

**BEFORE AN INDEPENDENT HEARING COMMISSIONER FOR
WELLINGTON CITY COUNCIL**

IN THE MATTER

of the Resource
Management Act
1991 (the **Act**)

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**)

**CLOSING SUBMISSIONS ON BEHALF OF NEW ZEALAND
FRUITGROWERS' CHARITABLE TRUST**

DATED: 20 December 2022

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1. INTRODUCTION

- 1.1 These submissions are filed on behalf of the NZ Fruitgrowers' Charitable Trust (**NZFCT**) the applicant for resource consent to reinstate a sign (**the Proposal**) on the roof of the Huddart Parker building (**the Building**). Resource consent for the Proposal was sought from the Wellington City Council (**the Council**), and specifically seeks consent for a LED sign (**Proposed Sign**).
- 1.2 In her fourth Minute, the Independent Commissioner gave a direction enabling NZFCT to provide a final written right of reply in relation to the Application.
- 1.3 The purpose of these submissions is to address the matters discussed at the hearing held on 7 December 2022, and the further correspondence subsequent to the hearing which was primarily focused on the proposed condition set.
- 1.4 These submissions have been prepared to assist the Commissioner in making her decision on the application. We have therefore not set the Proposal out in detail. Rather the submissions broadly cover the evidential matters discussed at the hearing that are considered to be of particular relevance to the Proposal, and provide comment on the draft conditions.

2. A ROOFTOP SIGN ON THE HUDDART PARKER BUILDING IS CONSIDERED TO BE APPROPRIATE

- 2.1 A rooftop sign has been a feature of the Building for approximately 50 of the last 60 years.¹ Some of the previous signs were not static – the lights came on and off to spell certain words related to the weather.² The signs previously located on the building represented different forms and styles and were changed over time reflecting the technology available, and different advertising styles. Of particular note, the AGC sign was a block sign meaning it was not possible to see through the letters.³

1 Evidence of Keith Mackenzie, at [1.4] and [4.3].

2 Evidence of Chessa Stevens, at [18].

3 Shown in Evidence of Adam Wild at Figure 3.

- 2.2** The community aspect of the sign is recognised by the Council’s heritage listing of the building⁴ and is valued by members of the community, as evidenced by the submissions in support.⁵
- 2.3** The above points are significant in terms of the unique characteristics of this proposal, and differentiate it from other potential applications for rooftop billboards. It would be very difficult to conclude that a decision to grant consent for this particular billboard set a precedent for rooftop billboards more generally in Wellington. The historical presence of a sign on the roof of the Building was highly relevant to NZFCT in deciding to make this application.
- 2.4** Even those opposed to the proposal confirmed that they could accept a rooftop sign on the Building:
- (a) Ms Stevens’ evidence on behalf of the Council indicated support for a static, non-digital, non-illuminated sign with cut out letters with a similar surface area to the previous signs, limited to the building name, or name/logo of the business or owner/occupier of the building on which the sign is located.⁶
 - (b) Mr Thornton for the Council indicated that he would no longer oppose the application if it was for a sign reflective of the previous signage that was on site.⁷
 - (c) Mr Hamilton from the InterContinental Hotel suggested a static sign with the building name, or logo of the business.⁸
 - (d) Mr Wesley indicated Boffa Miskell is not opposed to signage on the roof of the Huddart Parker Building in principle.⁹ He supported the suggestions made by Ms Stevens that appropriate signage could be static, non-digital, non-illuminated and similar in form and size to previous signs, and relate to the name or use of the building.¹⁰

4 Evidence of Chessa Stevens, at [18]-[24].

5 Evidence of Keith Mackenzie, at [9.1].

6 Evidence of Chessa Stevens, at [103].

7 Section 42A Report, at [143].

8 Evidence of Scott Hamilton, at page 29, [11].

9 Evidence of Hamish Wesley, at [5.2].

10 Evidence of Hamish Wesley, at [5.3].

2.5 So the key difference between NZFCT and those parties is not whether it is acceptable to have a sign on top of the building or not, but whether the use of modern signage technology for that sign is appropriate. This has some significance in terms of the assessment of the balance of the evidence, because it means care needs to be taken with any opposition that is based on the visibility of the sign above the parapet. In short, having accepted that the 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 features existed on previous signs which the opposing parties have suggested are acceptable.

