the AEE, the Applicant also identifies that Viewshaft 9 is adjacent to the site, and that Post Office Square is a listed public place for sunlight protection.

Reasons for Resource Consent under the Operative District Plan

- (10) The following table contained in section 17 of the Council’s s42A report sets out the reason for the resource consent. Section 3.2 of the AEE also sets out the reasons for consent. There being no evidence to the contrary, I accept this as being the reasons for consent:

<p>Rule 13.3.9 - Signs</p> <p>The proposal is for a sign that does not meet all the standards specified in section 13.6.4.1:</p> <ul style="list-style-type: none"> • 13.6.4.1.2 – the proposed sign is located on a building and will project above the parapet level, or the highest part of the building to which the sign is attached. • 13.6.4.1.4 – the proposed sign will be located on a building above 18.6m above ground level and will have a maximum area of greater than 15m² and will not bear only the name and/or logo of the building owner/occupier. • 13.6.4.1.7 – the proposed sign is located within the Post Office Square Heritage Area, and it is not intended to bear the name/logo of the owner/occupier of the building. <p>(11) As such, resource consent for a Discretionary (Restricted) Activity is required pursuant to Rule 13.3.9.</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> • 13.3.9.1 moving images, text or lights 	<p>Discretionary (R)</p>
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⁴ Which I also refer to as the Building and Heritage Area through this decision

<ul style="list-style-type: none"> • 13.3.9.2 position • 13.3.9.3 dimensions • 13.3.9.4 number of signs • 13.3.9.5 sign display of: temporary signs, or signs located on buildings above 18.6m above ground level, or signs adjoining or opposite the Parliamentary Precinct Heritage Area. • 13.3.9.6 duration (for temporary signs). 	
<p>Rule 21D.3.1 – Sign on a Listed Heritage Building</p> <ul style="list-style-type: none"> • The proposal is for a sign on a site on which a listed heritage building is located and is not a Permitted Activity because it exceeds 0.5m2. <p>As such, resource consent for a Discretionary (Restricted) Activity is required pursuant to Rule 21D.3.1.</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> • 21D.3.1.1 Sign design, location and placement • 21D.3.1.2 Area, height and number of signs • 21D.3.1.3 Illumination • 21D.3.1.4 Fixing and methods of fixing. 	<p>Discretionary (R)</p>

Wellington City Proposed District Plan

- (12) The Proposed District Plan was publicly notified on 18 July 2022.
- (13) The site is located in the City Centre Zone under the Proposed District Plan. The site is also subject the following notations and qualifying matters:
- Height Control Area – 60m
 - Active frontage
 - Verandah Control
 - Coastal Inundation Hazard – Medium Coastal Inundation Hazard
 - Flood Hazard Overlay – Inundation Ara
 - Liquefaction Hazard Overlay
 - Tsunami Hazard Overlay – High Coastal Tsunami Hazard
 - Heritage Building 155 – Huddart Parker Building
 - Heritage Area 16 – Post Office Square
 - Heritage Area – Points – Non-heritage building
 - Viewshaft 14 – Cable Car Station to Point Jermingham and Point Halswell
 - Coastal environment
 - WIAL 1 – Wellington Airport Obstacle Limitation Surfaces
- (14) I sought clarification through my Minute 3 as to whether the proposed sign would trigger any consent requirements under the Proposed District Plan. Mr Aburn and Mr Thornton agreed that consent would be required under two rules in the Proposed District Plan.

SIGN-R6 (Signs of heritage buildings, structures or on a site within a heritage area)	Restricted discretionary
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<p>The sign would not meet the following standards of SIGN-S12;</p> <ul style="list-style-type: none"> • The size of the sign does not exceed 0.5m² • The sign display only the name or purpose of any activity undertaken on the site, or interpretive content about the values and history of the building. <p>Discretion is restricted to the matters in SIGN-P3, Signs Design Guide and Heritage Design Guide</p>	
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- (15) Mr Thornton also identified that consent would be required under SIGN-P5. However, this is a general rule relating to digital signs and did not have immediate legal effect on notification of the Proposed District Plan as SIGN-R6 did. Therefore, I have not considered it further.

Overall activity status

- (16) Overall, the proposal is assessed as a **discretionary (restricted) activity**.

4 Notification and Submissions

- (17) The Council publicly notified the application on 23 August 2022.
- (18) Submissions closed on 20 September 2022 and the Council received 13 submissions and one late submission from the following persons:

#	Submitter	Address	Support/ Oppose
1	David Stevens	63 Rangoon Street, Khandallah	Support
2	Steve Maitland	5 Stormanstown Way, Wellington	Support
3	Kirsty McDonald	32 Hawkestone Street, Thorndon	Support
4	Michael Gaffaney	31 Parata Street, Waikanae	Support
5	David Paetz	25 Graham Street, Petone	Support
6	Lenie Emmerson	439A Broadway, Miramar	Support
7	Roberta Hall	87 Harakeke Road, Te Horo Beach	Support
8	Neil Rossiter	44 Calcutta Street, Khandallah	Support
9	Simon Hegarty	16 Awa Road, Miramar	Support
10	Scott Hamilton (InterContinental Hotel)	2 Grey Street, Wellington	Oppose
11	Alastair Hutchens	9 Amritsar Street, Khandallah	Support
12	Wayne Kearse	12 Koromiko Road, Highbury	Support
13	Hamish Wesney (Boffa Miskell Ltd)	1 Post Office Square, Wellington	Oppose
14	Stout Street Chambers (2013) Ltd	1 Post Office Square, Wellington	Oppose (Late)

- (19) The Council accepted the late submission⁵ and I therefore have considered it.
- (20) Eleven of the submissions were in support, and the remaining three in opposition.
- (21) Mr Thornton summarises the submissions in support as follows⁶:
- (a) Would like to see the reinstatement of temperature and time as a former iconic city landmark.
 - (b) Nostalgia element of the former temperature and time.
 - (c) Consider the proposal a convenient way to see the temperature and time during commuting.
- (22) Mr Thornton summarises the submissions in opposition as follows⁷:
- (a) The billboard detracts from the character of the building.
 - (b) The billboard is visually dominant and not integrated into the architecture of the building.
 - (c) The billboard is not in keeping with the heritage values of the building.
 - (d) The billboard LED lights will cause inconvenience of hotel guests through light nuisance.
 - (e) The billboard is not necessary for the building owner to fund maintenance of the building.
 - (f) The billboard is inconsistent with the District Plan policies and the Design Guide for Signs.

5 Statutory Framework

- (23) Section 104 of the Resource Management Act 1991 (the RMA) sets out the matters I must have regard to when considering the application, the relevant parts of which are set out below:

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*

⁵ Paragraphs 39 to 47 of the s42A report.

⁶ Paragraph 36 of the s42A report.

⁷ Paragraph 35 of the s42A report.

- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
 - (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.
 - (2A) ...⁸
 - (3) A consent authority must not,—
 - (a) when considering an application, have regard to—
 - (i) trade competition or the effects of trade competition; or
 - (ii) any effect on a person who has given written approval to the application:
 - (c) grant a resource consent contrary to—
 - (i) section 107, 107A, or 217:
 - (ii) an Order in Council in force under section 152:
 - (iii) any regulations:
 - (iv) wāhi tapu conditions included in a customary marine title order or agreement:
 - (v) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011:
 - (d) grant a resource consent if the application should have been notified and was not.
 - (4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.
 - (5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.
 - (6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.
 - (7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.
- (24) Section 104C of the RMA outlines the matters for which the Council can have regard to when considering an application for a restricted discretionary activity.
- (1) After considering an application for a resource consent for a restricted discretionary activity, a consent authority must only consider those matters over which—
 - (a) a discretion is restricted in national environmental standards or other regulations:
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.
 - (2) The consent authority may grant or refuse the application.
 - (3) However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which—
 - (a) a discretion is restricted in national environmental standards or other regulations:

⁸ Not relevant to this application.

