

**IN THE MATTER** of the Resource Management Act 1991 (**RMA**)

**AND**

**IN THE MATTER** of an application by New Zealand Fruitgrowers' Charitable Trust to the Wellington City Council for a resource consent to reinstate a sign on the building located at 2 Jervois Quay, Wellington (**the Application**)

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**SUPPLEMENTARY STATEMENT OF ALISTAIR ABURN  
ON BEHALF OF NEW ZEALAND FRUITGROWERS' CHARITABLE TRUST  
(PLANNER)**

**7 December 2022**

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**Scope**

1. This Supplementary Statement summarises my evidence-in-chief (EIC) dated 22 November 2022 and should be read in conjunction with that statement.
2. I also provide brief comment on the Statement of Evidence of Kate Maxwell for Boffa Miskell and respond to the Commissioner's Preliminary Questions listed in Minute 3 issued on 30 November 2022.

**Summary of Evidence in Chief**

3. In my Conclusion to my EIC I recorded that:
  - a. In the assessment of environmental effects (AEE) submitted with the resource consent application, I concluded that the principal issue for assessment was the potential for adverse effects on the heritage values of the Huddart Parker Building and the Post Office Square Heritage Area.
  - b. In my opinion that remains the principal issue, alongside any adverse effects on streetscape and the visual amenities of Post Office Square.
  - c. To reach the conclusion that consent can be granted to the proposed new sign, I have drawn on the expert evidence of Messrs Adam Wild and Richard Knott, both of whom

conclude that any adverse effects on heritage (Adam Wild) and streetscape and visual amenities (Richard Knott) are less than minor.

[EIC paras. 12.8, 12.9 and 12.15 re heritage; and EIC 12.20-12.22 re streetscape/visual amenities]

- d. Given those conclusions, I have in turn concluded that the proposal sign is not contrary to the relevant District Plan objectives and policies.

[EIC 12.37-12.43, 13.16 and 14.8(e)]

- e. Accordingly, and with the imposition of appropriate consent conditions, I am of the opinion that consent can be granted under sections 104 and 104C of the Resource Management Act 1991.
- f. A relevant consideration in relation to this application is the acknowledged historical presence of a sign in the same position as now proposed. That is why I have frequently referred to the 'reinstatement' of a sign, albeit a sign in the more modern LED digital format rather than a static 'neon' lit format. Nevertheless, in my opinion the change in format does not lead to the sign becoming unacceptable.
- g. As is evidenced by the supporting submissions and the Council's Heritage Inventory statement, a sign in this location that incorporates public information, time and weather information in particular, in addition to commercial advertising, which was always a feature (refer Figure 3), is an important feature of the building's and the Post Office Square's history.
- h. I recommend that resource consent be granted, subject to appropriate consent conditions which principally focus on the operation of the sign.

#### **Evidence of Kate Monique Maxwell**

4. Ms Maxwell's planning evidence is prepared on behalf of Boffa Miskell as a submitter opposing the application.
5. I note that Ms Maxwell repeats several times in her evidence that the proposal is not "reinstating the rooftop signage" [my emphasis]. My position is that the proposal seeks to reinstate a rooftop sign in the same position as the previous signs, albeit in a different format. I accept that it is not a 'like for like' situation (Ms Maxwell at her paragraph 8.10). But it is, in my opinion, reinstating an historic condition - i.e. a rooftop sign.

6. I agree with Ms Maxwell when she opines that the ODP policies are the primary focus for a 'policy assessment' of the proposal. However, I disagree with her statement that the proposal is not consistent with the relevant objectives and policies. I accept nevertheless, that we come to a different conclusion largely because we draw on different expert urban design and heritage evidence. In reaching my conclusions, I have had regard not only to the evidence of Adam Wild (heritage) and Richard Knott (urban design), but also the evidence of Chessa Stevens (heritage) and Sarah Duffell's preliminary urban design report. Having read all of the submitter's evidence, I have not changed my opinion that consent should be granted for the reasons stated in my EIC.
7. I note that Ms Maxwell states at her paragraph 8.8 when addressing heritage effects, that both Mr Knott and Mr Wild rely heavily on the proposed signage being a reinstatement. I disagree that their evidence is that narrowly focused. Both provide a full assessment of the proposed digital sign against the relevant assessment criteria and design guidelines, which essentially address heritage, character and context, while also opining that the historic condition of a rooftop sign on the building for a lengthy period of time is a relevant matter to have regard to, and I agree that it is.
8. At paragraph 8.18 Ms Maxwell states that, based on Mr Coolen's evidence, she does not consider the proposed billboard "*achieves the region's urban design principles as set out in the RPS, specifically the principals [sic] of context and character*". Here she is referencing Policy 54 of the RPS, which in turn references the New Zealand Urban Design Protocol (**Protocol**).
9. For the reasons stated in my EIC, I do not agree. Both Mr Wild and Mr Knott consider in detail both the 'character' of the Huddart Parker building and its 'context' - i.e. it's setting in the Post Office Square Heritage Area.
10. I also note that one of the Protocol's '7 C principles' is "Custodianship". Referencing custodianship, the Protocol states, inter alia, that:

*Custodianship recognises the lifetime cost of buildings and infrastructure, and aims to hand on places to the next generation in as good or better condition.*
11. As Mr Mackenzie's evidence clearly establishes, custodianship of heritage buildings is an expensive undertaking. To this end, I consider the Applicant's offer to direct the revenue from the proposed sign to the future maintenance of the building is consistent with the principle of custodianship.