3. TRAFFIC EFFECTS

3.1 The clear and uncontested expert evidence in this case is that this proposal will not have adverse traffic effects.¹¹

3.2 Digital billboards have not caused any known traffic incidents in New Zealand in the last ten years.¹² The roading where the Proposed Sign will be seen from does not have any inherent road safety defect or issue that the Proposed Sign could compromise.¹³

3.3 Mr Harries also provided comments on the conditions that had been put forward in the section 42A report, explaining why some of those conditions appeared to be traffic-related but were not warranted from a traffic perspective. This evidence is important because the officers have proposed reinstating some elements of the conditions that are without a logical or evidential basis in light of the agreed position on traffic effects. We will return to these comments in discussion of the conditions.

4. EXISTING USE RIGHTS FOR THE FRAME

4.1 There is agreement between NZFCT and Mr Thornton that the existing frame on the Building has existing use rights and is lawful. Mr Thornton confirmed at the hearing that he had searched the Council files and found the existing frame was legal and continued to have existing use rights under section 10 of the RMA.

¹¹ Evidence of Brett Harries, at [125]; Section 42A Report, at [67].

¹² Evidence of Brett Harries, at [8.23].

¹³ Evidence of Brett Harries, at [6.1].

5. LIGHTING EFFECTS

- 5.1** Concerns regarding impacts of lightspill have been raised by submitters (InterContinental in relation to the impact on its rooms and Boffa Miskell in the time lapse video provided) and the Council (Ms Stevens' concerns about the brightness of the billboard as compared with a static board).
- 5.2** Mr Kern was the only lighting expert to present evidence in relation to the Proposal. His evidence was that spill light will not affect nearby building occupants. This is because of the Proposed Sign's automated luminance controls, and the distance between the nearest neighbouring building windows and the Proposed Sign.¹⁴ Mr Kern gave evidence that any glare from the Proposed Sign will be limited because the luminance will be controlled to acceptable values.¹⁵ This will be in line with ambient light conditions and accepted obtrusive light standards.
- 5.3** Mr Kern's evidence is clear that the lightspill will not impact on the InterContinental. He has also proposed a decrease in the night-time luminance maximum compared to the maximum suggested by the Council in the draft conditions. At the hearing he explained why the time lapse video provided by Boffa Miskell did not provide a realistic depiction of how the Proposed Sign will appear to the eye.
- 5.4** As Mr Kern explained at the hearing, care needs to be taken when comparing the Proposed Sign to other existing digital billboards. Existing digital billboards vary in brightness, for example the Stadium walkway billboard had a high night-time luminance when he measured it on the evening of 6 December 2022.¹⁶ Mr Kern has recommended that the sign company turn the brightness of that sign down.
- 5.5** Mr Aburn's assessment was that the changes in the lighting environment are consistent with Objective 4 of the NPS-UD.¹⁷ Mr Aburn supported the expert evidence of Mr Kern that the lighting effects will be less than minor and there will be no appreciable glare.¹⁸

14 Evidence of Russ Kern, at [9.2].

15 Evidence of Russ Kern, at [8.9].

16 Supplementary evidence of Russ Kern, Appendix 1: tests 3 and 4.

17 New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities and future generations. Evidence of Alistair Aburn, at [12.26].