(b) *it has restricted the exercise of its discretion in its plan or proposed plan.*

6 HEARING, APPEARANCES AND SITE VISIT

- (25) The hearing was held in Wellington City Council offices on Wednesday 7 December 2022.
- (26) The Council planning officer's s42A report and applicant's and submitters' evidence were circulated prior to the hearing and taken as read. The evidence presented at the hearing responded to the issues and concerns identified in the Council planning officer's s42A report, the application and AEE itself, the submissions made on the application and the evidence circulated in advance of the hearing.
- (27) I do not separately summarise the matters covered here, but I refer to or quote from that material as appropriate in the remainder of this Decision. I took my own notes of any answers given to verbal questions that I posed to Hearing participants. The hearing was also recorded using Teams.
- (28) I adjourned the hearing after hearing the applicant's preliminary closing statement. I requested through Minutes⁹ that Mr Kern provide detail of the signs he had addressed through his final evidence¹⁰ and for the applicant to provide an updated set of proposed conditions. These were to be provided to hearing participants for their review and comment. I have already set out the changes made to the application through the hearing process earlier in this decision.
- (29) The applicant provided the signage details and an updated set of conditions on 7 December 2022, which were circulated to all parties for their review.
- (30) There was no specific feedback received on Mr Kern's lighting information. Boffa Miskell did not provide any feedback on the conditions. The Council and Mr Hamilton provided feedback.
- (31) Along with minor wording changes for administrative purposes, the Council:
- Sought reference to general accordance in condition 1
 - Proposed changes to condition 5 in respect to the framing, requiring a full plan of any work be provided before works occurred, and a note that signage would not be permitted if the framing is not able to be modified to accommodate the signage
 - Recommended deletion of conditions 6, 8 and 9, as not being necessary
 - Sought an amendment to condition 12 that the items included not be visible from adjacent public spaces
 - Sought a 30 second dwelling time, if I was of a view to allow a change of image
 - Sought reinstatement of conditions 16(b) and (g) in respect of colours used and contact details
 - Sought a new condition requiring certification of compliance with luminance levels.
- (32) Mr Hamilton sought that if advertising was approved, a more appropriate dwelling time would be two minutes and 70 lumens would be more appropriate from sunset until dawn, as consistent with Mr Kern's statement during the hearing. He also sought that the sign not

⁹ See Minutes 4 and 5, dated 9 December and 19 December 2022 respectively

¹⁰ See section 6 of final evidence of Russ Kern dated 22 November 2022.

contain large areas of the colours green, orange or red. Mr Hamilton also sought that the sign be located in a different location and reiterated some of the matters he had addressed at the hearing.

(33) The applicant provided a final closing statement on 20 December 2022. While this is available on record at the Council, it provides a useful summary of the applicant's position, based on their expert advice presented before and at the hearing, and I have therefore set out the key points from the statement below:

- All parties to the hearing confirmed that they could accept a rooftop sign on the building.
- A rooftop sign has been a feature of the Building for approximately 50 out of the last 60 years.
- Some aspects of previous signs were not static, with lights coming on and off to spell certain words related to the weather.
- The AGC was a block sign, so it was not possible to see through the letters.
- The community aspect of the sign¹¹ is recognised by the Council's heritage listing and is valued by members of the community, as evidenced by the submissions in support.
- There are unique elements of the proposed sign that differentiate it from other potential applications for rooftop billboards, and would not set a precedent in the City
- The key consideration is whether the use of modern signage technology for a sign is appropriate.
- Having accepted that previous signs were appropriate, it is contradictory to say that the proposed sign is unacceptable because it is visible above the parapet, blocks a view of the sky from some locations or has lights or changing content of some form. All of these were features of previous signs.
- The clear and uncontested expert evidence is that there are no adverse traffic effects.
- The frame has existing use rights.
- Mr Kern was the only lighting expert, whose evidence was that spill light would not affect nearby building occupants, because of the automated lighting controls, and distance. Any luminance would be controlled to acceptable values, in line with ambient light conditions and accepted obtrusive light standards.
- The lightspill would not impact on the InterContinental.
- The time lapse video provided by Boffa Miskell did not provide a realistic depiction of how the sign would appear.
- Care needs to be taken comparing the sign to other existing billboards, as these vary in brightness.
- The changes in lighting are consistent with the NPS-UD.
- Mr Thornton accepted that the lighting effects were not significant, to be similar to that produced by internal lighting in a nearby building, and that there was not an adverse effect on hotel guests at the InterContinental. Guests would be able to use a barrier while sleeping and change in outlook is not an adverse environmental effect.
- The sign would maintain and make no significant change to the historic built conditions, streetscape characteristics and skyline within the area. IT would not

¹¹ Which I interpret to be the time and temperature elements

have a more than minor effect on the visual amenity of the area or heritage significance of the building or heritage area.

- PDP SIGN-P3 should be given weight, particularly that regard be had to the benefits of the allowing signage to support sustainable long term use. The revenue would help support maintenance of the heritage building, which has benefits to the public.
- Ms Stevens considered a non-illuminated, smaller, static sign would be acceptable, but was concerned about the level of lighting. Mr Kern's lighting evidence should be preferred.
- Ms Stevens' evidence should be given less weight, as she was not at the hearing, and Mr Luzzi's support of her evidence provides limited acceptance. While Mr Luzzi agreed with her evidence, he had not appeared to carry out his own analysis.
- The proposed sign has been designed to fit on the existing frame.
- It is difficult to see how the proposed sign could be seen as creating the impression of another level to the building, as it is set back behind the parapet and its design would be deliberately distinct.
- Mr Thornton accepted the NPS-UD enables change in the urban environment, the transitory nature of the advertising would not have an adverse effect on the hotel, and that changing images were unlikely to cause an adverse effect.
- It is difficult to follow Ms Duffell's logic that the digital billboard is not a logical progression to more modern signage.
- Mr Knott and Mr Aburn considered these matters acceptable.
- There would be community benefits because of the changing nature of the sign allows different images to be displayed, including information.
- There are limited opportunities to view the existing support structures within Post Office Square, and from a distance is seen as part of a broader urban environment, and therefore would not be a dominant feature.
- Positive effects would include the use of revenue for building maintenance. The Embassy Theatre decision is an example of this. The *JBH Investments Ltd vs Auckland City Council* decision noted that a positive effect could be to increase the commercial viability of a heritage building. The community aspects of advertising events is also a positive effect. Providing time and weather information is also a public benefit, and tied to the previous sign, as recognised on the Council's heritage inventory.
- In terms of the conditions and the Council and Mr Hamilton's feedback:
 - The use of general accordancy is preferred, to allow flexibility with mitigation options if they arise during detailed design
 - The Council's proposed note to condition 5 is ultra vires.
 - The applicant does not have an issue or deletion of conditions 6, 8 and 9, and while Mr Thornton recommends their deletion, they could be reinstated if I consider they add value.
 - There is no detailed design yet for the sign, so condition 7 needs to be flexible.
 - In respect of condition 10, the proposed note is ultra vires.
 - The proposed amendments to condition 12 are not agreed with, due to uncertainty
 - There is no traffic or heritage reason to deviate from 8 seconds in respect to condition 15, or for conditions 16(b) and (g).
 - The luminance in condition 18 is far lower than currently imposed on most LED sign consents, and in reality the sign brightness is expected to be much lower.

