

Resource Management Act 1991
Christchurch City Council
Application for Resource Consent

Notice of Decision by Hearings Commissioner David Mountfort

Application Reference: RMA/2020/702

Applicant: Lumo Digital Limited

Site address: 399 Lincoln Road, Addington

Legal Description: Pt RS 9 Canterbury Dist. and Lot 1 DP 1406

Proposal: Establish two 29.2m² digital billboards

Date of Hearing: **1 December 2020**

Summary of Decision

That the Application be declined

Introduction

1. Lumo Digital Limited has applied for resource consent to establish two 29.2m² digital billboards at 399 Lincoln Road, Addington.
2. In brief, the main features include:
 - Each billboard will be single-sided and have a curved digital display;
 - The billboards will each have dimensions of 9.9m (w) and 2.95m (h) (29.2m²). The platforms which the billboards will be affixed to will have a height of 2.1m (maximum height of billboards will be 5.05m);
 - The billboards will be connected in a V-shape with one board facing east and one west;
 - The billboards will be located in the northeast corner of the site at the intersection of Moorhouse Avenue and Lincoln Road;
 - Landscaping is proposed around the base of the billboards. This will consist of low-level native species endemic to the wider Christchurch area;
 - The billboards will display a changing range of advertisements.
3. I have been appointed by the Christchurch City Council to hear and decide the application and submissions.

The site

4. The site is located at 399 Lincoln Road, Addington, Christchurch. It is legally described as Lot 1 DP 1406 and Part RS9 and comprises an overall area of 1,197m² (more or less). It is a triangular corner site with its long boundaries on Moorhouse Avenue and Lincoln Road and its apex at the intersection of those two roads, where the signs are proposed to be located. The site is currently under redevelopment for a self-service fuel station.
5. The site is zoned Industrial General and sits within a band of Industrial General land along the south side of Moorhouse Avenue. Immediately to the north is Hagley Park which is zoned Open Space Community Parks and identified in the District Plan as a 'Highly Significant' Heritage Item. Other zones in the vicinity include Commercial Central City Mixed Use and Residential Central City to the north-east diagonally across Moorhouse Avenue and Commercial Office to the west along Moorhouse Avenue.

The submissions

6. A total of 12 submissions were received on this application (four in support, seven in opposition and one which did not state a position).
7. Submissions in support were lodged by
 - A & H Ashby
 - M De Wit
 - V Kocon
 - Gull NZ Ltd
8. Reasons for support include that:
 - The proposal would create jobs; and that
 - It would have no effect on the service station business being constructed on the same site.
9. Submissions in opposition were lodged by
 - M Apse
 - L Chandler
 - C Cooper

- P Garlick
- M Kúbuch
- S Rehfeldt
- C Shaw

10. Reasons for opposition include that:

- Lighting and movements of the advertisement would be visible from and have adverse effects at submitters' apartments;
- Visual dominance of the screens;
- There would be driver distraction; and that
- There would be effects on the visual amenity of Hagley Park.

11. A neutral submission in opposition was lodged by Shamus Holdings Ltd. No reason for the submission was stated.

The hearing

12. I conducted a hearing at the Council offices on 1 December 2020. The following people appeared at the hearing:

Applicant

Jaime Robinson	Legal Counsel
Phil Clemas	Applicant Representative
Kent Harrison	Applicant Representative
Richard Knott	Urban Designer
Chris Rossiter	Traffic expert
John Scheele	Planner

Submitters

Paul Garlick	Resident
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Christchurch City Council

Matthew Klomp	Planner, Section 42A reporting officer
David Hattam	Urban Designer
Axel Wilke	Traffic expert

The planning framework

13. The proposal requires resource consent under the following rules in the District Plan:

Activity status rule	Standard not met	Reason	Matters of control or discretion
6.8.4.1.3 RD3	6.8.4.1.1 P15	The proposed digital billboards will not comply with activity specific standards a. and f. as they will be greater than 18m ² in area and as they will be located less than 50m from a signalised intersection.	6.8.5.3 Static and digital billboards