18 Evidence of Alistair Aburn, at [14.8].

- 5.6** Mr Thornton accepted that the lighting effects were not significant, particularly with regard to the InterContinental hotel. He considered the lighting effect to be similar to that produced by the internal lighting in a nearby building.¹⁹ Furthermore, when questioned at the hearing by the Commissioner, Mr Thornton did not consider that there was an adverse effect on hotel guests at the InterContinental. Mr Thornton stated that most guests at the hotel would use some kind of barrier between the window and the outdoors while they were sleeping, so any light effects from the Proposed Sign would not impact the guests' experience.
- 5.7** In Mr Thornton's report he found the effects of lighting nuisance to be less than minor, and acceptable.²⁰ He also states that the change in outlook is not an adverse environment effect.²¹ Change is typical of a central area which commonly includes digital billboards. Therefore, occupants of a CBD hotel would expect a varying and changing environment.
- 5.8** NZFCT's evidence from Mr Kern supports the conclusion reached by Mr Thornton.²²

6. HERITAGE EFFECTS

- 6.1** NZFCT's heritage evidence, provided by Mr Knott and Mr Wild, differs in the conclusion regarding heritage effects when compared with the evidence provided by Ms Stevens. Mr Knott and Mr Wild found that the Proposed Sign will maintain, and make no significant change to, the historic built condition, streetscape characteristics, and skyline within the area.²³ Mr Knott found that the Proposed Sign will not have a more than minor effect on the visual amenity of the area or heritage significance of the Huddart Parker Building or the Post Office Square Historic Heritage Area.²⁴
- 6.2** The PDP does not provide a stricter activity status for signs on a heritage building; instead, the activity remains a restricted discretionary activity, capable of being granted consent.
- 6.3** Policy SIGN-P3 of the PDP should be given weight when considering the proposal and its benefits. This policy expressly confirms that regard should be had to the benefits of

19 Section 42A Report, at [80].
20 Section 42A Report, at [83].
21 Section 42A Report, at [81].
22 Evidence of Russ Kern, at [9.2].
23 Evidence of Adam Wild, at [10.5].
24 Evidence of Richard Knott, at [11.1].

allowing additional signage to support sustainable long term use. The revenue from the Proposed Sign will help support the maintenance of an expensive heritage building that has benefits to the public.²⁵

6.4 Ms Stevens did not support the application, but considered that a non-illuminated, smaller, static sign would be acceptable.²⁶ We also note that Ms Stevens' report appeared to rely on her own findings on lighting, which is outside her area of expertise, suggesting that the Proposed Sign will be significantly brighter than a non-illuminated board.²⁷

6.5 The evidence of Mr Kern must be preferred in relation to lighting matters. His evidence shows that the Proposed Sign will have limited light spill, given the sign's automatic response to ambient lighting conditions, and because LED screens do not project light.²⁸ In his evidence, an LED billboard is less likely to have light spill than an externally lit billboard.²⁹ It is unclear what effect Ms Stevens' finding, which was made ahead of receiving the light effects evidence of Mr Kern, had on her overall decision not to support the application.

6.6 More weight must necessarily be placed on the comprehensive and balanced evidence of Mr Knott and Mr Wild, which they spoke to at the hearing. Ms Stevens' absence at the hearing means her evidence essentially remains untested, and the views expressed in her report predated the NZFCT's heritage and lighting evidence. Mr Luzzi's support of her evidence provides limited assistance. While he said he agreed with Ms Stevens' evidence, he does not appear to have carried out his own analysis.

6.7 In terms of the matters of detail Mr Luzzi referred to at the hearing, the Council's proposed condition 10³⁰ would require the consent holder to send final design details to the Council before construction. NZFCT accepts that condition.

25 SIGN-P3, 2: the benefits of allowing additional signage to support sustainable long term use: [Wellington City Proposed District Plan](#).

26 Evidence of Chessa Stevens, at [103].

27 Evidence of Chessa Stevens, at [52].

28 Evidence of Russ Kern, at [5.9].

29 Evidence of Russ Kern, at [7.5].

30 Proposed Conditions Amended at Hearing, filed on 9 December.

7. URBAN DESIGN EFFECTS

Size of the proposed sign

7.1 The Proposed Sign has been designed to fit on the frame that is currently located on the Building. That frame was used for the More FM sign that was present on the building until 2012, and indicates the scale of the previous sign. As discussed earlier in these submissions, the Council and submitters have indicated their perspective that a sign of a similar type and scale would be appropriate.

