

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under section 120 of the Act
BETWEEN CALDER STEWART DEVELOPMENT
 LIMITED
 (ENV-2018-CHC-170)
 Appellant
AND CHRISTCHURCH CITY COUNCIL
 Respondent

Environment Judge J E Borthwick – sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 13 March 2019

DETERMINATION

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed and resource consent is granted subject to:
 - (a) the amended conditions marked Annexure A;
 - (b) the following plans marked Attachment A:
 - (i) Ignite plan SK 180321 Rev02; and
 - (ii) Ignite "Frame to Screen Integration" sketch.
 - (c) planning map: Category 1 and Category 2 Entertainment and Hospitality Precincts, Christchurch District Plan, marked Attachment B;
 - (d) "Adaptive Monitoring Programme (Conditions 21 to 29, inclusive)", exhibit B to affidavit of S A Turner, dated 22 February 2019, marked Attachment C.



– attached to and forming part of this determination.

(2) the appeal is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns an appeal by Calder Stewart Development Limited against a decision of the Christchurch City Council, declining consent to construct a digital screen billboard on the EntX building at 617-649 Colombo Street, Christchurch.

[2] I have read and considered the consent memoranda of the parties dated 21 December 2018 and 8 February 2019, which propose to resolve the appeal.

[3] The parties advise that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

Background

[4] The consent is for a discretionary activity which was declined at first instance. The parties applied for orders that the appeal be allowed and consent granted, subject to agreed conditions. Counsel did not, however, explain how the orders sought addressed the concerns of the Commissioner who declined consent.

[5] While the parties have reached agreement, the making of the orders by the court is the exercise of a discretionary power and the court must be satisfied that the orders will achieve the purpose of the Resource Management Act ("the RMA" or "the Act").¹



¹ See *Classic Properties Limited v Canterbury Regional Council* [2016] NZEnvC 20 at [18].

[6] The court issued a Minute² asking the parties to explain the agreement and address how the Commissioner's concerns with regard to the size/design of the billboard and traffic safety were proposed to be addressed. Further to that, they were directed to file affidavits of suitably qualified experts in support of the grant of consent.

[7] They responded by way of joint memorandum,³ filing affidavits from experts in the fields of traffic engineering, urban design and planning.

Traffic

[8] At [9] of his affidavit, Dr Turner, a traffic engineer, explains that the key transport consideration for electronic billboards is how they might impact on road safety for different road users, which includes motor vehicle drivers and passengers, pedestrians, bicyclists and motorcyclists. Within each of these groups, especially for pedestrians, there are different risks for different user subsets such as young, elderly and disabled pedestrians.

[9] While there is clear evidence that vehicle drivers are distracted by signs, there is no consensus on whether the distraction results in a noticeable increase in crashes in the variety of situations in which these signs are installed.⁴

[10] Dr Turner deposed that the Council's best practice guideline requirements for static billboards are not applicable to this electronic billboard. Given the characteristics of the site and billboard design, he has taken a first principles approach to road safety. He proposes a complex series of conditions, the purpose of which is to study traffic conflict, in a proactive way, and identify any unexpected and undesirable increase in the crash risk. The conditions enable early intervention if the electronic billboard does cause crashes or a significant increase in near misses. The change in the electronic billboard to a static display is, in his opinion, a suitable remedial treatment.⁵

[11] Dr Turner prepared a flow diagram, Attachment C to this determination, summarising the intended operation of conditions 23 to 29. He says that the intention is that the most stringent restrictions (static images only) will apply if monitoring reveals traffic conflicts are consistently more than 30% above the baseline number over time,

² Dated 8 February 2019.

³ Dated 22 February 2019.

⁴ Affidavit of S A Turner, dated 22 February 2019, at [10].