- Along with knowing a couple of the submitters who work for horticulture New Zealand and another who is a real estate agent, Mr McKenzie also knows Mr Gaffaney who worked for Huddart Parker Building Lt and Mr Paetz who is Mr McKenzie's predecessor. That Mr McKenzie knows submitters is not relevant to the consideration of the matters raised by the submitters.
- (34) While as a Wellington resident, I am familiar with the site and surrounding area, I conducted an unaccompanied site visit prior to the hearing. I also visited the site during the course of the hearing and undertook a further site visit to view some of the signs that Mr Kern addressed through his evidence.
- (35) I note the criticism from the applicant in respect to Mr Luzzi's evidence. In my view, it is not uncommon for one expert to be supplemented with another when the original expert is not available. Mr Luzzi has been clear in his evidence that he supports Ms Stevens' evidence. He elaborated on the reasons for his support at the hearing, and in my opinion, it is quite clear that he has come to an informed view in his advice. Accordingly, I have not given less weight to Ms Stevens' original report or Mr Luzzi's evidence as presented at the hearing.

7 SECTION 104 and 104C ASSESSMENT

Existing environment and permitted baseline

- (36) I accept Mr Thornton's position articulated in paragraphs 55 and 56 of the s42A report that there is no relevant permitted baseline to consider.
- (37) In respect of the existing environment, I also accept both planners' position that there are no existing use rights applying to the sign but there are for the sign structure.

Section 104(1)(a) Effects on the Environment Assessment

- (38) As a discretionary (restricted) activity, in making my decision I must only consider those matters over which discretion is restricted. Mr Aburn usefully set these out these in the AEE and his evidence.
- (39) Given the limits of my consideration, I have set these out below:

Central Area Rule 13.3.9 (Operative District Plan)

- 13.3.9.1 moving images, text or lights;
- 13.3.9.2 position;
- 13.3.9.3 dimensions;
- 13.3.9.4 number of signs; and
- 13.3.9.5 sign display (of signs located on buildings above 18.6m above ground level).

Heritage Rule 21D.3.1 (Operative District Plan)

- 21D.3.1.1 sign design, location and placement;
- 21D.3.1.2 area, height and number of signs;
- 21D.3.1.3 illumination; and
- 21D.3.1.4 fixing and methods of fixing.

SIGN-P3 Signs and historic heritage (Proposed District Plan)

1. The extent to which:

- a. Damage to heritage [fabric](#), from methods of fixing, including supporting [structures](#), cabling or wiring is minimized or is reasonably reversible;*
- b. The location and placement of [signs](#) obscure architectural features, project above parapet level or reflect the typical positioning of signage on the [heritage building](#) or within the [heritage area](#);*
- c. The area, [height](#) and number of [signs](#) are appropriate for the scale of the [heritage building](#), heritage [structure](#) or [heritage area](#) or would result in clutter;*
- d. The quality of the design of the [sign](#) complements the [heritage building](#), [heritage structure](#) or [heritage area](#);*
- e. The intensity of any illumination adversely affects heritage values; and*
- f. The [sign](#) fulfils the intent of the [Heritage](#) and [Signs Design Guides](#).*

2. The benefits of allowing additional signage to support sustainable long term use.

- (40) Having considered these matters over which I have discretion, I agree with and have used the broad categorisation used in Mr Thornton's s42A report in addressing them:
- Streetscape and visual amenity effects
 - Heritage effects
 - Positive effects
- (41) Some time was spent on lighting and luminance at the hearing. I consider lighting effects to fall within the assessment of streetscape and visual amenity and heritage effects, and have not therefore addressed them as a separate effect.
- (42) There was no contention between Mr Kong, Council's Transport Engineer and Operations Manager, and Mr Harries about traffic and safety effects arising from the proposed sign. Pursuant to s113 of the RMA, I accept their advice and find that any traffic and safety effects are acceptable.
- (43) The contention that did remain were the draft conditions proposed by Mr Thornton should consent be granted. Mr Harries provided evidence in respect to draft conditions in respect of dwell time for the signs, use of colours and contact details. I note that these conditions differed to those recommended by Mr Kong. Accordingly, I have addressed these through the streetscape and visual amenity and heritage assessments, where necessary.
- (44) At a high level, I record that there was general disagreement between the applicant and the Council and submitters who appeared at the hearing on the magnitude of effects and their acceptability in respect to streetscape and visual amenity, heritage and positive effects.
- (45) Where there was some level of agreement at the hearing that a sign may be appropriate on the existing support structure, that this be limited to a static, non-digital, non-illuminated sign, which related to the name or use of the building, of a similar nature to the signs that had previously been present on the site. This area of agreement is helpfully set out in paragraph 2.4 of the applicant's closing submissions. I note however that not all parties to the consent agreed with this, with Stout Chambers seeking that the application be refused. I bear this in mind during my assessment.

- (46) In approaching my assessment, I also have noted that many of the submissions in support of the sign focused on the reinstatement of a sign providing time and temperature information, with only one¹² specifically mentioning the use of modern digital technology as part of this.
- (47) Finally, a lot of the focus of the assessments has been to compare what previously was on the building to what is proposed by the billboard. I consider that little weight can be placed on this comparison. While it can be useful to compare, that sign has lost existing use rights and cannot be replaced except through a resource consent process, while noting the structure does enjoy existing use rights. It is not a valid comparison. I approach my assessment with this in mind.

Streetscape and visual amenity

- (48) I received and heard expert evidence from Mr Knott, Mr Kern, Ms Duffell and Mr Coolen, which was then synthesized by Mr Aburn, Mr Thornton and Ms Maxwell in their respective evidence. In summary, and drawing from the conclusions stated by each expert, I have set out the different positions below:

Applicant's experts¹³

- The sign will not result in unacceptable illumination levels, nor would it give rise to unacceptable glare.
- The sign would be viewed against the backdrop of existing tall buildings, and not break the skyline.
- The sign would very likely draw more attention to the building itself, and can be considered complementary to the building, more so than the existing framework.¹⁴
- The sign would utilise the existing sign structure, although this would be supplemented where required to allow installation of the new digital billboard face.
- From a distance, it would represent a relatively small feature in a relatively expansive view.
- It would not be a dominant feature in views from Customhouse Quay and Post Office Square and, in these areas and from Grey Street, would appear as an integral part of the wider urban context.
- It would not be visually obtrusive from public viewpoints or compromise the wider streetscape.
- It would not detract from the visual amenity of the building or result in any public safety issues.
- It would not have more than a minor effect on the visual amenity of the area.
- Post Office Square is an area dominated by traffic and pedestrian and cycle movement, rather than being a pleasant urban environment, enclosed and activated by attractive buildings.
- Mr Coolen's timelapse should be disregarded, and it is more appropriate to view signs in person.
- There would be no clutter as there are no other large signs on the building or in the vicinity of the proposed sign.

¹² David Stevens

¹³ Mr Aburn's final evidence, Mr Knott's final evidence and summary evidence and responses to questions

¹⁴ While this is from 12.11 of Mr Aburn's final evidence in respect of heritage values, I also included it here given his reference to its visual impact.

- The proposed 8 second dwelling time would ensure that the sign would not appear distracting, particularly as no flash effect would arise.

