

8 June 2018

[REDACTED]

Dear [REDACTED]

Local Government Official Information and Meeting (LGOIMA) request for information on LED digital billboards

I am writing in response to your official information request received 2 June 2018 regarding resource consent application, the decision to grant or decline the application, and any decision of an independent commissioner (if applicable) to install any LED digital billboards within the region applied for after 1 January 2016.

Please find attached two applications which have been granted since 1 January 2016 for use of LED digital billboards. The application LUC-2013-246/A is a variation of a resource consent and has been signed off by an Independent RMA Commissioner.

Yours sincerely

Rebecca Murray
Governance Support Officer

15 January 2018

Go Media
C/- Mike Gray
PO Box 699
Waiheke Island
Auckland 1840

Dear Mike Gray

**SECTION 127 APPLICATION: LUC-2013-246/A
(BEING A VARIATION TO LUC-2013-246)
130 ANZAC AVENUE
DUNEDIN**

Your application for a variation of resource consent LUC-2013-246/A, lodged pursuant to Section 127 of the Resource Management Act, was considered by myself, Independent RMA Commissioner Kirstyn Lindsay, under delegated authority. Pursuant to Sections 95A to 95G of the Resource Management Act 1991, I have determined it was appropriate to process the application on a non-notified basis. I have determined that consent to vary LUC-2013-246 should be granted. The decisions are outlined below, and the decision certificate is attached to this letter.

BACKGROUND TO APPLICATION

The subject site is legally described as Lot 2 Deposited Plan 418365, is held in Computer Freehold Register 470472 and is the location of the Dunedin Stadium. A single double-faced sign was authorised by LUC-2012-345 to promote stadium related activity. The sign is located on the stadium site and face State Highway 6 at the roundabout. The sign has an area of 18m² on each side and is a maximum of 7.75m above existing ground level.

In 2013, the applicant sought to change the nature of the sign so that it was able to be used as a hoarding sign for a cumulative maximum of 6 months of the year when the stadium was not marketing an event. LUC-2013-246 authorised the use of the sign for a limited hoarding use.

It should be noted that there is a separate hoarding sign on the site which is operated by a separate company and is managed separately from the sign subject to this application.

DESCRIPTION OF APPLICATION

The applicant now seeks to change the static billboard form to a digital format. The applicant suggests that the digital format provides flexibility to regularly transition between various advertisements. They do not seek to exceed the 50% hoarding restriction placed on the sign and the physical form the sign structure will remain unchanged. The use of digital format is in regular use within New Zealand and the applicant has promoted a number of conditions regarding the digital signage intended to address any adverse traffic effects including dwell time, image content, shut down ability and lighting. It is noted that the New Zealand Transport Agency have reviewed the proposed conditions that form part of the application and raised no concerns.

REASONS FOR APPLICATION

The Section 127 of the Resource Management Act 1991 states:

(1) *The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent subject to the following:*

- (a) The holder of a subdivision consent must apply under this Section for a change or cancellation of the consent before the deposit of the survey plan (and must apply under Section 221 for a variation or cancellation of a consent notice after the deposit of the survey plan); and*
- (b) No holder of any consent may apply for a change or cancellation of a condition on the duration of the consent.*

(2) *Repealed.*

(3) *Sections 88 to 121 apply, with all necessary modifications, as if –*

- (a) The application were an application for a resource consent for a discretionary activity; and*
- (b) The references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.*

(4) *For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who–*

- (a) Made a submission on the original consent application; and*
- (b) May be affected by the change or cancellation.*

In accordance with the provisions of Section 127(3)(a) of the Resource Management Act 1991, the application to vary land use consent LUC-2013-246 is a **discretionary unrestricted** activity.

PLANNING ASSESSMENT

S95E assessment - Affected Persons

Section 127(4)(b) of the Resource Management Act 1991 means that the Council can only consider the adverse effects of the variation itself, being those effects over and above the effects of the existing resource consent, when determining affected parties. In this instance, the New Zealand Transport Agency were deemed to be an affected party and their written approval was provided on 28 November 2017, subject to the conditions offered by the applicant.

Section 127(4)(a) of the Resource Management Act 1991 also directs the Council to consider whether any submitters on the original application could be adversely affected by the variation. The original application was processed non-notified, and accordingly there are no submitters who could be adversely affected by the variation.

Notification

S95A Assessment

Step 1 – Mandatory public notification

The applicant has not requested public notification of the application (s95A(3)(a)).

Public Notification is not required in terms of refusal to provide further information or refusal of the commissioning of a report under section 92(2)(b) of the Act (s95A(3)(b)).

The applicant does not include exchange to recreation reserve land under section 15AA of the Reserves Act 1977 (s95A(3)(c)).