⁵ Affidavit of S A Turner, at [60-61].



while the least stringent restrictions (increased duration of moving images to 60 seconds) will apply if traffic conflicts are consistently less than 30% above the baseline number of conflicts over time.⁶

[12] The court had queried the basis for the 30% threshold in its Minute. Dr Turner said that the 30% figure is often used by traffic engineers to establish that the change (in this instance traffic conflicts) is most likely [I interpolate] not random chance.⁷ He explained that, with regard to any change in the number of traffic conflicts, where the change is above 30% it is considered more than likely that the change cannot be attributed to random chance, from which it can be inferred there is a higher risk of crashes occurring. Below 30% any change in traffic conflicts is considered to have been caused by a random chance.⁸

[13] That aside, as a consequence of the court's questions, Dr Turner reviewed the conditions making changes to improve the effectiveness of the same. He is confident that the conditions are workable, as am I, with the further amendments he has made.

Urban design

[14] In its Minute, the court said that the evidence provided would need to explain how the conditions address the adverse effects on the environment, which the Commissioner appointed to hear and determine the application had found would be "very significant" due to the size, prominence and likely content of the billboard.

[15] Counsel advised that at the Council hearing the billboard design was amended by the applicant to provide a screen that curves around the corner of the building. The change was made to improve the design but in doing so this increased the size of the billboard from approximately 103.5m² to 111.75m². It is understood that no party, including the applicant and its representatives, were aware of the increase in size from that applied for. This also meant that the Commissioner who determined the application was unaware of the size increase and based his decision on plans and images showing a larger billboard design than that proposed in the application.⁹

⁶ Affidavit of S A Turner, dated 22 February 2019, at [49].

⁷ Affidavit of S A Turner, dated 22 February 2019, at [50].

⁸ Affidavit of S A Turner, dated 22 February 2019, at [50].

⁹ Joint memorandum, dated 22 February 2019, at [6]-[7]; affidavit of J Lonink, dated 22 February 2019, at [27].



[16] Mr Lonink, a Senior Urban Design Advisor for the Council, informed the court that the billboard design considered by the Commissioner was not well integrated or positioned at the building façade. This resulted in the screen appearing to be an afterthought rather than a conscious design decision, contributing to what he would have considered to be significant adverse effects.¹⁰

[17] A number of changes have been made to the design of the billboard to reduce the total screen size and its prominence, including reducing its height, altering the distance of setback from the roof edge, and embedding the screen in a frame that fits in with the architectural detailing of the corner façade.¹¹ In Mr Lonink's opinion the proposed changes to the size,¹² height and setback of the billboard contribute to the screen being integrated better within the architecture of the building.

[18] The conditions also address the content that will be shown on the screen, as a method for the billboard to contribute to a cohesive urban environment. The parties have agreed that a minimum of 25% of the billboard's content must relate to the site and central city businesses and activities, community and non-advertising material.

Planning

[19] Ms Regnault, Principal Planning Advisor for the Council, gave a succinct assessment of the relevant City Plan provisions, addressing changes made to the billboard's size, positioning and setting within the architectural framework against the objectives and policies for commercial activity and signage.¹³

[20] The conclusion reached at [37] of her affidavit, is that the changes made to the billboard's size, positioning and integration allow the proposal to generally align with the intent of the objectives and policies for commercial activity and signage. Given the amendments made to the conditions addressing traffic safety, she deposed that the proposal is supported by the objective and policy that seek to ensure development does not adversely affect transport safety and efficiency.



¹⁰ Affidavit of J Lonink, dated 22 February 2019, at [35].

¹¹ Affidavit of J Lonink, dated 22 February 2019, at [28].

¹² Affidavit of J Lonink, dated 22 February 2019, at [28]. Digital screen size is now 98.93 m².

¹³ Affidavit of M G Regnault, dated 22 February 2019.

Other relevant matters

[21] No person has given notice of an intention to become a party under section 274 of the Act.¹⁴

Outcome

[22] All parties to the proceeding have executed the memorandum requesting the orders. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.


J E Borthwick
Environment Judge



¹⁴ A s 274 notice was filed by AB Investments Limited on 7 August 2018 but was withdrawn on 18 October 2018.

Annexure A

CONDITIONS OF CONSENT (RMA/2017/1365)

Definitions

Crashes (or accident) –means a collision between two different road users and may involve motor-vehicle drivers and passengers, cyclists and pedestrians. Crashes have different types (e.g. rear-end) and different severity levels (e.g. fatal, serious injury, minor injury and non-injury).