## Commissioner's Preliminary Questions

12. In Minute 3 eight preliminary questions were posed:

***Question 1: Does the proposed sign trigger any consent requirements under the Proposed District Plan?***

13. When the application was lodged with the Council (22 April 2022) it was prior to the 18 July 2022 public notification of the Proposed District Plan (PDP). At that point therefore, the only relevant plan was the Operative District Plan (ODP).
14. Prior to preparing my EIC I reviewed the Council's s42A Report. At paragraphs 126 to 133, Mr Thornton addressed the PDP, but only in respect of the objectives and policies that he noted "*have immediate legal effect with regards to heritage*". He did not reference the PDP heritage rules as being applicable.
15. However, following receipt of Minute 3 I reviewed the PDP's chapter on Signs and identified that SIGN-R6 'Signs on heritage buildings, heritage structures and their sites, or on a site with a heritage area' also has immediate legal effect.
16. The answer to the questions is therefore "yes", resource consent is required for a restricted discretionary activity under SIGN-R6.2. The matters of discretion are:
1. The matters [sic] SIGN-P3; and
  2. The Signs Design Guide and the Heritage Design Guide.
17. I addressed SIGN-P3 in my EIC at paragraphs 12.44 to 12.50, noting inter alia that one of the matters to have regard to under the policy was the extent to which:

*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 with the heritage area.*

18. Drawing on the EIC of Mr Wild, I commented that:

*The location of the sign will not obscure any architectural features ... and while it will project above the parapet level, this was the case for close on 50 years. Also, I note that both Ms Duffell and Ms Stevens do not appear to be opposed to a rooftop sign per se.*

19. I note that Mr Wesley on behalf of submitter Boffa Miskell accepts that a rooftop sign could be appropriate; however, Ms Maxwell is 'silent' on the point.
20. I have reviewed the Supplementary Statement prepared by Mr Wild. Drawing on his conclusions [paras 4.5 to 4.10], and given the specific circumstances applying to this application to position the sign on the existing framework, thus reinstating an historic condition, I am of the opinion that any effects are not more than minor and are therefore acceptable. As discussed by Mr Wild, the proposed sign will not obscure the Huddart Parker Building's distinctive architectural features.
21. Finally, in relation to the PDP provisions relating to signs on heritage buildings, I note that they are subject to a significant number of submissions, both opposing and supporting submissions. In short, notwithstanding that they have immediate legal effect, they are far from settled and so the matter of weight to be accorded the provisions is, in my opinion, a matter for consideration.

***Question 2: Was the previous sign erected lawfully?***

22. In my opinion "yes". Certainly over the period of time since 1963 neither the Council nor any other party has suggested otherwise. I am not aware of any enforcement action being taken by Council following the heritage listing of the Huddart Parker building.<sup>1</sup> As a planner, I draw on my answer to the third question to support my position that the sign was erected lawfully.

***Question 3: Was there a District Plan in place at the time the sign was first erected?***

23. No. The first "City of Wellington District Scheme", prepared under the Town and Country Planning Act 1953, was publicly notified on 15 July 1967. It was made operative on 25 September 1972. Prior to 1967, there was what was referred to as an 'undisclosed district scheme'. That scheme, to my knowledge, was not subject to scrutiny through a public notification process.

***Question 4: Would the sign framework ('scaffold') have existing use rights?***

24. As a planner, in my opinion yes. The 'character, intensity and scale' of the sign framework has not changed since it was first installed in 1963. It has remained in place without any material

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<sup>1</sup> The Huddart Parker building was first listed as a heritage building on 27 July 1994 when the current ODP was publicly notified as a Proposed District Plan. The building was not included in the Schedule of heritage buildings (Appendix 1A) under the 1985 Operative District Scheme prepared under the Town and Country Planning Act 1977, which was made operative on 4 September 1985

change from 1963 through to the present time. To enable a better appreciation of the rooftop framework installed in 1963, I have attached a photo taken at rooftop level - refer Attachment 1.

***Question 5: Would reinstatement of the sign have been permitted, without a consent being required (where existing use rights had been lost)?***

25. In my opinion “no”. If existing use rights had been lost, which is the present position, resource consent would be required - hence the current application.