Step 2 – Public notification precluded

Public notification is not precluded by any rule or national environmental standard (s95A(5)(a)).

The proposal is not a controlled activity or boundary activity and, while it is a discretionary activity, it is not a subdivision of land or residential activity and, as such, notification is not precluded (s95A(5)(i-iii)).

The proposal is not a prescribed activity (95A(5)(b)(iv)).

Step 3 – If not precluded by Step 2, public notification is required in certain circumstances

The application is for a single activity and there are no rules which require notification (S95A(8)(a)).

As discussed in the reasons for the decision below, the effects of the proposal will not have and are not likely to have an adverse effect on the environment pursuant to S95D (S95A(8)(b))

Step 4: public notification in special circumstances

There are no special circumstances which surround the application (S95A(9)(a)).

S95B Assessment

Section 95B(1) requires a decision whether there are any affected persons (under s95E). The following steps set out in this section, in the order given, are used to determine whether to give limited notification of an application for a resource consent, if the application is not publicly notified under section 95A.

Step 1: certain affected groups and affected persons must be notified

Limited notification is not required under Step 1 as the proposal does not affect customary rights groups, customary marine title groups nor is it on, adjacent to or may affect land subject to a statutory acknowledgement.

Step 2: if not required by step 1, limited notification precluded in certain circumstances

Limited notification is not precluded under Step 2 as the proposal is not subject to a rule in the district plan or NES that precludes notification.

Limited notification is not precluded under Step 2 as the proposal is not a prescribed activity or a controlled activity.

Step 3: if not precluded by step 2, certain other affected persons must be notified

Limited notification is not required under Step 3 as the proposal is not a boundary activity where the owner of an infringed boundary has not provided their approval, and it is not a prescribed activity.

Limited notification is not required under Step 3 as the proposal falls into the 'any other activity' category and the written approval of affected parties identified under S95E have been obtained and effects of the proposal on other parties are determined to be less than minor.

Step 4: Further limited notification in special circumstances

Special circumstances do not apply that require limited notification.

NOTIFICATION DECISION

It is determined that the effects of the proposal are no more than minor when assessed under S95D and all affected parties identified under 95E have provided written approval to the application. Overall, it is determined that the proposal does

not require notification under section 95A and 95B of the Resource Management Act 1991.

DECISION

*That pursuant to Sections 34(A) and 127(1) of the Resource Management Act 1991 and after having regard to Section 104 of the Act, and the provisions of the Dunedin City District Plan and/or the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to the **discretionary** activity of varying resource consent LUC-2013-246, and the conditions are amended as shown in the attached certificate.*

REASONS FOR THE DECISION

Effects on the Environment

In coming to a determination to grant consent to the variation, I gave consideration to the actual and potential effects on the environment of the proposed variation in accordance with Section 104 of the Act. Guidance was taken from Section 19.6 of the Dunedin City District Plan and on the basis that the existing environment is characterised by a high traffic and industrial nature environment and associated with a major public facility.

Amenity (Assessment Matter 19.6.1)

I recognise that the billboard structure is currently in place and this variation merely seeks to change the format of the signage from static to digital. As such, I have disregarded the bulk and location of the sign and associated structure as well as any innate visual dominance it may have.

The application was assessed by Council's Urban Designer who accepts that the hoarding is already well established in this area. The area is a low sensitivity viewing environment, with most views being by passing motorists for periods of less than 15 seconds. The Urban Designer recognises the conditions recommended by NZTA and proposed by the applicant and considers the effects on amenity to be acceptable. I adopt the urban designers position and consider the effects of the change to the sign will be acceptable.

Traffic Safety (Assessment Matter 19.6.2)

I note that NZTA administer the state highway network and are responsible for ensuring that the national roading network operates in a safe and efficient way. NZTA has provided written approval to the application subject to conditions which have subsequently been offered by the applicant. I accept that NZTA is satisfied that the proposed digital format will not pose a risk to traffic safety providing those conditions of consent are complied with. The application has also been assessed by Council's Transportation Planner who notes the comprehensive suite of conditions requested by the NZTA have been volunteered by the applicant. These conditions relate to road safety and cover matters such as driver distraction, legibility of the hoarding content, and post-installation safety reviews.

In terms of transport effects, the Transportation Planner considers the orientation of the billboard to only impact the State Highway network (in particular, the adjacent roundabout which is controlled by the NZTA) and confirms that Transport has no objection to the proposed variation. The consent conditions requested by the NZTA, and volunteered by the applicant, are considered to be appropriate to impose on the consent to address road safety matters.

I adopt the transportation planner's assessment and agree to vary the conditions as proposed. Based on the assessment by the Council's transportation planner and the written approval of NZTA, I determine the effects of the change to a digital format to be acceptable in respect of traffic safety, subject to conditions of consent.