Traffic Conflicts – means incidents where road users get close in time and space to having a collision but do not collide. These are typically separated into 'near misses' and 'severe' conflicts. In the latter, one or more of the road users has to come to an abrupt stop (heavy braking) or suddenly swerve to avoid a collision.

General Conditions

1. The development shall proceed in accordance with the information and plans submitted within the Application except as updated at **Attachment A attached** to this consent. The Approved Consent Documentation has been entered into Council records as RMA/2017/1365 (xxx pages).
2. Any content displayed on the digital screen billboard shall comply with the Advertising Standards Authority Advertising Code of Practice and the Broadcasting Act 1989.
3. Any content displayed on the digital screen billboard should not contain any New Zealand road signs that are specified in the Traffic Control Devices (TCD) Manual or the Manual of Traffic Sign and Marking (MOTSAM).
4. Multiple consecutive advertisements for the same products is prohibited.
5. There shall be no sound equipment associated with the digital screen billboard and no sound equipment is to be installed as part of the digital screen billboard.
6. The digital screen billboard shall not be made of a material that is reflective to other light sources such as vehicle headlights.
7. The condition and appearance of the digital screen billboard will be maintained at all times. In the event of digital screen billboard failure, the digital screen billboard shall default to either black or white.
8. A minimum 25% of the advertisements displayed on the digital screen billboard during both daytime hours (being between 0700 hours and 2200



hours) and night-time hours (being between 2200 and 0700) shall be reserved for the following:

- (a) Events and activities undertaken within the development site, including theatrical releases and trailers, upcoming events, commercial activities and food and beverage outlets;
 - (b) Community events and activities including sporting activities, tourist activities and events undertaken in the Canterbury Region, social, cultural and entertainment activities;
 - (c) To convey information, current news and sports coverage and media;
 - (d) Events and activities undertaken within commercial premises within the Category 1 and Category 2 Entertainment and Hospitality Precincts (as per Planning Map CC, Christchurch District Plan as attached to this consent as **Attachment B**);
 - (e) Non advertising digital art and displays.
9. The 25% of advertising as described in Condition 8 shall be averaged over a period of one month.
10. The Consent Authority may on up to three occasions every calendar year after the establishment of the digital screen billboard, request from the consent holder an itemised schedule for any nominated calendar month(s), a schedule of the type of advertising to determine compliance with Condition 8. The consent holder shall provide such a schedule within 20 working days upon formal request.

Digital screen billboard Illumination

11. The digital screen billboard shall not exceed 20 lux of light when measured 2m within the boundary of any adjacent site.
12. The brightness of the digital screen billboard shall be adjusted in response to changes in ambient light levels so that the images are not unreasonably bright for the safety of motorists. The maximum luminance (brightness) levels are:
- (a) 5000ch/m² during the day-time,



- (b) 600cd/m² at one hour either side of dawn and dusk, and;
 - (c) 250cd/m² at night.
13. The luminance of the digital screen billboard shall be audited by an appropriately qualified lighting engineer/designer within 5 working days of installation and operation of the screen to confirm maximum luminance levels in Conditions 11 and 12 are not being exceeded. Confirmation of this is to be forwarded to the Head of Resource Consents, Christchurch City Council within 48 hours of the audit being completed.

Static Content

14. Any static images or messages displayed on the digital screen billboard shall contain no movement of any type (i.e. no animation, flashing, scrolling, intermittent or full-motion video shall be displayed).
15. Any static images or messages that are displayed on the digital screen billboard shall have a minimum duration of 8 seconds.
16. There shall be no transitions between static images, apart from either:
- (a) An immediate change;
 - (b) A maximum cross-dissolve period between images of 0.5 seconds.
17. Between transitions there will be no flashing or blinking.
18. No more than one advert shall be displayed on the digital screen billboard at any one time.

Animated Content

19. Any moving images that are displayed on the digital screen billboard shall be limited to a minimum of 8 seconds and a maximum of 20 seconds duration for the first two years of operation.
20. Any content on the digital screen billboard shall be consistent with the guidelines contained in Section 3 "Animated, flashing and variable message signs" of the NZTA Traffic Control Devices Manual, Part 3 Advertising Signs.