7.2 Ms Duffell and Mr Coolen indicated their view at the hearing that a key reason why a digital billboard was not acceptable on the Building was because it would create the impression of another level to the heritage Building. It is difficult to see how the proposed sign could be viewed in this way, in particular as it is proposed to be set back behind the parapet and, as discussed by Mr Wild, the sign's design will be deliberately distinct from the design of the Building.³¹ The visual distinctiveness of the sign as compared to the heritage characteristics of the Building would make it unlikely that the Proposed Sign would be viewed as being another floor of the Building.

Non-static nature of the sign reflects change to urban environments

7.3 Urban environments change, and advertising changes too. The signs previously on the Building were all third party advertising. The Proposed Sign will provide third party advertising, using a modern form.

7.4 Digital billboards are now commonplace in many city centres in New Zealand. They are present on other heritage buildings – for example, the Embassy Theatre.

7.5 At the hearing, Mr Thornton accepted that the NPS-UD enables change in the urban environment and, as a result, the transitory nature of the advertising would not have an adverse effect on the InterContinental hotel. Mr Thornton acknowledged that the changing images were unlikely to cause an adverse environmental effect.³² However, he did not extend this same reasoning to the Proposed Sign itself.

31 Evidence of Adam Wild, at [9.5] – [9.12].

32 Section 42A report, at [81].

- 7.6** Ms Duffell suggested that the reinstatement of the sign as a digital billboard is not a logical progression of more modern signage. It is difficult to follow this logic when most new signs now have an energy efficient LED format.
- 7.7** Mr Knott found that the changing images will not be visually intrusive,³³ and Mr Aburn noted the change to a digital LED sign as reflective of change to the urban environment.³⁴
- 7.8** Furthermore, the changing nature of the sign can provide benefits to the community given the ease and flexibility they provide for different images to be displayed. As discussed by Mr Costello, digital billboards can provide “*an easy and cost effective way to provide information to the community*”.³⁵

Relationship with Post Office Square and the surrounding area

- 7.9** Concerns were raised regarding the potential urban design or visual effects of the sign on Post Office Square and the surrounding area. However, as discussed by Mr Knott, there are limited opportunities to view the existing support structure (and therefore the proposed sign) from within Post Office Square. From a distance, the sign will be seen as part of a broader urban environment and will therefore not be a dominant feature as it will be viewed as an integral part of that wider urban context.³⁶

8. POSITIVE EFFECTS OF THE SIGN

- 8.1** A number of positive effects were identified in evidence, and during the hearing as being associated with the reinstatement of a sign on the building.
- 8.2** NZFCT has proposed a condition to tie the revenue of the sign to maintenance of the building. The Embassy Theatre decision report is an example of the Council accepting (appropriately in our submission) that use of the revenue from an LED sign to help pay for refurbishment of a heritage building is a positive effect.³⁷ Ms Duffell acknowledged that the advertising revenue gained from the Embassy Theatre’s digital signs helped to upgrade the doorway which provided a public benefit. The Environment Court in *JBH*

33 Evidence of Richard Knott, at [7.8].

34 Evidence of Alistair Aburn, at [12.25] and [12.26].

35 Evidence of Frank Costello [7.1].

36 Supplementary evidence of Richard Knott, at [2.5] – [2.9].

37 Notice of Decision, 9-11 Kent Terrace, Mt Victoria, 15 December 2020, SR 470800, at page 15.

Investments Ltd v Auckland City Council noted that a positive effect of a sign is that it can increase the commercial viability of a heritage building.³⁸