Council's experts¹⁵

- While Mr Knott's description of Post Office Square is not disagreed with, it is a well-used space, and an important location for crossing between the CBD and Waterfront. There are amenities and places for sitting when the weather is good, and its quality as an urban space should not be downplayed.
- The submitters in support primarily focus on the time and temperature and not the third-party content.
- Billboards by nature are designed to attract attention and convey a message, and dominate the skyline, particularly at dusk.
- The sign would both detract and draw attention from the appreciation of other aspects in the immediate environment, and would draw attention to the rooftop, rather than the surrounds.
- The sign would detract from the architectural features of the building, being the building top and above the parapet.
- Light is a regular aspect of staying in the city, and lights on signs can be controlled. The Hotel would not be adversely affected.
- Introducing a large LED sign into this quality environment (heritage buildings and high quality landscaping) would detract from the visual quality of the Grey Street pedestrian route.
- The sign would disrupt and visually dominate important characteristics of the surroundings.
- With third-party content shown, images would not integrate content with the host building or setting in a complementary way.
- The sign dominates the skyline in both facing and oblique views.
- In terms of clutter, the sign would introduce an element of third-party advertising into a location where such signs are not located and the visual quality of the setting is valued. It is not necessary in this context, and as such would introduce visual clutter. There are few other signs in this location, and upper-level signs are limited to name signs.
- The visual quality of the top of the building would be improved if the frame was removed, rather than reused.
- In this area of town, the predominate signage generally comprises cut out logos on the top of buildings, often with naming rights. A logo or lettering that is static over time blends into the landscape and is generally forgotten about that. A digital billboard is a flat, blank surface with no sky visible, with adverts rather than just a logo, and it changes every eight seconds, drawing attention to it constantly, rather than it blending into the background.
- Visual effects would be exacerbated after dark.
- The sign is inconsistent with the Design Guide in several areas. Additional reasons to those above include:
 - It does not achieve a relationship with the building below it in terms of scale or placement of façade elements.
 - It alters the silhouette of the building.
 - The large flat panel is at odds with the architectural and landscaping detailing of the wider context.

¹⁵ Mr Thornton's s42A report, Mr Thornton's hearing notes and summary, Ms Duffell's urban design assessment dated June 2022, Ms Duffell's supplementary statement of evidence dated 6 December 2022 and responses to questions

- It would detract from the public space qualities of the waterfront.
- From several key public space viewpoints, the image would not appear in full, detracting from these viewpoints with pointless additional visual distraction.

*Submitter experts*¹⁶

- The proposal is not reinstating a historic condition, as it is significantly different.
- There will be a number of new effects that are not compatible with the architectural style and character of the building and its immediate surroundings.
- It would introduce a distracting element into the area and result in dominance effects on the building and Post Office Square.
- Post Office Square is actively used by people throughout the day. The two food trucks, restaurant and café make a significant contribution to the activation of the Square.
- The new wall art at 86 Customhouse Quay is not similar to the effects from commercial signage.
- The effects of a digital billboard on the character and architectural qualities of the building and surrounding heritage buildings and the visual amenity of the adjacent open space are notably different to any previous signage, due to its brightness, size, solid rather than permeable nature and transitional content.
- Agreement in terms of Ms Duffell's conclusion in respect of the Design Guide.
- The applicant's assessment has not considered the type of display, including the perceived bulk and mass, contrast of the display with its surroundings, brightness, source of the lighting and transitional content. The original sign had a pattern of 1.5m high lights; the proposal is for a 4m high billboard. Signage was static, and for the most part consisted of individual letters, with a partly permeable display.
- The visual character of the area is a lot cleaner, if comparing to the Embassy Theatre. An electronic billboard of the proposed size, with transitional and commercial content would be entirely new in this environment and stand out.
- When comparing to the Embassy, an isolated billboard that is viewed against the sky, has a higher visual dominance than when it is installed against a wall.
- While visitors to the Square may not look up to the top of the building, these people are probably not the main target for the advertising.
- However, its presence would affect people's experience of the Square.
- Large scale billboards do not fit within the human scale environment of the Square.
- A billboard typically is designed to be seen and to be visible from its surroundings. A digital billboard that is viewed against a clear sky has a higher visual dominance than a billboard against a backdrop of buildings, particularly in the evening when office lights and other signage contribute to visual clutter
- The scale, brightness and solid nature of the proposed billboard will contribute to a bulk and mass that is in contrast with the fine detailed architecture of the Huddart Parker building and adjacent heritage buildings and would result in visual dominance within this environment.
- The digital billboard would attract attention to it, rather than to the building.
- It would add a contrasting element to the wider cityscape. A digital billboard that consists of transitional and commercial content, that is not associated with the building itself, would result in a contrasting and visually dominant element in the wider cityscape view of buildings.
- The effects would be more than minor and unacceptable.

¹⁶ Mr Coolen's statement of evidence and hearing summary, Ms Maxwell's statement of evidence and hearing summary and responses to questions

- Illumination effects could be managed through controlling the illuminance of the billboard.
- (49) Mr Hamilton also raised matters of visual amenity¹⁷, and was particularly concerned about the impact on the outlook of guests of the Intercontinental Hotel. He was concerned this would result in issues with commercial viability of the particular rooms from which the sign would be visible. His evidence at the hearing primarily focused on the impact of the lighting of the sign. The submission of Stout Street Chambers set out its reasons as opposing the sign being that it would be visually intrusive and would not satisfy the relevant objectives and guidelines in the Design Guide for Signs. The submitter did not appear at the hearing or provide a statement to elaborate on these points.
- (50) I have carefully considered the evidence of both parties. In my view, it is inherent that the primary purpose of a billboard is to draw attention to it to gain revenue for those who are advertising on it, along with the sign owner, and in this case, the owner of the building on which it would be located. The intent of such a sign is not to blend in, but rather to be seen. I questioned Mr Knott on what he meant by the sign appearing as an integral part of the wider urban context. He explained that he meant it would not “jump out as being different”. In this respect, I prefer the evidence of the Council and submitter experts, as a billboard would be different to what can presently be viewed, and would be dominant by its very nature. I also preferred the Council and submitter evidence that the sign would have a wider viewing audience than that attributed by the applicant, based on the intent of the sign to attract attention.
- (51) In terms of luminance, I accept the experts’ evidence that any lighting effects could be appropriately managed through the recommended conditions of consent, so that the sign would not be visually obtrusive or inappropriate in this regard. I visited many of the signs cited by Mr Kern, comparing acceptable with unacceptable signs which assisted to inform this finding.
- (52) However, in all other regards, I prefer the evidence from the Council and the submitters. I find that a digital billboard with images changing every eight seconds would be distracting and detract from and contrast with the building and the surrounding cityscape in a manner that is not acceptable. While I appreciate that cityscapes are dynamic and change over time, this would result in a contrasting element in this part of the Wellington CBD, to the extent it would detract from the qualities of the area. A rooftop digital billboard sign with regularly changing content would be incongruent with the surrounding context of mainly heritage buildings with limited building-related signage that is located within their existing envelope.
- (53) I do not accept Mr Aburn’s assertion that the sign would be complementary to the building in that it would draw attention to the building. I prefer Mr Coolen’s position that the whole purpose of the sign is to draw attention to it, and in doing so, it would detract from appreciation of the building. While I have found that the lighting effects would be acceptable, I find that the sign would impact on the amenity enjoyed by the Intercontinental Hotel, for the same reasons I have set out here. However, I do accept Mr Knott’s evidence in this regard that while it would have an impact, it would not be a

¹⁷ See submission and evidence of Scott Hamilton on behalf of Columna Capital Holdings Ltd trading as the InterContinental Wellington, dated 28 November 2022

significant one, given that the primary focus of outlook from the rooms cited by Mr Hamilton would be towards the Harbour.