Cumulative Effects (Assessment Matter 19.6.4)

The proposal is not seeking to introduce any more signage into the area nor is it seeking to increase the percentage of time that the hoarding signage can be displayed. Overall, I have determined that any cumulative effects are acceptable.

Objectives and Policies

In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Dunedin City District Plan and the 2GP were taken into account in determining the application. Overall, I have determined that the proposal is consistent with the relevant objectives and policies of both the operative and proposed district plans.

Operative Dunedin City District Plan		
Objective	Supporting policies	Commentary
Objective 19.2.1 Avoid, remedy or mitigate the adverse effects of signs on amenity values.	Policies: 19.3.1, 19.3.2, 19.3.5	The signage is already well established in this area and it is only the effects arising from the change of the format of the sign which are to be considered. The assessment of the proposed change has been assessed by Council's Urban Designer who recognises that the site is located within a low sensitivity viewing environment, where view times from passing motorists will be momentary. The variation is considered to be consistent with this objective and supporting policies.
Objective 19.2.2 Ensure that signs do not adversely affect the safe and efficient functioning of the road network.	Policies: 19.3.2, 19.3.4, 19.3.5	The proposal has been assessed by Council's Transportation Planner and written approval has been obtained by NZTA. Subject to conditions of consent recommended by NZTA and proposed by the applicant, the proposed change is sign format will not adversely affect the safe operation of the transportation network. The variation is considered to be consistent with this objective and supporting policies.
Objective 19.2.4 Promote the use of signs by managing the adverse effects of visual clutter.	Policies: 19.3.2, 19.3.4, 19.3.5	The rolling nature of the new sign format means that more advertising will be displayed than currently. However, the sign structure is static and will not introduce additional visual clutter. The variation is considered to be consistent with this objective and supporting policies.
Proposed Second Generation District Plan		

Objective	Supporting policies	Commentary
<p>Objective 32.2.2 Land use activities and development are designed and operated to:</p> <ul style="list-style-type: none"> a. provide a good standard of on-site amenity for visitors; b. maintain or enhance the amenity of surrounding areas, as far as practicable; and c. avoid adverse effects on people's health and safety. 	<p>Policy 32.2.2.4 Require ancillary signs visible from outside the zone to be located and designed to be maintain streetscape amenity, including by being of an appropriate size and number to convey information about the name, location and nature of the activity on site to passing pedestrians and vehicles, and not being oversized or too numerous for that purpose.</p>	<p>It is noted that the signage is ancillary only in part to the stadium activity. However, the location and position of the sign is already well established, traffic safety effects are deemed acceptable and the amenity effects have been assessed by the Council's urban designer.</p> <p>Subject to conditions of consent, the variation is considered to be consistent with this objective and supporting policy.</p>

Other Matters

Section 104(1)(c) of the Resource Management Act 1991 requires me to have regard to any other matters considered relevant and reasonably necessary to determine the application. I consider there are no other matters seemed relevant to this application.

Part 2 Matters

I consider that the policy direction given by the Operative and Proposed District Plans, is certain, valid and complete and, as such, there is no need to revert to higher order planning instruments or Part 2 of the RMA.

Conclusion

I determine that it is appropriate to vary resource consent LUC-2013-246 for the following reasons:

- The variation will not result in a fundamentally different activity or one having materially different adverse effects.
- Any adverse effects of the variation on the environment are acceptable given the bulk and location of the signage is established and it the change to a digital format will not impact on the amenity of the area or create an unacceptable risk to traffic safety.
- The variation raises no new issues in terms of Part 2 of the Resource Management Act, the objectives and policies of the Dunedin City District Plan and the proposed 2GP or any other relevant planning documents.

RIGHTS OF OBJECTION

In accordance with Section 357A of the Resource Management Act 1991, the consent holder may object to this decision or any condition within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

Senior Planner - Enquiries
Dunedin City Council
P O Box 5045
Moray Place
Dunedin 9058

Monitoring

Section 35(2)(d) of the RMA requires every council to monitor resource consents that have effect in its region or district. The scale and nature of the activity, the complexity and number of the conditions needed to address the environmental effects and whether the conditions have been complied with determines the number of monitoring inspections required. Given the nature of your intended works/activity, this consent will require annual inspections.

The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. The fee for your scheduled inspections will be included in the invoice for your application.