- 8.3** Importantly, these positive effects are also recognised in Policy SIGN-P3 of the PDP, which expressly confirms that regard should be given to the benefits of allowing additional signage to support sustainable long term use.
- 8.4** In the context of the above points, it is difficult to see the basis for Mr Thornton’s view that the advertising revenue and its contribution towards maintaining a heritage building were not a positive effect.³⁹
- 8.5** The community aspects of the advertising are also relevant. For example, advertising of events provides a clear public benefit. Digital billboards provide flexibility (discussed by Mr Costello) to be easily used for charitable causes, or to provide public service information. Advertising can provide information about events occurring in the City, which is beneficial. Furthermore the intent is for 20 percent of the time of this billboard to be retained for public good advertising/notices.
- 8.6** Lastly, as recognised by the submitters in support of the application, the provision of time and weather information is a public benefit, as well as continuing a valued heritage aspect of the Building and the previous signs. The connection of the time and temperature information on the sign is recognised in the Council’s heritage inventory.
- 8.7** Even if the Council officers disagree as to the magnitude of these positive effects, it is not credible to say that they are not relevant positive effects that need to be considered in relation to the proposal.

9. COMMENTS ON CONDITIONS

Conditions proposed by NZFCT

- 9.1** On 9 December 2022 we circulated an updated version of the proposed conditions. The modifications to the proposed conditions (from the version provided at the hearing) were

³⁸ *JBH Investments Ltd v Auckland City Council* A140/2006, 3 November 2006, at [47].
³⁹ Section 42A report, at [95].

largely provided in response to matters raised at the hearing. However, that version proposed the following further changes:

- (a) A number of technical changes were proposed to standardise the terminology used in the conditions with all references being changed to “signage” rather than referring to the sign interchangeably as “signage”, “billboard”, “digital signage” etc.
- (b) In relation to condition 3, NZFCT is comfortable with a condition imposing a maximum depth of 130mm for the sign, excluding its support structure (i.e. the frame).
- (c) Condition 8 and 9 were added to address matters raised by the Commissioner at the hearing. NZFCT made these commitments as part of its application and is comfortable with conditions being imposed to ensure:
 - (i) a minimum of 20 percent content for local and not for profit advertising; and
 - (ii) that the revenue generated from the Proposed Sign would be used for the maintenance of upkeep of the Huddart Parker Building.
- (d) Condition 15(f) is proposed to be deleted to avoid duplication, as condition 15(d) already requires that the image content must be static.
- (e) Condition 18 was updated with the evidence provided by Mr Kern at the hearing to ensure that the light produced at night would be at an appropriate level. We have also added a condition that monitoring must be undertaken by a suitably qualified professional to ensure that the light is being measured correctly.
- (f) We have updated the reporting conditions and deleted condition 20, as this would require monitoring of traffic safety effects at six months, 12 months and 24 months. Given that there was no evidence suggesting there would be any traffic effects, there appears to be no need for this condition.
- (g) We have also included Condition 22 that the Council Monitoring Office must be made aware of when work undertaken in accordance with the consent will begin.

Response to changes proposed by other parties

9.2 We have reviewed the Council's comments (circulated on 15 December 2022) on the proposed conditions we previously submitted, and have the following comments in response:

- (a) Condition 1: the use of "general accordancy" is necessary to provide a degree of flexibility. If "general" is not included, for example, the applicant will not be able to pursue further mitigation options if they arise during the detailed design process.
- (b) Condition 5: while NZFCT is comfortable with the proposed amendments to the condition, the proposed note is *ultra vires* and should be removed. The note has the effect of stating that where the framing cannot be modified, the resource consent is effectively cancelled. If it is determined that the framing needs to be replaced, NZFCT should be able to apply for a resource consent for a new frame, or rely on its existing use rights to put up a new frame (depending on the new frame proposed).
- (c) Conditions 6, 8 and 9: NZFCT does not have an issue with either the inclusion or deletion of these conditions. They have been removed from the conditions as per Mr Thornton's recommendation, but NZFCT would be comfortable with their reinstatement if the Commissioner considers they add value.
- (d) Condition 7: as discussed in Mr Mackenzie's evidence, there is currently no contract in place for provision of the sign by a signage company. The detailed design of the sign, and its content has therefore not been completed. While NZFCT is committed to providing the time and temperature information, it seeks flexibility that the format for how this is shown can be updated over time. Given the flexibility of digital signage the amendments to this condition are considered to be unnecessarily restrictive.
- (e) Condition 10: the applicant is comfortable with providing the additional information proposed by the Council, but seeks the deletion of the proposed note on the basis that it would be *ultra vires* to invite a further effects assessment (and potentially a further approval process).