- (54) Like the Council and submitters, I consider a static, building-related sign may be an acceptable alternative. However, that alternative was not in front of me for consideration. In considering this, I was very mindful of the evidence before me in terms of what would be different between a static, building-related sign and a digital billboard. Ultimately, it came to the nature and purpose of the sign.

Heritage effects

- (55) I received and heard expert evidence from Mr Wild, Mr Knott, Ms Stevens and Mr Luzzi and Mr Coolen, which was then synthesized by Mr Aburn, Mr Thornton and Ms Maxwell in their respective evidence. In summary, and drawing from the conclusions stated by each expert, I have set out the different positions below:

Applicant's experts¹⁸

- The proposal would be a reinstatement of an historic condition, recognised as having heritage values in the Council's Heritage Inventory Record for the building. A sign was present for nearly two thirds of the building's 97 history.
- The clock and temperature display was a familiar inner-city landmark, and referred to fondly by some of the submitters.
- The Inventory Record recognises, under the Cultural value, social values, sentimental connection, that *"the building once held community sentiment and connection for the temperature display and clock that was a prominent feature on the roof. This has somewhat diminished since the removal of the display"*.
- The proposal does not intend to restore or replicate the signage types that had been affixed to the frame, but rather to position a new digital sign on the frame, so reinstating an historic condition.
- A reinstated sign does not need to replicate the previous signs; the sign represents a continuation of the historic progression of sign types.
- The relatively compressed nature of the Post Office Square Heritage Area with the high rooftop location of the sign, significantly mitigates immediate effects on the Area and building.
- Views are most apparent and limited to south-moving traffic on Customhouse Quay at some distance from the Building, a view that becomes less complete and more removed from line-of-sight.
- There would not be adverse effects on the heritage significant values or context of the Building or Heritage Area, or affect the ability to interpret the heritage features of the Building, Heritage Area or other nearby heritages places.
- Its elevation and the horizontal distance to view the sign means it does not represent cumulative adverse visual clutter.
- The proposed sign would maintain and make no significant change to the historic built condition, streetscape characteristics and skyline within the area.
- The contrast between the sign and the Building would reinforce the Building's distinctive values.
- Effects at a pedestrian scale within Post Office Square are removed due to its set back behind the parapet and cornice. These two elements separate and disengage

¹⁸ Mr Wild, Mr Knott and Mr Aburn's final evidence and summary statement of evidence and responses to questions

the building from the sign. It would not detract from existing decorative detailing, structural divisions, windows or doorways.

- The proposed sign would not have a more than minor adverse effects on the heritage significant of the Building or Heritage Area.
- Directing the revenue from the sign for future maintenance of the building is consistent with the principle of custodianship.
- The sign would very likely draw more attention to the building itself, and can be considered complementary to the building, more so than the existing framework.
- Any illumination effects on the building's heritage fabric and values would be less than minor.

Council's evidence¹⁹

- The sign does not constitute reinstatement of an historic condition.
- It will have a negative impact on the heritage values of the Building and Heritage Area.
- There is no justification or mitigation for the adverse effects on these heritage values.
- The clock and weather forecast or any kind of advert on the roof of the Building are not scheduled in the District Plan, and do not form part of the heritage fabric of the building.
- No commercial sign has been fixed to the building since 2011.
- The "temperature display and clock" are associated to the Sentiment Connection heritage value of the Building, but no sign related to advertising is associated with this heritage value.
- The Townscape heritage value evaluation says "*The building is situated on a prominent corner site at a corner of Post Office Square and Jervois Quay and has a strong street presence particularly when viewed from the north*". It does not reference a sign.
- That the rooftop of the Building has long been occupied by signage taking advantage of a prominent position does not give any heritage value to the signage itself.
- The Inventory Report only refers to the clock and temperature and not any other aspects of the sign.
- The Social Heritage value section of the Post Office Square Heritage Area states "The square has important ongoing social value as a public place – a meeting place and a space where people pass through on their way to and from the waterfront". It associates "the time and temperature [...] checked from the neon sign on the Huddart Parker Building" to its Social Heritage value and does not address the advertising.
- Only the clock and forecast display can be associated with heritage values, rather than any other signage. This historic condition is incomparable to the proposed new 50m² plus digital billboard.
- That the time and forecast would appear on a rotating digital display is not a material component, as defined in the New Zealand ICOMOS charter definition of reinstatement.
- The billboard would be an intrusive modern addition to the Building, identified in the Inventory record, and would impact on the authenticity of the Building associated to its Level of Cultural Heritage Significance.

¹⁹ Ms Stevens s42A report, and Mr Luzzi and Mr Thornton's s42A report and statements at the hearing and responses to questions

- The billboards' size and position would alter the perceived proportions of the Grey Street façade. The parapet and new billboard would be visually connected, and would appear as an eighth story, significantly impacting on the Aesthetic heritage values of the Building and alter the perceived proportions of the Grey Street façade.
- The negative impact would be exacerbated at night time, including from close distance, because distraction will be caused by unidentifiable sources of lighting spreading from the rooftop and regularly changing colours.
- The billboard would impact on other heritage buildings.
- An extended dwell period of 20 to 30 seconds is often accepted as one measure to reduce effects, although additional measures are often required.
- There are a number of matters that have not been addressed by the applicant, as set out in Ms Stevens' report.
- There are no digital billboards installed on top of heritage buildings in Wellington.
- Mr Wild's statement that "the inherent value of historic heritage is found in its resilience to remain relevant and valuable in evolving environments despite development" is not supported by Council policy or the ICOMOS New Zealand Charter.
- Using the Building as a pedestal for digital commercial advertising is contrary to its heritage values.
- The billboard would be clearly visible from within the Heritage Area, from Grey Street, distracting from the Building's most prominent façade from as far away as the Wellington Railway Station, exacerbated by rapidly changing images. It will have a significant visual impact on the streetscape and vistas in the surrounding area, particularly along Customhouse and Jervois Quays.
- It would not create visual clutter at street level within the immediate vicinity.
- Altering or replacing the frame may affect the heritage fabric of the Building.
- The billboard would draw attention away from the Square and surrounding buildings.

*Submitter evidence*²⁰

- The billboard would add a distracting element to the existing character and structure of the Building.
- The applicant's argument that it is reinstating a historic condition is not supported. The sign cannot be compared with any previous signage. Aesthetic differences relate to scale, solid nature, brightness and transitional content. It would not have the same social value given advances in technology.
- The effects of an electronic billboard are significantly different to previous signs on the Building.
- The installation of the billboard is incompatible with the structure and overall architectural style of the Building, and will appear within the same vertical plane of the front façade. It would be notably distinct and incompatible with the decorative detailing and structural divisions of the façade.
- The billboard would draw more attention to itself, and detract from the Building, worsening the visual amenity of the Building.

(56) The submission of Stout Street Chambers set out its reasons as opposing the sign being that it would not be in keeping with the character and heritage of the Building and its

²⁰ Ms Maxwell and Mr Coolen's Evidence and Hearing Summaries and responses to questions

environs, and did not meet the criteria of Rule 21D.3.1. The submissions in support of the sign referred to the nostalgia of the time and temperature display.