***Question 6: How does this application differ to the consent granted for the digital billboards on the Embassy Theatre?***

26. Firstly, the Huddart Parker application was publicly notified, whereas the Embassy Theatre application was processed and granted on a non-notified basis.
27. The aggregate size of the three digital billboards on the Embassy Theatre is 102.6sqm compared to the 52sqm on the Huddart Parker Building.
28. The digital billboard(s) on the Embassy Theatre were in the same location as previous non-digital signage, as is the case with the proposed Huddart Parker Building sign.
29. The Huddart Parker Building sign is located above the building parapet. That is not the case with the Embassy Theatre signs. The Embassy Theatre building presents a two-tiered massing - the Kent Terrace entry block with its detailed architectural pediment, and the auditorium block set back and above the entry block. The digital signs cover the entire length of the top level of the auditorium block.
30. In closer-up views, the signs appear to sit above the detailed architectural pediment of the Kent Terrace entry block.
31. In the case of the proposed Huddart Parker Building sign, which does sit above the building top, the perception of the actual building top remains unaffected [evidence of Adam Wild].
32. The Embassy Theatre signs required resource consent under the same ODP rules as the present application: Central Area Rule 13.3.9 (Signs) and Heritage Rule 21D.3.1 (Signs).
33. As I noted in my EIC [paragraph 13.14], the Council’s Decision Report acknowledged the positive effects of generating revenue to assist with the reinstatement/refurbishment of the heritage elements (ground floor entry) of the Embassy Theatre building.

34. On the consent granted for the Embassy digital signs, consent condition (b) stated:

*Digital Signs*

*Removal of Signs*

*(b) The three digital signs along the top of the Kent Terrace façade as shown on plan by Perry Architects, project entitled “Embassy Theatre”, drawing entitled “Proposed Elevation” drawing no 5 RB, dated July 2016 must be removed no more than 8 years after installation.*

*Advice Note:*

*The specified timeframe is inherent to the approval of this application. Should an extended timeframe for the display of these signs be sought, a fresh resource consent will need to be applied for in relation to this matter.*

35. Consent condition (b) was effectively an ‘Augier’ condition offered by the Applicant.

36. The Consent Order issued by the Environment Court replaced the Council-imposed 60sec dwell time for the Embassy Theatre signs with a 25sec dwell time.<sup>2</sup> The current application requests an 8sec dwell time.

***Question 7: How many other digital billboards are there on heritage buildings in the City?***

37. In addition to the three digital billboards on the heritage listed Embassy Theatre, I am aware of the following digital billboards on other heritage buildings:

(a) 89-95 Courtenay Place, Heritage Listing Reference 67/3, located within the Courtenay Heritage Area; and

(b) 145-149 Cuba Street, Heritage Listing Reference 429, located within the Cuba Street Heritage Area.

38. I have attached photos of these heritage buildings, plus the Embassy Theatre, at Attachment 2.

39. There is also a ‘free-standing’ digital sign immediately adjacent to the east façade of the heritage listed Manthel Motors’ Building. Although not physically attached to the building (there

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is an approx. 100mm gap) it is viewed in association with the street (north) facing façade of the heritage building. Again I have attached a photo at Attachment 2.

**Question 8: Is Change 1 to the Regional Policy Statement relevant to this application?**

40. The Public Notice for Change 1 to the RPS stated that:

*The focus of the Proposed Change 1 to the Regional Policy Statement is to implement and support the National Policy Statement of Urban Development 2020 (NPS-UD) and to start the implementation of the National Policy Statement for Freshwater Management 2020 (NPS-FM). We are also addressing issues related to climate change, indigenous biodiversity and high natural character.*

41. In relation to the current application, in my opinion the only Change 1 RPS provisions that have any relevance to the current application are those relating to the proposed amendment to Chapter 3.9 “Regional form, design and function”, which relate back to the NPS-UD, including amendments to Objective 22, to give effect to the concept of a well-functioning urban environment as articulated by the NPS-UD. I consider that appropriate signs are part of a well-functioning urban environment.

42. I note that Change 1 does not propose any amendments to Chapter 3.5 “Historic Heritage”, including Policy 21, Policy 22 and Policy 46 which I address in my EIC.

43. In relation to Chapter 3.9, Policy 54 ‘Achieving the region’s urban design principles - consideration’, which I address at paragraph 12.33 of my EIC, also remains unchanged.

44. The Summary of Submissions was publicly notified on 5 December 2022. I have reviewed the Summary of the Chapter 3.9 submissions and in my opinion there are none that could be considered relevant in the context of the current application.