Monitoring Programme

21. Prior to the proposed digital screen billboard becoming operational, the Consent Holder shall undertake a 'baseline' traffic safety analysis of the Colombo/Lichfield intersection including up 50 metres on each of the four approaches to the intersection. The analysis shall be undertaken by an appropriately qualified transport engineer and include (but not be limited to) information on the following matters:
- (a) An inventory of land use signage and potential other distractions to road users within 50m of the intersection.
 - (b) Collect recent (within the last 2 months) count data for all road users (vehicle, cycle and pedestrian movements at the intersection. This should include information on daily and hourly road user volumes.
 - (c) Based on the data in b) above, determine the two busiest peak hourly counts (combined for all road users) identified across a given week.
 - (d) The Crash Analysis System (CAS) managed by the New Zealand Transport Agency shall be reviewed to identify any injury crashes (minor injury, serious injury or fatal) that have occurred within the intersection or nearby (up to at least 50m on each approach). For the purpose of establishing a baseline analysis, the review shall cover the last 5 years of crash history. For the purposes of subsequent analyses under conditions 22, 24 and 27, the review will involve assessing crashes as they occur. A review of the CAS summary data and Police crash reports, by a suitably qualified road safety professional, will determine whether distraction was a key cause, a contributing factor or not a factor in each crash. For any serious injury or fatal crashes, the road safety professional shall also use his/her best endeavours to discuss any such crash with the Police officer who attended the crash. The road safety professional shall identify the source or sources of the distraction (including signage) from the crash report and the Police Officer (if discussions have taken place).
 - (e) The Council's closed-circuit television (CCTV) surveillance of the intersection shall be recorded for a 24-hour period that includes the two daily peak hours, and during a typical weekday period (ie not during school holidays). The same period is to be used for all



subsequent surveys. The footage shall then be reviewed to identify traffic conflicts. The methodology (survey and analysis) to be used for the traffic conflict analysis is to be in accordance with, or similar to, the British Traffic Conflict Technique (reference - http://www.ictct.org/wp-content/uploads/LIB_Kraay_1982.pdf and paper by CJ Baguley (TRRL) titled The British Traffic Conflict Technique: State of the Art Report). This video footage is to be retained until the end of the monitoring programme.

12 and 24 Month Traffic Surveys (Data Collection)

22. 12 and 24 months after the digital screen billboard becomes operational, the Consent Holder shall repeat the traffic safety analysis as specified in Condition 21 for the purposes of evaluating any changes in road safety performance and road user behaviour at the intersection. These additional studies shall evaluate the following additional matters:
- (a) Any changes to the layout of the intersection following installation of the digital screen billboard;
 - (b) Changes in traffic, pedestrian and bicycle flow conditions, and;
 - (c) Whether or not the number of serious and/or slight (moderate) traffic conflicts increase by more than 30% above the baseline level.

12 and 24 Month Traffic Surveys (Analysis)

23. If the number of traffic conflicts after the 12 and 24 month surveys have been completed are:
- (a) Both less than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow, then the Consent Holder is able to increase the maximum duration of moving images that are displayed on the digital screen billboard to 60 seconds.
 - (b) More than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow for either survey, then the Consent Holder shall continue to operate the digital screen billboard in accordance with conditions 19 and 20 above (i.e. operating a maximum video clip of 20 seconds).



36 Month Traffic Survey (Data Collection and Analysis)

24. 36 months after the digital screen billboard becomes operational, the Consent Holder shall repeat the traffic safety analysis as specified in Condition 21 for the purposes of further evaluating any changes in road safety performance and road user behaviour at the intersection.
25. If the digital screen billboard has been operating at a maximum clip length of 60 seconds in accordance with Condition 23a), and the number of traffic conflicts after the 36-month survey is:
- (a) Less than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow, then the Consent Holder is able to retain the maximum duration of moving images that are displayed on the digital screen billboard at 60 seconds.
 - (b) More than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow, then the Consent Holder shall permanently operate the digital screen billboard in accordance with conditions 19 and 20 above (i.e. operating a maximum video clip of 20 seconds) and this monitoring programme will cease.
26. If the digital screen billboard has been operating at a maximum clip length of 20 seconds in accordance with Condition 23b), and the number of traffic conflicts after the 36-month survey is:
- (a) Less than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow, then the Consent Holder is able to retain the maximum duration of moving images that are displayed on the digital screen billboard at 20 seconds.
 - (b) More than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow, then the Consent Holder shall permanently operate the digital screen billboard in accordance with conditions 14 to 18 inclusive (i.e. static images) and this monitoring programme will cease.