- (57) In response to my Minute, Mr Aburn advised that there are three other digital billboards on heritage buildings within the central area, being at 89-95 Courteney Place, on the Embassy Theatre at 10 Kent Street, and at 145-149 Cub Street. A free-standing digital sign is located immediately adjacent to the east façade of the Manthel Motors' Building. The photos that accompanied Mr Aburn's evidence confirmed that none of these are located above the rooftop of a heritage building, albeit parts of the two signs at Courteney Place protrude in part above a curved roofline. As outlined earlier, Mr Luzzi confirmed he was not aware of any digital billboards located on the rooftop of a heritage building in Wellington.
- (58) I found that there was a distinct difference in approach between the heritage experts for the applicant and Council in how they approached the assessment of the proposed digital billboard in terms of the heritage values for the Building and Post Office Square Heritage Area contained in the Council's Heritage Inventory Record. The applicant's experts focused primarily on the heritage values for the building that referenced the sign. I preferred Ms Stevens' and Mr Luzzi's broader approach of considering all of the heritage values contained in the Heritage Inventory record, and not focusing on the particular parts that mention the sign. In that regard, I also preferred the Council's experts view that where the sign was mentioned, it was for the time and temperature components rather than the advertising itself, noting that the sign was not directly associated with tenants or the owner of the Building, as confirmed by Mr McKenzie during the hearing. I accept the Council's position that less weight should be given to any heritage association of the commercial components of the sign. I also accept the Council's position that the sign does not constitute a reinstatement of a historic condition, given the significant differences in the form and type of the proposed sign and taking into account the definition from the ICOMOS New Zealand Charter.
- (59) I was concerned that Mr Wild's assessment did not take into account impacts on pedestrian experiences viewing the Building and Post Office Square Heritage Area and surrounding heritage buildings; and rather focused on south-moving traffic²¹. I found the Council experts and Mr Coolen's evidence to be more robust in terms of views of the proposed sign and the effect that this would have on the heritage values of the Building and Post Office Square Heritage Area in particular.
- (60) In terms of the applicant's experts' assertion that a digital sign is a progression of the historic condition of previous signage; this needs to be tempered against the fact that the sign has lost its existing use rights. I also preferred the Council's and submitter's experts' positions that a digital billboard is a significantly different proposition to the nature and type of the previous signage on the Building, which I have traversed earlier.
- (61) Overall, I preferred the Council and submitter's evidence that due to its location, prominence, regularly-changing digital content with associated lighting and solid appearance, a digital billboard would detract from and be incompatible with the heritage values of the Building and the Heritage Area. Further, I accept the Council's evidence that it would have a significant visual impact on the streetscape and vistas in the surrounding area, particularly along Customhouse and Jervois Quays. Again, I do not accept Mr Aburn's

²¹ Paragraph 5.6 of Mr Wild's Final Evidence.

evidence in this regard that the sign would be complementary to the Building and prefer Ms Maxwell's evidence.

- (62) I find that the effects of the proposed billboard on the heritage values of the Huddart Parker Building and the Post Office Square Heritage Area to be unacceptable.

Positive effects

- (63) There was a lot of discussion on positive effects in evidence and during the hearing. The applicant put weight on the revenue from the digital sign being put towards building maintenance, the provision of community information as 20% of the sign content, and the reinstatement of time and weather information on the sign.
- (64) I had questioned any similarities between this application and the Embassy decision, which also involved billboard signage on a heritage building. In that instance, the signs were for a limited duration and the revenue was to be used for specific identified upgrade works. At the hearing, Mr McKenzie confirmed that the revenue would not cover all the maintenance costs, for example the current \$650,000 cost cited in evidence; however, funds would be accrued for years when there were lower maintenance costs.
- (65) Mr Thornton's view was that positive effects were limited to economic and commercial benefits to the building owner, content creator and advertiser. He considered that there would be very limited benefit to the wider public and that this was insufficient to counterbalance adverse effects. He considered the reserve fund to be immaterial in terms of the building owner's overall need to maintain the building and that only a portion of the billboard revenue would go to the building owner irrespective. In terms of the time and temperature, he noted that this information is readily available elsewhere, such as on phones, car dash boards and smart watches.
- (66) Ms Maxwell accepted Mr Mackenzie's evidence that there would be community benefit from the signage and that socially negative products would be prohibited. However, her view was that these benefits did not outweigh the adverse effects.
- (67) I prefer Mr Thornton's position on the positive effects arising. I have addressed the heritage effects earlier in this assessment. I accept and find that there will be some positive effects arising, however, these are as Mr Thornton expresses, limited in nature.

Conclusion – Section 104(1)(a) Effects Assessment

- (68) Based on my evaluation above, I prefer the evidence of the Council and submitters and find that the overall effects arising from the proposal are unacceptable. While I find that there will be positive effects arising, I preferred Mr Thornton's position that these would not outweigh the adverse effects to a degree that the effects would be acceptable.
- (69) In coming to this finding, I carefully considered whether I could grant consent to a static sign, as described as being acceptable by the Council and submitters. However, given the proposal is for a billboard with different images, and this would be significantly different to what consent has been sought for. I also considered whether limiting the dwell time and luminance levels further than the proposed by the applicant would mitigate the adverse effects and mean the proposal could be considered acceptable. However, when

considering the evidence, I do not consider that these options would be sufficient to make the sign acceptable.

Section 104(1)(ab) Ensuring Positive Effects Through Offsets and Compensation Assessment and Conclusion

- (70) The applicant did not offer or agree to any measures for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

Section 104(1)(b) Relevant Planning Documents Assessment

- (71) In accordance with section 104(1)(b)(i)-(iv) of the RMA, I have had regard to the relevant standards, policy statements and plan provisions of the following documents:
- The National Policy Statement on Urban Development 2020 (NPS-UD)
 - The Regional Policy Statement for the Wellington Region 2013 (RPS)
 - The Wellington City Operative District Plan 2000 (ODP)
 - The Wellington City Proposed District Plan 2022 (PDP)
- (72) In approaching this evaluation, however, I am mindful that s104C of the RMA limits my consideration.
- (73) I also considered and generally accept Mr Aburn's position that the application does not raise matters of national or regional significance²². The exception is because the protection of historic heritage is a matter of national significance under s6(f) of the RMA. However, both the ODP and the PDP include objectives, policies and rules that give effect to s6(f) and the direction in the RPS²³.
- (74) For ease and brevity, I have not repeated the objectives and policies verbatim, except where I consider it has been necessary to do so for emphasis. Rather, I have focused on the overall intent of the objectives and policies. Full versions, which I have reviewed, can be found in both expert planners' evidence and in the higher order documents themselves.

NPS-UD

- (75) Mr Aburn and Mr Thornton agreed that the NPS-UD was a relevant policy statement for development in urban areas. However, they disagreed as to whether the proposed sign was consistent with the NPS-UD.
- (76) Mr Thornton's position²⁴ was that the proposal does not achieve the outcome sought by the NPS-UD because:
- The sign did not add or contribute to a well-functioning environment (policy 1).
 - The sign does not form part of the planned urban built form, as billboards are not anticipated on heritage buildings, within heritage areas or above the parapet of a building, and any effects generated can and should form part of the adverse effects consideration (policy 6(b))

²² Paragraph 9.6 of Mr Aburn's final evidence.

²³ Which I address below.

²⁴ Paragraphs 100 to 107 of the s42A report.