45. At paragraph 12.34 of my EIC, I said:

*To conclude, for the reasons summarised above, in my opinion the proposal is not inconsistent with the general strategic direction of the RPS.*



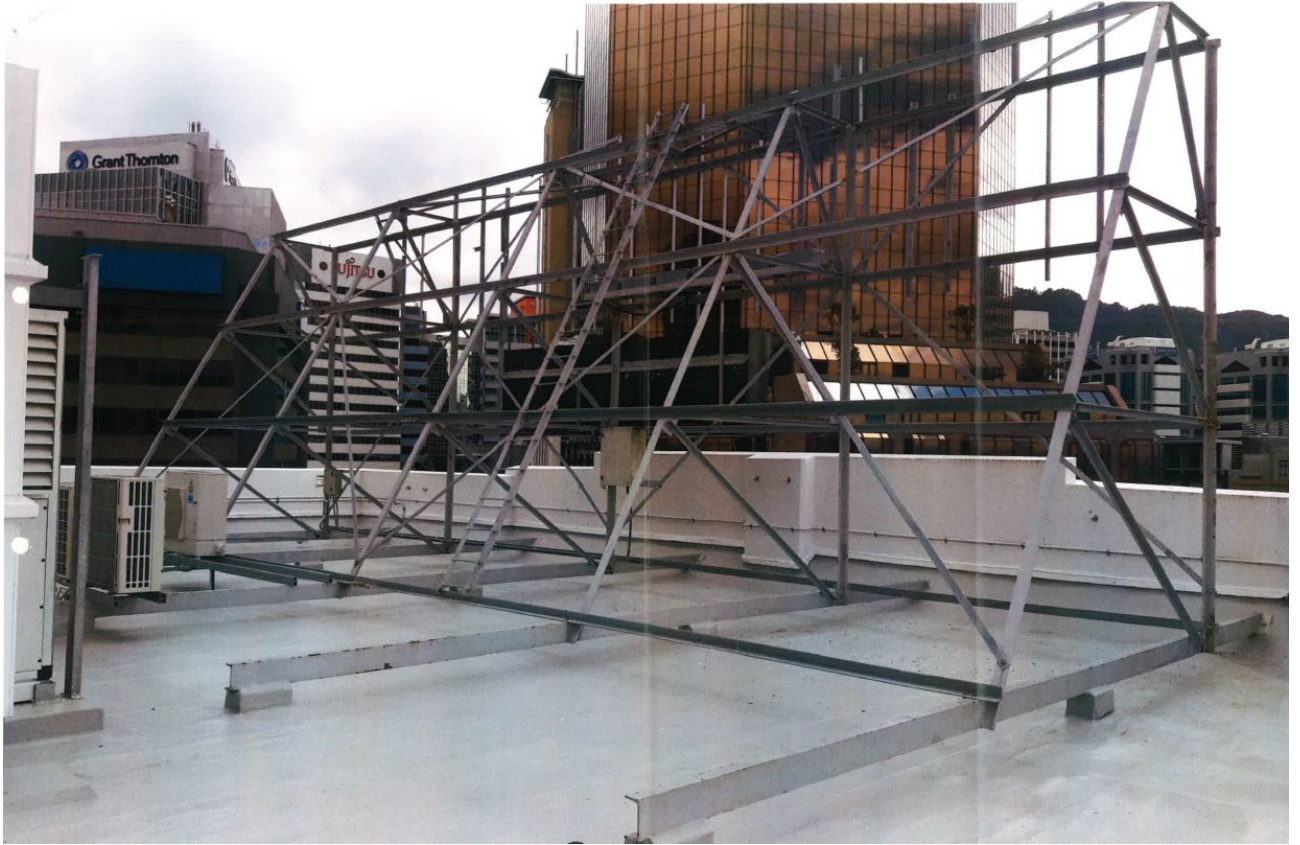
46. Having now reviewed Change 1 to the RPS and the Summary of Submissions, I remain of that opinion.

A handwritten signature in blue ink, appearing to be 'Alistair Aburn', written in a cursive style.

Alistair Aburn

7 December 2022

**ATTACHMENT 1: EXISTING SIGN FRAMEWORK**



## ATTACHMENT 2: DIGITAL SIGNS ON HERITAGE BUILDINGS

### 1. EMBASSY THEATRE



172	9-11 Kent Terrace	Embassy Theatre	LOTS 24 25 27 LOT 26 DP 240 - EMBASSY THEATRE	Entire external building envelope
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### 2. 149 CUBA STREET



429	149 Cuba Street	Shop/dwelling	LOT 1 DP 79547	Listing specifically includes party wall on south side of building
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### 3. 89-95 COURTENAY PLACE



67.3	89-95 Courtenay Place	Colonial Motor Company Building (former)	LOT 1 DP 73633	Entire external building envelope
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### 4. 186-200 Wakefield Street



377	186-200 Wakefield Street	Manthel Motors' Building (former)	LOTS 38 39 DP 394	Entire external building envelope
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