It should be noted that if additional inspections are required, beyond those scheduled at the time the consent is issued, then there is the ability to apply additional charges to cover the costs of these extra inspections. Often you can reduce the need for additional inspections by complying with the conditions of consent in a timely manner and by ensuring on-going compliance with those conditions. Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Yours faithfully

Kirstyn Lindsay

Independent RMA Commissioner

Consent Type: Land use Consent

Consent Number: LUC-2013-246, as varied by LUC-2013-246/A

Location of Activity: 130 Anzac Avenue, Dunedin

Legal Description: Lot 2 Deposited Plan 418365, held in Computer Freehold Register 470472

Lapse Date: 24 October 2018, unless the consent has been given effect to before this date.

Pursuant to Sections 34(A) and 127(1) of the Resource Management Act 1991 and after having regard to Section 104 of the Act, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to the discretionary activity of varying Resource Consent LUC-2013-246 to establish a hoarding. The conditions are amended as follows:

[The alterations made by this decision are shown in underlining and strikethrough]

Conditions

1. The proposed activity ~~shall~~ must be undertaken in general accordance with the plans and information submitted with the resource consent application to vary LUC-2013-246 received by the Council on 1 December 2017 ~~17 June 2013~~, as shown in Appendix 1, except where modified below.
2. The hoarding ~~shall~~ must not exceed 18m² on either side of the signage.
3. The display of any non-stadium related signage is limited to no more than 50% of the time per annum that the hoarding is operational. ~~This consent provides for hoardings erected temporarily on the existing sign for a maximum of six cumulative months per annum.~~
4. The consent holder ~~shall~~ must forward to the Consents Manager a record of time that images are displayed on a per annum basis. This record must be divided into two categories: stadium and non-stadium related advertising. The annual record must be provided to Council each year within one month of the anniversary of this issuing of this consent. The record must be submitted in writing to rcmonitoring@dcc.govt.nz, dates the hoardings where installed and removed, including a cumulative tally of days hoardings have been established per annum. ~~For the purpose of clarity the recording year commences on the date of the grant.~~
5. This consent authorises the use of hoardings solely for the existing signage location. Should the existing free-standing sign be relocated or removed, this consent will be invalidated.
6. The Council may review the conditions of consent by giving notice of its intention to do so pursuant to Section 128 of the Resource Management Act 1991 within one month of the first, second, fifth and tenth anniversary of the

grant, for the purpose of managing any unforeseen adverse effects of the activity.

7. *Sign materials are to prevent any sunlight or headlight reflection.*
8. *The digital billboard must be designed and operated to avoid any back spill lighting onto adjacent properties.*
9. *The digital billboard must have a maximum LED brightness of 5,500 cd/m² (Nits).*
10. *The digital billboard must not have any brightness exceeding 5,500 cd/m² between sunrise and sunset.*
11. *The digital billboard must not have any brightness exceeding 400 cd/m² between sunset and sunrise.*
12. *The digital billboard must use LED technology that does not have the filament visible to motorist.*
13. *The LED digital billboard must have an automatic dimming system based on an ambient light level sensor so that the night time maximum luminance is 400cd/m² and the day time maximum luminance is 5,500cd/m². Sign brightness must be equal to or less than the brightness of a standard vinyl-skinned billboard under the same lighting conditions.*
14. *Within 30 days of the LED digital billboard being put into service the Consent Holder shall submit a report from a suitably qualified and experienced lighting practitioner, to the satisfaction Council's Compliance Monitoring Officer, confirming the following:*
 - a) *The automatic dimming system provides a night time maximum luminance of 400cd/m² and a daytime maximum luminance of 5,500cd/m².*
 - b) *The suitability for providing acceptable readability during both day and night situations.*
 - c) *There is no disability glare to motorist during both day and night.*

The report shall be submitted to rcmonitoring@dcc.govt.nz.

15. *The traffic safety effects of the digital billboard must be reviewed and a report submitted to Council's Compliance Monitoring Officer at rcmonitoring@dcc.govt.nz. The review shall occur at six months and twelve months from commencement of operation. The review must be undertaken by a professional safety traffic engineer as agreed between the Applicant and Council's Compliance Monitoring Officer. The review shall involve an examination of NZTA's Crash Analysis System (CAS) to establish whether there is any identifiable pattern of recorded crashes that include the Road User Factors 356 ("Attention diverted by advertising signs") or 363 ("Diver dazzled") and which appear directly attributable to the digital billboard.*

If a pattern of record is identified, the Applicant shall within 24 hours of being advised of this pattern, propose to the Council's Compliance Monitoring Officer (in consultation with Council's Manager Network Operations) measures that will be undertaken to

immediately avoid, remedy or mitigate the cause of the pattern of digital billboard-related crashes. Such measures may include adjustments to the daytime and/or night time luminance levels; and/or adjustments to the transition time; and/or increase to the dwell time of each image at particular times of the day; and/or controls on image content. The nature and extend of any measures must be to the satisfaction of Council's Compliance Monitoring Officer (in consultation with Council's Manager Network Operations) and be implemented as soon as practicably possible.