48 Month Traffic Survey (Data Collection and Analysis)

27. 48 months after the digital screen billboard becomes operational, the Consent Holder shall repeat the traffic safety analysis as specified in Condition 21 for the purposes of further evaluating any changes in road safety performance and road user behaviour at the intersection.



28. If the number of traffic conflicts following implementation of Condition 25a) (i.e. a maximum clip length of 60 seconds) after the 48-month survey is:
- (a) Less than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow, then the Consent Holder is able to permanently retain the maximum duration of moving images that are displayed on the digital screen billboard at 60 seconds and this monitoring programme will cease.
 - (b) More than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow, then the Consent Holder shall permanently operate the digital screen billboard in accordance with conditions 19 and 20 above (i.e. operating a maximum video clip of 20 seconds) and this monitoring programme will cease.
29. If the number of traffic conflicts following implementation of Condition 26(a) (i.e. a maximum clip length of 20 seconds) after the 48-month survey is:
- (a) Less than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow, then the Consent Holder is able to permanently increase the maximum duration of moving images that are displayed on the digital screen billboard to 60 seconds and this monitoring programme will cease.
 - (b) More than 30% above the baseline number of traffic conflicts adjusted for changes in traffic flow, then the Consent Holder shall permanently operate the digital screen billboard in accordance with conditions 14 to 18 inclusive (i.e. static images) and this monitoring programme will cease.
30. Irrespective of the outcome of the 12, 24, 36 and 48-month surveys, if there are one or more fatal crashes or two or more serious crashes or five or more minor injury crashes where the operation of the digital screen billboard was a key crash cause, then the Consent Holder shall be restricted to static images on the digital screen billboard as soon as any of these crash totals are reached, in accordance with conditions 14 to 18 inclusive. The review of crashes over the 48 months after the digital screen billboard becomes operational is to be undertaken by a suitably qualified road safety professional. This professional shall determine which crashes, if any, that the billboard sign was considered a key crash cause, being a



cause where the professional considers that the crash will not have happened if the billboard sign did not exist. A key crash cause is to be distinguished from those situations where the viewing of the billboard by a crash victim was only a contributing factor, being a factor where the professional considers that the crash would have still happened if the billboard sign did not exist.

Section 128 Review of Consent Conditions

31. In accordance with s.128 of the Resource Management Act 1991 the Christchurch City Council may serve notice on the Consent Holder on 1 March or 1 October of its intention to review, in whole or in part, the conditions of this consent to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage.

Advice notes:

In undertaking the analyses required by conditions 21, 22, 24 and 27 it is preferable to use the same person or people to provide objectivity.

The Council will require payment of its administrative charges in relation to monitoring of conditions, as authorised by the provisions of section 36 of the Resource Management Act 1991. The current monitoring charges are:

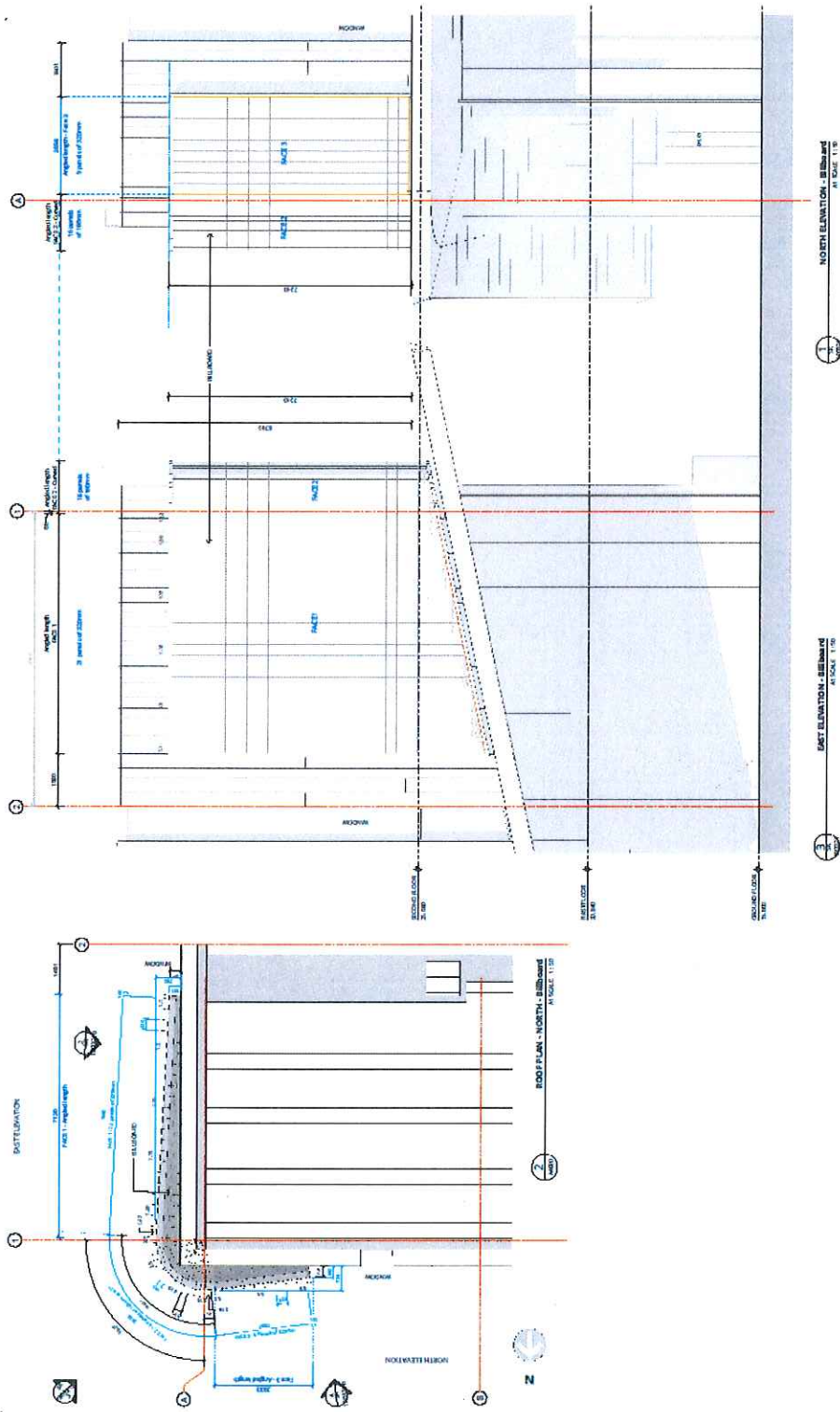
- (i) A monitoring fee of \$277.50 to cover the cost of setting up a monitoring programme and carrying out an inspection to ensure compliance with the conditions of this consent; and
- (ii) Time charged at an hourly rate for the additional monitoring activities required by conditions of consent, certification of conditions and any additional monitoring activities (including those relating to non-compliance with conditions).



ATTACHMENT A - PLANS

The digital screen billboard's size, profile and integration with the building shall be in general accordance with the Ignite plan SK 180321 Rev02 and Ignite "Frame to Screen Integration" sketch below.