- There are not sufficient urban benefits from the billboard that contribute or are consistent with a well-functioning urban environment (Policy 6(c))

(77) His view did not change through the hearing. In his closing statement he also noted that the NPS-UD is primarily focussed on enabling intensified housing. Where he considered it to be of limited relevance was in regards to the effects on the Intercontinental Hotel. Considering Policy 6, his position was that the Hotel is in a Central Area environment which experiences changes, and that the amenity appreciated by guests of the hotel may change, and that the change in itself is not necessarily an adverse effect.

(78) Mr Aburn's position²⁵ was that:

- Signage is an element in well-functioning urban environments, which is acknowledged in the ODP.
- In seeking to avoid adverse effects on the visual amenity of the host building or site, the ODP provides for assessment through restricted discretionary activity status.
- The ODP acknowledges that the environment associated with signs can alter and change, as recently reflected by the majority of new signs, including those on heritage buildings, being LED digital signs.
- Changes in the lighting environment are consistent with Objective 4.

(79) In her statement of evidence, Ms Maxwell agrees with Mr Thornton's assessment.

(80) I do not accept Mr Thornton's closing statement that the NPS-UD is primarily focused on intensified housing, given it also addressing provisions of business land and its focus overall on well-functioning urban environments. However, I do agree that it is of less relevance to this application in terms of the focus of the NPS-UD. I accept the planners' evidence that Policy 6 is relevant insofar as the NPS-UD does seek that change occurs, and that change in itself is not necessarily an adverse effect. I find that there is nothing in the NPS-UD itself that would mean that this application is inconsistent with it.

Regional Policy Statement for the Wellington Region

(81) In my minute 3, I requested that parties address Proposed Change 1 to the RPS, as it was notified on 19 August 2022 and is therefore a relevant consideration for this application .

(82) Mr Thornton considered Policies 46 and 54 of the RPS to be relevant²⁶. These are, at a high level:

- Policy 46: Managing effects on historic heritage values
- Policy 54: Achieving the region's urban design principles

(83) For the reasons set out in respect to heritage effects, he considered the proposal to be contrary to policy 46. While he noted that the effects are reversible, in considering (i), the relationships between the elements of the site would be diminished and not maintained. In respect of policy 54, for the reasons articulated in his streetscape and visual effects assessment, he considered that the proposal is contrary to it as it does not achieve the regional urban design principles, particularly character, connections and custodianship.

²⁵ Paragraphs 12.24 to 12.27 of Mr Aburn's final evidence

²⁶ Paragraphs 108 to 113 of the s42A report.

- (84) While Mr Thornton had briefly address Proposed Change 1 in his s42A, in his response at the hearing, he confirmed his view that it does not relate to signage. He also advised that he agreed that the RPS is reflected in the Operative and Proposed District Plans and not relevant.
- (85) Mr Aburn's position²⁷ was that policy 45 is no longer relevant, as policies 21 and 22 of the RPS are now in place in the Operative District Plan. He relied on Mr Knott's evidence in respect of Policy 54, drawing on Mr Knott's conclusion that the sign would not have a more than minor effect on the heritage significant of the building and area. His overall conclusion was that the proposal is not inconsistent with the 'general strategic direction of the RPS'.
- (86) Ms Maxwell agreed with Mr Thornton and disagreed with Mr Aburn in respect of policy 54. She relied on Mr Coolen's evidence that the proposal would introduce a number of new effects that are not compatible with the architectural style and character of the building and its immediate surroundings, meaning it does not achieve the principles of context and character.
- (87) I accept the planners' positions that policy 45 the RPS is not generally a relevant consideration given that it has been given effect to through the Operative and Proposed District Plans. I therefore focus my consideration on those documents in respect to heritage.

Operative District Plan and Proposed District Plan

- (88) Both planners undertook detailed evaluations of the relevant objectives and policies of the Operative District Plan. These are:

Central Area:

- | | |
|-------------------------|--|
| <i>Policy 12.2.10.1</i> | <i>Guide the design of signs (and their associated structures and affixtures) to enhance the quality of signage within the Central Area.</i> |
| <i>Policy 12.2.10.2</i> | <i>Manage the scale, intensity and placement of signs to:</i> <ul style="list-style-type: none"> • <i>maintain and enhance the visual amenity of the host building or site; and</i> • <i>ensure public safety.</i> |
| <i>Policy 12.2.10.3</i> | <i>Ensure signs in the Central Area do not adversely affect the integrity of the building on which the site is located.</i> |
| <i>Policy 12.2.10.4</i> | <i>Ensure that signs contribute positively to the visual amenity of the building and neighbourhood and cityscape above the fourth storey level.</i> |
| <i>Policy 12.2.10.5</i> | <i>Control the number and size of signs within heritage areas and areas of special character.</i> |
| <i>Policy 12.2.10.7</i> | <i>Ensure that signs in the Central Area do not adversely affect the amenity values of nearby Residential Areas.</i> |

Heritage

- | | |
|------------------------|--|
| <i>Policy 20.2.1.9</i> | <i>Ensure that signs on listed heritage buildings or objects (or sites on which they are located) or within Heritage Areas do not adversely affect heritage values and qualities and avoid unnecessary or inappropriate signage.</i> |
|------------------------|--|

²⁷ Paragraphs 12.28 to 12.34 of Mr Aburn's Final Evidence

- (89) All the planners limited their evaluation to SIGN-P3 as being of particular relevance. In full, this policy states:

Signs and historic heritage

Enable signs on heritage buildings, heritage structures and within their sites, and within heritage areas to support wayfinding and interpretation and only allow signs for other purposes where they do not detract from the identified heritage values, having regard to:

1. The extent to which:
 - a. Damage to heritage fabric, from methods of fixing, including supporting structures, cabling or wiring is minimized or is reasonably reversible;
 - b. The location and placement of signs obscure architectural features, project above parapet level or reflect the typical positioning of signage on the heritage building or within the heritage area;
 - c. The area, height and number of signs are appropriate for the scale of the heritage building, heritage structure or heritage area or would result in clutter;
 - d. The quality of the design of the sign complements the heritage building, heritage structure or heritage area;
 - e. The intensity of any illumination adversely affects heritage values; and
 - f. The sign fulfils the intent of the Heritage and Signs Design Guides.
 2. The benefits of allowing additional signage to support sustainable long term use.
- (90) It is no surprise that there was disagreement between the applicant, Council and submitters as to consistency with these objectives and policies. I note that both Mr Thornton and Mr Aburn focused on whether the proposal was contrary to these objectives and policies. This is not the test for a restricted discretionary activity. Rather, my consideration is to have regard to these objectives and policies, which in practice is whether a proposal is consistent with them. Ms Maxwell applied the test correctly.
- (91) Mr Thornton's reasons as to why he considers the proposal to be contrary to the objectives and policies of the Operative District Plan, and the assessment criteria 21D.3.1.5 to 11 is set out in his paragraphs 115 to 125 of his s42A report. His view did not change during the hearing. I summarise the reasons for his position as:
- The sign would dominate and not maintain nor enhance the architectural or visual amenity of the host building (policy 12.2.10.2)
 - The sign would adversely affect the architectural integrity of the building (policy 12.2.10.3)
 - There is no positive contribution to the visual amenity of the building neighbourhood and cityscape above the fourth storey level (policy 12.2.10.4)
 - The sign would dominate and overwhelm the streetscape values of the Post Office Heritage Area and add to the wider proliferation of signage (policy 12.2.10.5)
 - The sign does adversely affect heritage values and qualities and it is not necessary for safety or way finding, and is therefore inappropriate (policy 20.2.1.9)

- The sign would detract from the heritage significance and architecture of the building, result in visual clutter, not complement the building and not meet the Design Guide for Signs.