Should changes be required to the operation of the digital billboard under this condition, then six monthly monitoring shall continue for a further two years from the date of change.

16. The digital billboard must not imitate traffic signs or any traffic control device, or give instructions to motorists that may conflict with any traffic sign or traffic control device.
17. The digital billboard must operate with a minimum dwell time of 15 seconds.
18. The digital display must have a transition time of 0.5 seconds between images. The images must fade in and out rather than there being an abrupt change.
19. Image content must be static and must not incorporate flashes, movement, sequential advertisements or amination.
20. The Consent Holder must ensure that the minimum capital lettering height for the display must be as follows:
 - a) Main message: no less than 300mm;
 - b) Secondary message: no less than 150mm.
21. The Consent Holder must ensure at all times that the digital billboard includes no more than eight words and/or symbols, with a maximum of 40 characters per line.

Note: Words contained within images as part of any branding e.g. name of a bottle, shall not be counted as a word for the purpose of this condition.

22. The Consent Holder must ensure that any lettering and/or symbols will be clearly legible, and the message must contrast with the background. The sign message must be designed to best practice guidelines to ensure the message is readily understood by an approaching driver.
23. The digital billboard must be programmed to automatically go dark in the event of a malfunction. The Consent Holder must provide an emergency (24/7) contact number and an intervention process to enable the Consent Holder to disable the digital billboard by manual intervention, both remote and on site, should the automatic intervention fail. These details must be provided to satisfaction of Council's Compliance Monitoring Officer at rcmonitoring@dcc.govt.nz , prior to the operation of the electronic billboard commencing.

Advice notes

- 1 In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 A resource consent is pertinent to the property to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 4 It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.

~~Issued at Dunedin on 24 October 2013~~

Reissued at Dunedin this 16th day of January 2018 pursuant to Section 127(1) of the Resource Management Act 1991

Kirstyn Lindsay

Independent RMA Commissioner

24 April 2017

APN Outdoor Limited
C/O Planz Consultants Limited
PO Box 1845
CHRISTCHURCH 8140

Attention: Danielle Blakely

Dear Danielle

RESOURCE CONSENT APPLICATION: LUC-2017-57
ANDERSONS BAY ROAD RAILWAY
OVERBRIDGE

Your application for land use consent to erect two LED digital billboards on the Andersons Bay Road Railway overbridge was processed on a non-notified basis in accordance with sections 95A to 95G of the Resource Management Act 1991. In considering sections 95A to 95G, it was determined that any adverse effects would be no more than minor, all potentially affected parties have provided written approval to the application and that there were no special circumstances in relation to the proposal. Therefore, public notification of the application was not required. The application was considered by a Senior Planner – Consents, under delegated authority, on 24 April 2017.

I advise that the Council has **granted** consent to the application. The decision is outlined below, and the decision certificate is attached to this letter.

DESCRIPTION OF ACTIVITY

The applicant is seeking to replace two existing static billboards located on the Andersons Bay Road railway overbridge with two LED digital billboards. The proposed LED billboards will be the same size as the static billboards (12 metres long by 2.9 metres high), protruding a maximum of 0.4 metres from the face of the existing railway overbridge.

The billboards will consist of a number of self-illuminating LED panels fixed together to form a single billboard. The billboards are proposed to be controlled to ensure the luminance is limited to 500cd/m² during hours of darkness and 50000cd/m² during daylight hours.

In terms of the operation of the digital billboards (and in addition to the above luminance limits) the following is proposed:

- Images shall not contain animation or emit flashing lights;
- Each image shall have a maximum display time of eight seconds;
- Images shall transition from one to the next via a 0.5 second dissolve; and
- Images shall not use graphics, colours or shapes in combination in such a way that they would resemble or distract from a traffic control device.

The LED billboards will be lit 24 hours a day, 7 days a week.

The Andersons Bay Road railway overbridge is located adjacent to the intersection of State Highway 1 and Anderson's Bay Road. At this point the Main South Trunk Rail line crosses Andersons Bay Road via an overbridge.

Surrounding land use is generally industrial to the south, south west and east, with the Dunedin shunting yards and State Highway 1 also being a predominate features in the area. To the north west of the site is located Kensington Oval, a large green area utilised as playing fields for summer and winter sporting codes.

The location is also currently characterised by a number of billboards, located alongside Andersons Bay Road which are most visible to southbound traffic on State Highway 1.

The application in addition to an assessment of environmental effects also contains a Traffic Assessment Report and a Light Spill Assessment.