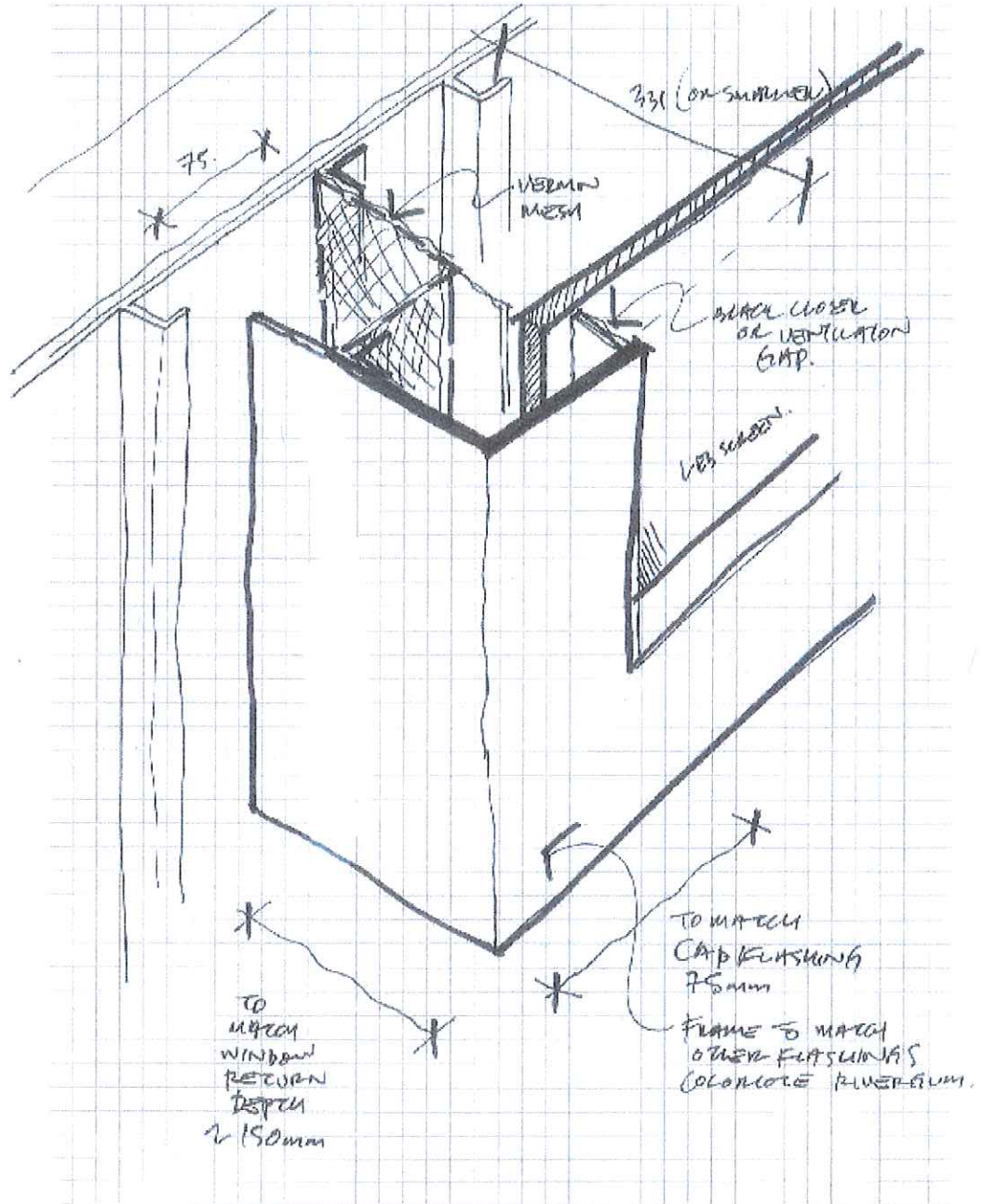


HOYTS Enx
 617-648 COLONBO STREET,
 CHRISTCHURCH

Scale: 1:50 (A1)
 Drawing No: 16.3 OPTION WITH FRAME

Project Number: 0281-002
 Drawing Number: SK 18.03.1
 Rev: Rev02





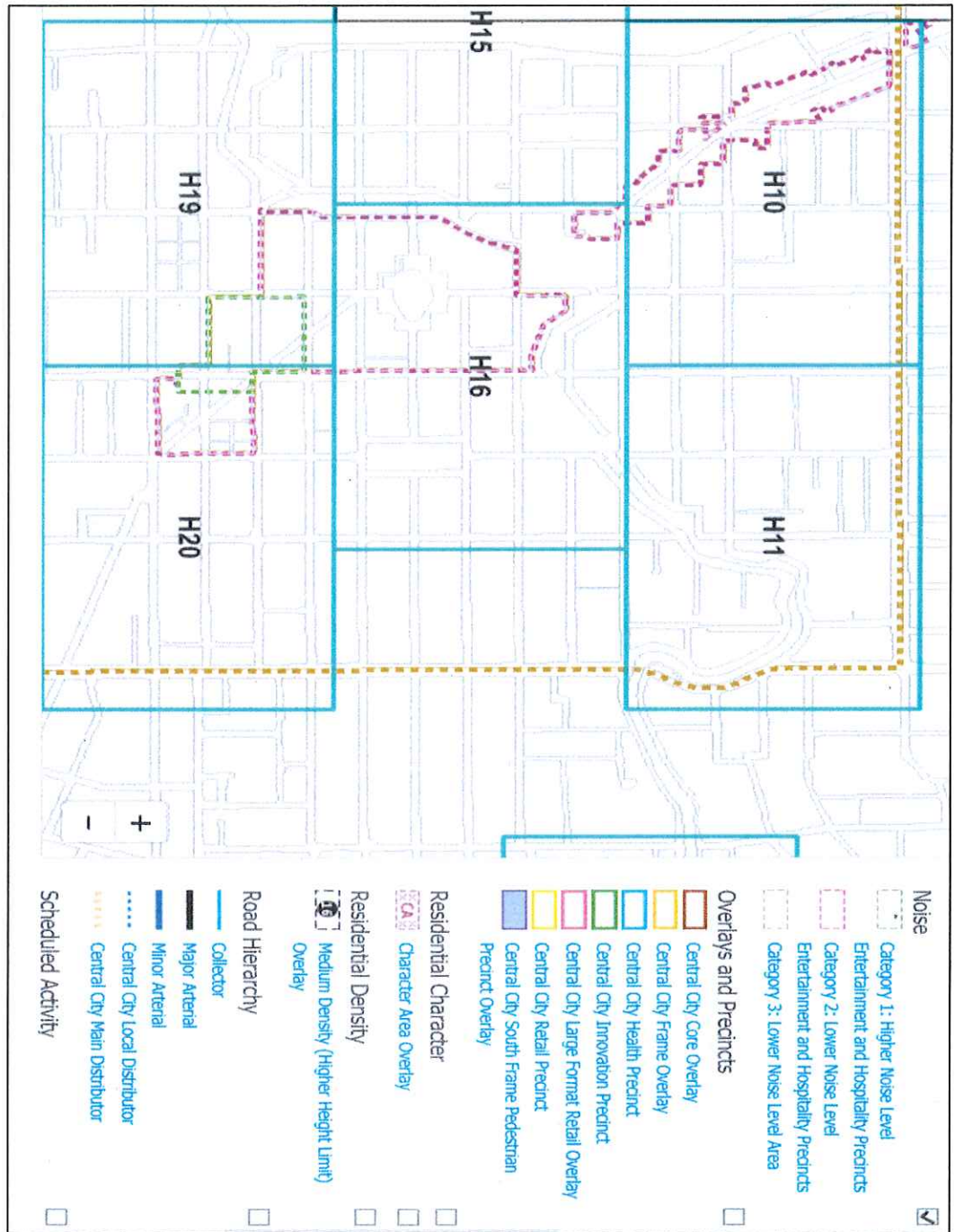
Project: **ENTRY**
 Scope: **FRAME TO SCREEN INTEGRATION.**

Project No: _____
 Date: _____
 Author: _____

ignitech.co.nz



ATTACHMENT B – CATEGORY 1 AND CATEGORY 2 ENTERTAINMENT AND HOSPITALITY PRECINCTS



Source: Christchurch District Plan, Planning Maps dated 19 December, 2018



ATTACHMENT C

EXHIBIT NOTE

This is the annexure marked "B" referred to in the affidavit of SHANE ALAN TURNER and sworn at Christchurch this 23rd day of February 2019 before me

Signature.....
 A Solicitor of the High Court of New Zealand
 (Solicitor to sign in part on Exhibit)

Lana Christensen
 Solicitor
 Christchurch

Optimistic Monitoring Programme (Conditions 21 to 29, inclusive)