(92) Mr Aburn’s reasons as to why the proposal is not contrary to the objectives and policies of the Operative District Plan is articulated in his paragraph 12.37 of his final evidence. He disagreed with Mr Thornton’s position on proliferation of signs for the reasons articulated in his paragraph 12.41. He maintained the view that the proposed sign does not give rise to significant and unacceptable adverse effects that would mean it is contrary to the District Plan policies for signs on heritage buildings. In paragraph 12.43 he expresses the view that none of the policies are framed around an avoidance direction, and all enable consideration of proposals on their merits. On questioning, Mr Aburn did agree that Policy 20.2.1.9 does include reference to avoidance. I summarise the reasons for his position as:

- The sign will be attached to an existing frame and incorporate high quality graphics (policy 12.2.10.1).
- The sign would be the only external sign attached to the building, and would not detract from visual amenity or result in public safety issues (policy 12.2.10.2).
- It would not unacceptably affect the architectural integrity of the building (policy 12.2.10.3) or the heritage value of the building and area (policy 12.2.10.5), as evidenced by the previous sign. The sign would not be dominant in views and it would be viewed against a backdrop of existing taller building.
- It would not make a significant change to the historic built environment condition, streetscape characteristics or skyline, as it is located within the elevation of an existing building (policy 12.2.10.4).
- It would not adversely affect the amenity values of any nearby residential area (Policy 12.2.10.7).

(93) Ms Maxwell agreed with Mr Thornton’s assessment, also drawing on Mr Coolen’s evidence²⁸. She set out her disagreement with Mr Aburn’s assessment in respect of policy 12.2.10.4, as the sign is not a reinstatement, but a new digital billboard designed to draw attention to it. She relied on Mr Coolen’s position that:

“A billboard typically is designed to be seen and to be visible from its surroundings. The scale, brightness and solid nature of the proposed billboard will contribute to a bulk and mass that is in contrast with the fine detailed architecture of the Huddart Parker building and adjacent heritage buildings and I consider that this will result in visual dominance within this environment.”²⁹

(94) Ms Maxwell agreed with Mr Thornton that SIGN-P3 mirrors those of the Operative District Plan. In his assessment, Mr Thornton noted that the policy adds (b) to that contained in Policy 20.2.1.9 of the Operative District Plan. He also considers the policy to discourage signs on a heritage building, particularly above the parapet level. Overall, he concluded that the proposal is contrary to this policy.

(95) Mr Aburn disagreed with Mr Thornton. In terms of the sign’s location above the parapet, he drew my attention that this had been the case for close on 50 years. He also noted that while the Design Guide discouraged signs above the parapet on heritage buildings, there

²⁸ Paragraph 8.20 of the Statement of Evidence of Katie Monique Maxwell dated 29 November 2022

²⁹ Paragraph 6.9 of the Statement of Evidence of Jos Coolen dated 29 November 2022

are specific circumstances that make granting consent appropriate. Mr Aburn also drew my attention to this being an enabling policy, and that there would be positive benefits.

- (96) Again, I questioned Mr Aburn on the enabling nature of this policy, and if that was actually the case. In particular, the policy is in two parts. The first part enables signs that supports wayfinding and interpretation, and then goes on to say that signs for other purposes will only be allowed when they do not detract from heritage values. On reflection, Mr Aburn confirmed it had two parts to it. Ms Maxwell confirmed that this was her interpretation of the policy. I agree.
- (97) I also questioned Mr Thornton on his use of discourage in respect of billboards. After consideration, he confirmed that there are no prohibited rules associated with this policy, and it rather requires more scrutiny to be given. I approach my consideration on that basis.
- (98) I accept that Policy 12.2.10.7 is not relevant as there are no nearby Residential Areas. I preferred Mr Aburn's position on visual clutter to that expressed by Mr Thornton and Ms Duffell in that there is not a proliferation of signs within this area.
- (99) I addressed the matters of discretion in my effects assessment; whereby I found that the effects would be unacceptable.
- (100) Specifically, I find that for the reasons I have already traversed in this decision:
- The sign would be of a high quality
 - The sign would not maintain or enhance the visual amenity of the Huddart Parker Building or the Post Office Square Heritage Area
 - The sign would not impact on public safety
 - The sign would detract from and be incompatible with the integrity of the Building
 - The sign would not contributed positively to the visual amenity of the Building, surrounding area and cityscape above the fourth level, in particular, it would be incongruous with and detract from the visual amenity
 - The sign would be incompatible with and detract from the heritage values of the Building and Heritage Area
 - The sign is unnecessary and inappropriate on a listed heritage building and within a heritage area
 - It is uncertain whether there may be resultant damage to the heritage building if upgrades to the support structure is required, while noting that this could be addressed by a condition
 - The sign projects above parapet level and while it reflects the historic positioning of a sign on the existing support structure, it does not reflect the previous form and type of the previous sign, beyond the provision of time and temperature information.
 - The sign would not complement, and rather would detract from the heritage building and area
 - The illumination may impact on the heritage values of the building and area
 - The sign is not consistent with the Heritage and Signs Design Guide
 - The revenue from the sign would support the ongoing maintenance of the building.
- (101) Overall, while there are aspects of the proposal that are consistent with the relevant provisions of the Operative District Plan and Proposed District Plan, I find that it is overall inconsistent with these documents, for the reasons set out above.

Conclusion – Section 104(1)(b) Objectives and Policies

- (102) I accept Mr Aburn’s position that the key relevant planning documents are the Operative District Plan and Proposed District Plan.
- (103) Overall, for the reasons articulated above and in the effects assessment, I find that the proposal is generally inconsistent with the relevant provisions of the Operative District Plan and Proposed District Plan.

Section 104(1)(c) Other Matters

- (104) Mr Aburn did not raise any relevant other matters. Mr Thornton identified that the building is not included in the HNZPT Register of Historic Places, Historic Areas, Wāhi Tapu and Wāhi Tapu Areas. I accept their advice that there are no relevant other matters to consider.

Subject to Part 2

- (105) Mr Aburn agreed³⁰ with Mr Thornton’s position³¹ who sets out his position that a detailed evaluation of Part 2 is not required as the planning and regulatory framework clearly indicates the outcomes. Mr Aburn added that the District Plan provisions appropriately address Part 2 and are complete. I accept their advice and I have not considered it necessary to address Part 2.

9 Overall Conclusion and Reasons

- (106) I find that the effects of the proposal are unacceptable under s104(1)(a).
- (107) I also find that the proposal is overall inconsistent under s104(1)(b) with the relevant provisions contained in the Operative District Plan and Proposed District Plan, being the most relevant planning documents.
- (108) Further, I am satisfied that there are no other matters under s104(1)(c) that are relevant to my consideration.
- (109) I therefore, for the reasons articulated in this decision, refuse consent under s104B.

10 Refusal of Consent

Pursuant to the authority delegated to me by the Wellington City Council and pursuant to sections 104, 104B and 108 of the RMA, I **hereby refuse consent** to the application by New Zealand Fruitgrowers’ Charitable Trust to erect an electronic billboard on the existing support structure located on the roof of the building known as the Huddart Parker Building for the reasons explained in this decision.

³⁰ Paragraphs 12.52 and 12.53 of Mr Aburn’s Final Evidence.

³¹ Paragraph 139 of the s42A report

A handwritten signature in blue ink on a light green rectangular background. The signature is cursive and reads "Sweetman".

Commissioner Gina Sweetman

Date: 17 January 2023