REASONS FOR APPLICATION

The subject site is zoned **Industrial 1** in the Dunedin City District Plan with the site also being designated for "Railway Purposes" (D419). Andersons Bay Road is classified as a Regional Road in the Plan's Roading Hierarchy.

The proposed billboard signs are considered to be hoarding signs under the operative District Plan which are defined as follows:

***Hoarding** - means any land, building wall, fence, structure or erection upon or against which any advertisement, placard, sign or inscription is displayed which is used to advertise anything not sold or provided on the premises where such sign is situated, or advertises an event to take place in some other location.*

In accordance with Rule 19.5.13 of the Signs Section of the operative Plan the proposal is assessed as a **non-complying** activity.

Proposed District Plan

The Proposed 2GP was notified on 26 September 2015, and some 2GP rules have immediate legal effect. In this instance, there are no relevant 2GP rules to consider.

PLANNING ASSESSMENT

Affected Persons

The written approval of the person detailed in the table below has been obtained. In accordance with section 104(3)(a)(ii) of the Resource Management Act, the Council cannot have regard to the effects of the activity on this person.

Person	Owner	Occupier	Address	Obtained
NZ Transport Agency	✓	✓	SH1	5 April 2017
KiwiRail Holdings Limited	✓	✓		23 March 2017

No other persons are considered to be adversely affected by this proposal. The proposal does not represent an increase in the amount of signage at the site and the primary effects issue relates to the safety concerns associated with a changing electronic image and the self-illumination of the proposed electronic billboards. The billboards will be established on a KiwiRail owned bridge structure within a designated railway corridor. Although the affected party approval from KiwiRail has been obtained the establishment of any billboard on the KiwiRail owned overbridge can only occur with the permission of KiwiRail and as a result KiwiRail are not considered to be an affected party to the proposal.

Effects on the Environment

The following assessment of effects on the environment has been carried out in accordance with section 104(1) of the Resource Management Act 1991. It addresses those assessment matters listed in Section 19.6 and 21.6 of the District Plan considered relevant to the proposed activity, and is carried out on the basis that the environment is characterised by industrial and warehousing activities, a railway shunting yard, major arterial roads and a large recreational park area to the northwest.

Any actual or potential effects on the environment of allowing this proposal to proceed will be no more than minor for the following reasons:

1 *Baseline Considerations*

Under sections 95D(b) and 104(2) of the Resource Management Act 1991, the Council may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect. That is, an application can be assessed by comparing it to the existing environment and development that could take place on the site as of right, without a resource consent, but excluding development that is fanciful.

In this situation other non-fanciful permitted uses within the road and rail corridors giving rise to similar effects are not readily identifiable. Regardless, the existing environment includes static billboards located in the same location on the overbridge as the proposed billboards that are authorised under an earlier resource consent (LUC-2008-91). The existing environment also includes a number of other static freestanding billboards to the north located along the eastern side of Andersons Bay Road authorised by resource consents.

It is considered that this is the appropriate baseline against which the activity should be considered, and against which the proposal has been assessed. As a result, it is the effects arising from the proposal, beyond the permitted baseline, that are the crucial elements and these are considered further below.

2 *Amenity Values and Visual impact (Assessment Matter 19.6.2)*

The site is characterised by the presence of major transportation routes and associated infrastructure, associated high levels of noise and vibration. Additionally the site is characterised by a cluster of large billboards, some of which are illuminated. As is noted by the applicant, there is a lengthy history of advertising signage at the site. The combination of the above factors results in the existing amenity values of the area being low.

Whilst the method of presentation of the messages on the billboards is altering from a static display to one that is changeable, the size and bulk of the new signage will not exceed that of the current signage. This includes the proposed signage not protruding above or below the outer face of the rail overbridge.

The application was also provided to Council's Urban Designer, Mr Peter Christos. Mr Christos also considers the amenity values around the site are low. Mr Christos also notes that amenity values improve to the north of the bridge through the presence of The Oval and the Town Belt. Mr Christos notes that views of these features are currently partially blocked by the existing overbridge (for northbound traffic). Mr Christos also identifies that the distance between the signage and the nearest residential property is some 400 metres.

Mr Christos concludes:

"In my view, the site currently has low amenity value, does not generate a lot of residential activity and the sign are adequately separated from any sensitive activities that could be overly affected by the proposal. The most significant audience is likely

to be motorists travelling quickly through the site and surrounding areas. For these reasons, I believe the effects on streetscape and amenity values would be less than minor."

I agree with Mr Christos and in particular note the site is well separated from sensitive activities and the audience will be motorists travelling through the site.

In summary, the proposal will not impact on the amenity values of the area or alter the existing character of the area to a degree that can be considered more than minor.