- (f) Condition 12: NZFCT disagrees with the proposed amendments to this condition. It is unclear how “adjacent public spaces” may be interpreted, and if this included adjacent high-rise buildings, or other high viewpoints, control structures and filament may be visible (as are air conditioning units and other building services typically located on top of the building).
- (g) Condition 15: referring to the evidence of Messrs Harries and Wild,⁴⁰ there is no traffic or heritage reason to deviate from the industry standard 8 second dwell time.
- (h) Condition 16(b) and (g): for the reasons set out in Mr Harries’ brief of evidence⁴¹ there is no evidential basis for the reintroduction (b) and (g). No technical evidence is relied upon by the Council to justify the imposition of those conditions.
- (i) Conditions 19 and 20: NZFCT is comfortable with both of these conditions, although notes a minor typographical error in proposed condition 19.

9.3 On Friday 16 December 2022 further comments on the conditions were also received via email to the Commissioner from Mr Scott Hamilton on behalf of the InterContinental Hotel. The comments above in relation to conditions 15 and 16 also provide a reply to points 6 and 8 of Mr Hamilton’s email. In relation to point 7 of Mr Hamilton’s email, we note that the 100 cds/m² maximum night-time luminance proposed in condition 18 was determined with reference to Mr Kern’s lighting evidence. It represents a far lower luminance than is currently imposed on most LED sign resource consents. Furthermore the 100 cds/m² is a maximum to provide a degree of flexibility for the sign to respond to ambient light; in reality the brightness of the sign is expected to be much lower.

40 Evidence of Brett Harries, at [11.8]; Evidence of Adam Wild at [8.2(d)].
41 Evidence of Brett Harries, at [11.10] - [11.20].

10. MR MACKENZIE'S KNOWLEDGE OF SUBMITTERS

10.1 At the hearing Mr Mackenzie was asked about whether he knew any of the submitters in support of the Application. Following the close of the hearing, Mr Mackenzie recalled that he omitted two names:

- (a) Mr Michael Gaffaney, who worked for Huddart Parker Building Limited and oversaw the strengthening project; and
- (b) Mr David Paetz, who was in Mr Mackenzie's role previously.

10.2 For completeness, we note that the fact a submitter is known by a hearing participant is not relevant to the consideration of the matters raised by that submitter. Regard must be had to relevant matters raised by all submitters, whether there is a connection or not.

11. CONCLUSION

11.1 During the hearing it was generally agreed between the parties that a rooftop sign is appropriate for the Building. The type of sign remains in contention.

11.2 While the Proposed Sign will be different from the previous sign on the building, that previous sign was different from the sign that came before it. The type of signage on the building has changed over the years, and the Proposed Sign represents the modern energy efficient approach to providing signage. The effects of the Proposed Sign will be less than minor. Change is not inherently negative, and the NZFCT's evidence has clearly shown the appropriateness of the Proposed Sign in the proposed location. Furthermore, reinstating a sign with time and temperature on the Building will be a restoration of a well-known landmark feature. NZFCT therefore seeks the approval of its application for consent subject to the condition suite circulated on 9 December 2002 and the amendments discussed in these submissions.

DATED at Wellington this 20th day of December 2022



Matt Conway / Katherine Viskovic
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Trust