3 ***Transportation (Assessment matters 19.6.2 & 19.6.3)***

The application included a thorough assessment of transportation effects including a Traffic Assessment Report prepared by Traffic Design Group (TDG). The TDG report discusses traffic safety considerations relating to billboards, including a review of the crash history at the site. This review identifies that none of the crashes for the period January 2011 to November 2016 were a result of driver distraction due to billboards.

The TDG report also assesses the proposed signage against the principles of NZTA traffic Control Devices Part 3 "Advertising Signs" 2011, which includes such things as visibility obstruction and sign legibility. The TDG report assesses that the proposed signage meets all NZTA criteria.

The report also provides a number of operational recommendations for conditions of consent to address potential adverse effects, in particular to address the display of images on the LED billboards in a way that could cause a danger or distraction to drivers.

The report concludes there is no traffic engineering reasons to preclude acceptance of the proposal.

The application was forwarded to Council's Transportation Operations department for comment. The Transportation Planner is satisfied that the adverse effects of the activity on the transportation network would be no more than minor, subject to compliance with recommended conditions of consent.

Transport has read and assessed the application, including the TAR, in its entirety. We similarly conclude that the proposed digital billboards are unlikely to have more than minor adverse effects on the safety and functionality of the transport network. We do, however, propose consent conditions additional to those proposed within the TAR in order to ensure that any unforeseen adverse effects that may arise can be adequately addressed.

The conditions recommended by the Transportation Planner relate to a post installation safety reviews. If these conditions are road controlling imposed I consider any transportation effects are minor. I also note that NZTA are satisfied as to effects and have provided their affected party approval to the application.

4 ***Glare & Lighting (Assessment Matters 21.6.3 & 21.6.4)***

As the LED billboards will emit light there is the potential for this to create an adverse effect. The application includes a light spill assessment which confirms that the billboards will not produce in excess of the 8-lux permitted on residential sites during daylight and night time periods.

It is noted that the luminance of the billboards will be automatically controlled in response to the ambient light conditions. This will ensure the billboards achieve an appropriate contrast between the image and the surrounding visual environment.

Conditions are attached to the decision below requiring that the activity comply with the lighting performance standards of the District Plan.

Any lighting effects are therefore assessed as less than minor.

5 **Cumulative Effects (Assessment Matter 19.6.4)**

The cumulative visual effects of the existing billboard use are significant and they are contributing to the low amenity values that are present. However, locating them in a low amenity area already affected by major transport routes and industrial activities ensures they are not compromising other areas of the city. The effects from this proposal are not expected to add to the existing effects such that the cumulative effects of this proposal are more than minor. Future applications for activity in the area, beyond that permitted 'as-of-right' by the District Plan, will be assessed as and when they arise and the potential for cumulative effects considered again at that time.

CONSENT DECISION

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **non-complying** activity being the establishment and operation of 2 LED digital billboard signs on the Andersons Bay Road railway overbridge legally described as Road SO 19512, subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.*

REASONS

Effects

In accordance with section 104(1)(a) of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed activity have been assessed and are outlined above. It is considered that the proposed activity will have no more than minor adverse effects on the environment.

District Plan – Objectives and Policies

In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the operative and proposed District Plans were taken into account in assessing the application. The proposal is considered to be consistent with the following objectives and policies of the District Plans:

Operative Plan

- **Objective 4.2.1 and Policy 4.3.1 (Sustainability Section)** that seek to enhance and maintain the amenity values of the Dunedin area.
- **Objective 19.2.1 and Policy 19.3.1 (Signs Section)** seek to avoid remedy or mitigate the adverse effects of signs on amenity values.
- **Objective 19.2.2 and 19.2.5 and Policy 19.3.2 (Signs Section)** seek to ensure that signs do not adversely affect the safe and efficient road network or create a safety hazard for pedestrians.
- **Objective 19.2.4 and Policy 19.3.4 (Signs Section)** seek to manage the adverse effect of visual clutter by promoting simplicity and clarity in the form of the sign and the message it conveys.
- **Policy 19.3.5 (Signs Section)** seeks to prevent the erection of permanent hoarding signs in order to reduce visual clutter which will have adverse effects on amenity values, transport network and heritage values.
- **Objective 20.2.4 and Policy 20.3.5 (Transportation)** seek to ensure that any adverse effects on the safety of the transportation network from development are avoided, remedied or mitigated.

Proposed District Plan

The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The proposal is considered to be consistent with the following 2GP objectives and policies:

- **Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.4 and 6.2.3.9 (Transportation Section),** which seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods
- **Objective 2.2.6 and Policy 2.2.6.2 (Public Health and Safety)** which seek to protect people from noise, light or offensive emissions that may create adverse effects on health or well-being.
- **Objective 2.4.1 and Policy 2.4.1.6 (Form and Structure of the Urban Environment)** that seek to, avoid visual clutter from signage through rules across the whole city and to prevent new commercial advertising (hoarding) sites.

In this instance, as the Proposed 2GP is not far through the submission and decision-making process, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed 2GP.

Section 104D

Section 104D of the Resource Management Act 1991 specifies that resource consent for a non-complying activity must not be granted unless the proposal can meet at least one of two limbs. The limbs of section 104D require that the adverse effects on the environment will be no more than minor, or that the proposal will not be contrary to the objectives and policies of the district plan (both the operative and the Proposed Plan). It is considered that the proposal meets the effects limb as any adverse effects arising from this proposed activity will be no more than minor when the existing environment is considered. Therefore, the Council can exercise its discretion under section 104D to grant consent.

Other Matters

Section 104(1)(c) of the Resource Management Act 1991 requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and Plan integrity are considered relevant here. These issues have been addressed by the Environment Court (starting with *A K Russell v DCC (C92/2003)*) and case law now directs the Council to consider whether approval of a non-complying activity will create an undesirable precedent. Where the Plan's integrity is at risk by virtue of such a precedent, the Council is required to apply the 'true exception test'. This is particularly relevant where the proposed activity is contrary to the objectives and policies of the District Plan.

In this case, the proposal is non-complying because it involves billboards that do not relate to the activity on the site. As the existing environment already includes existing static hoardings authorised by resource consent the precedent implications appears to relate to the fact that the proposed digital billboards provide for a changing image and are self-illuminating 24s hour a day. The location of the billboards in this case ensures amenity effects are minor which may not be the case in other locations where replacement electronic billboards are proposed.

On this basis I consider that approval of the proposal will not undermine the integrity of the Plan as the activity will produce only localised and minor effects, if any, and will not set an undesirable precedent.

RIGHTS OF OBJECTION

In accordance with section 357A of the Resource Management Act 1991, the consent holder may object to this decision or any condition within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

The Chief Executive
Dunedin City Council
P O Box 5045
Moray Place
DUNEDIN 9058
Attention: Senior Planner – Enquiries Plaza

Yours faithfully

John Sule
Senior Planner

Application Type: Land use Consent

Application Number: LUC-2017-57

Pursuant to sections 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council grants consent to erect two LED digital billboards, subject to the conditions below, imposed under Section 108 of the Act.

Location of Activity: Andersons Bay Road Railway Overbridge

Legal Description: SO 19512

Lapse Date: 24 April 2022, unless the consent has been given effect to before this date.

Conditions:

1. *The proposal shall be constructed generally in accordance with the plans and relevant details submitted with the resource consent application received by Council on 14 February 2017, except where modified by the following conditions.*
2. *The applicant shall advise in writing Council's Manager – Resource Consents within 5 working days of the commencement of operation of the LED billboard.*
3. *Any graphic displayed on the LED billboard shall have a minimum display time of eight seconds.*
4. *Images on the LED billboard shall transition from one to the next via a 0.5 second dissolve.*
5. *Image content on the LED billboard shall be static and shall not incorporate flashes, movement, animation or other dynamic effects.*
6. *Images on the LED billboard shall not use graphics, colours or shapes in combination in such a way that they would resemble, cause confusion with or distract from a traffic control device.*
7. *Images on the LED billboard shall not invite or direct a driver to do something.*
8. *Images on the LED billboard shall not be linked across two or more sequential images; that is where the meaning of an image is dependent upon or encourages viewing of the immediately following image.*
9. *The activity authorised by this consent shall produce no greater than 8 lux of light onto any other site used for residential activity during nighttime hours pursuant to Rule 21.5.4 (i)(b) of the District Plan in force at the date of issue.*
10. *A post-construction safety audit shall be prepared and submitted to the DCC Transport Group within the first 3 months of the proposed digital billboards becoming operational.*
11. *A post-operation road safety review shall be undertaken on the 12, and 24 month anniversaries of the digital billboards becoming operational, and be submitted to the DCC Transport Group.*

12. *Any requirements or recommendations of the above audits/reviews required by conditions 10 and 11 shall be implemented within 20 working days of the audit/review being completed.*
13. *Pursuant to Section 128 of the Resource Management Act, the operation of the digital billboards may be reviewed at any time after becoming operational, to ensure any adverse effects on the transportation network and amenity are sufficiently managed.*

Advice Notes:

- 1 In addition to the conditions of resource consent, the Resource Management Act establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
- 4 It is the responsibility of any party exercising this consent to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
- 5 This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.

Issued at Dunedin this 24 April 2017.

John Sule
Senior Planner

Appendix 1 - Approved plan for LUC-2017-57

[Scanned image –Not to Scale]