14. The application is therefore a restricted discretionary activity under the District Plan.

15. The site is listed as a contaminated site due to previous activities there, but the amount of earthworks proposed is very limited and the proposal does not trigger the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

The permitted baseline

16. Before discussing the application and the planning framework in detail I outline what is known as the “permitted baseline”. This is a legal principle, set out in section 104 (2) of the Resource Management Act 1991. Under this, when deciding a resource consent, “*a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*” It is necessary to establish what permitted non-fanciful activities could occur on this site, then compare the adverse effects of what is actually proposed with the effects that could be created as of right. In other words it is only the effects over and above those permitted as of right that are relevant to this enquiry. In this case the permitted baseline was discussed extensively by the representatives and witnesses for both the applicant and the Council. Essentially it amounts to the right to erect two doubled sided billboards of no greater than 18m² in area at least 50 metres from the intersection, and I note that this could in theory be along either the Moorhouse Avenue or Lincoln Road frontages. I will return to this later in my assessment of effects.

Resource Management Act 1991

17. When considering an application for resource consent and any submissions received, I must have regard to the matters listed in Sections 104C of the Resource Management Act 1991. Subject to Part II of the Act, which contains the Act’s purpose and principles, including matters of national importance, the consent authority shall have regard to:
 - a) Any actual and potential effects on the environment of allowing the activity.
 - b) Any relevant provisions of a plan or proposed plan,
 - c) Any other matter the consent authority considers relevant and reasonably necessary to determine the application.
18. It should be noted that other than giving pre-eminence to Part II, Section 104 gives no priority to other matters. They are all matters to have regard to and the consent authority must exercise its discretion as to the weight that it gives certain matters, depending on the circumstances of the case.
19. Under Section 104C, when considering an application for resource consent for a restricted discretionary activity, a consent authority may grant or refuse the resource consent, and (if granted) may impose conditions under section 108. The proviso to this section is that the consent authority must consider only those matters specified in the plan or a national environmental standard over which discretion is restricted and may impose conditions only for those matters.
20. Pursuant to Section 104(3)(a)(i) a consent authority must not have regard to trade competition when considering an application. No issue of Trade competition arose in this case.

Effects on the Environment

21. In this case there were two primary environmental effects identified, being traffic related effects, and visual amenity.
22. I accept that these were the major environmental issues raised by the application. I assess each of them in turn.
23. Effects on property valuation were also raised by a submitter, but this factor should not be discussed separately. It is an indirect or secondary effect that arises out of the principal effects because effects on a property valuation would be the result of the primary adverse effects affecting the desirability and saleability of the property. To consider this separately would be double counting of the adverse effects.

Traffic issues

24. The situation at this intersection is complex due to the very heavy traffic levels, the number of lanes, and the presence of cycleways on the roads. There are also relatively large numbers of pedestrians and cyclists on the roads, mainly due to the proximity of Hagley Park and the Central City, which both generate significant commuting and recreational opportunities for cyclists and pedestrians.
25. Four specific traffic issues have been raised. The first is the potential of the signs to obscure the traffic signals at the intersection. The second is the potential for the signs to confuse drivers if they were to mistake an advertisement for the traffic light and proceed through the intersection at the wrong time. The third issue is whether the advertisements would distract the drivers at critical decision points. Any of these situations could result in crashes, which could range from minor rear end collisions through to very serious crashes. The fourth issue is whether there would be any adverse effect on the cycleway on the south side of Moorhouse Avenue where it turns into Lincoln Road.
26. I will discuss and give my conclusions on the first and second of these issues together followed by the third and fourth separately.
27. With regard to obscuring the traffic signals, the Initial Assessment of Environmental Effects (AEE) lodged with the application was that while some traffic signal faces would appear close to the billboard, their appearance would be so distinctively different to the billboard display that drivers would have no difficulty identifying the traffic signals. In particular the black surround around the actual traffic lights was relied on for this. By the time of the hearing Mr Rossiter accepted that the projected position of one of the green signal aspects may track across the corner of the billboard from the typical eye height of a truck driver, but that this would not be the case for car drivers. He maintained the position that this perceived visual proximity would not cause any difficulty for drivers in identifying the traffic signals.
28. For the Council, the initial traffic evidence attached to the Council's section 42A report was prepared by Ms Megan Gregory under the supervision of Mr Wilke who then presented it along with a summary at the hearing, in the unavoidable absence of Ms Gregory. While I neglected to ask Mr Wilke to formally adopt Ms Gregory's report as representing his own views, I am completely satisfied that that is exactly what he did.
29. Their evidence discusses this issue of obscuring of the signals in the section 42A report as follows:

The further information memo shows that the signal faces on poles 6 and 7 will be at least partially in line with the billboard for a truck driver in the decision zone, but the memo's authors try to dismiss this by saying: "given that the surrounding backing board is black, the visibility of the aspect is unlikely to be confused with the content of the billboard."

This seems contradictory to the importance that the ITA initially placed on the sightline assessment; the conclusion at the end of the ITA hinges on the fact that the billboard does not align with the signal faces for a car driver within the decision zone. ViaStrada considers that it is critical that the billboard should not be in the same line of sight as the traffic signals for a driver in the decision zone, and that this would be part of the reason for the District Plan's rule regarding proximity of a billboard to the intersection.
30. It seems to me that in this extract the ViaStrada authors seem to be dealing together with the issues of obscuring signals, and confusion of signals with advertisements.

Conclusion on obscuring and confusion of traffic signals

31. My conclusion on this issue of perceived visual proximity is that although it is undesirable for the billboard to appear so close to the traffic signals, I am not convinced that drivers would be unable to actually identify the appropriate signals that they need to see. Traffic lights are a basic, routine part of urban driving, so it becomes almost instinctive to identify them quickly when approaching an intersection.

32. Similarly I am not convinced that there would be a risk of drivers confusing the content of an advertisement with a traffic signal, and for example making a false start or proceeding through an intersection when the lights are actually against them. It seems to me that the factors such as the shape, size, content, and colours of billboards and traffic signals are so different that it is highly unlikely that drivers would confuse the two unless the billboard was displaying an image of a traffic signal, and that would be contrary to the industry code of practice and is a matter which could be dealt with by conditions of consent to prevent this occurring.

Driver Distraction

33. That brings me to the issue of distraction. The risk is that drivers in motion would be watching the advertisements rather than the traffic lights or the surrounding traffic, leading to the risk of various types of crash. It is for this reason the District Plan has the rule that requires digital billboards to be at least 50 metres from intersections.
34. That rule had its origins in a report prepared for the Council in 2016 by Mr Shane Turner, a leading and well-respected transport planning expert¹, during the District Plan preparation process. That report was a literature review of studies into the adverse effects of digital billboards on traffic safety and led to a number of recommendations for the District Plan which were adopted by the Council, including the 50 metre rule. The Turner report takes the issue of driver distraction very seriously.
35. Digital billboards were still a new and emerging technology in 2015. The two experts in the current case had very different opinions about whether the Turner report has stood the test of time. Mr Rossiter believed that more recent research has demonstrated that digital billboards do not cause driver distraction and that drivers can and do prioritise the driving task and will only glance very briefly at the billboards while in motion.
36. Mr Rossiter said that the Turner report has been superseded by more recent research that does not support the premise that digital billboards cause unsafe driver distraction.
37. Firstly he discussed the Carriageway Consulting report². He said:

Carriageway Consulting Limited has investigated crash records at 14 signalised intersections in New Zealand with digital billboards located within 50m of an intersection, and in five cases with the billboards located directly behind traffic signal heads³. The report notes that both of these factors are commonly mentioned as presenting a particular road safety risk when resource consent applications are made for new digital billboards. While there is a perception that crash rates would rise following the installation of digital billboards, this is not reflected in the crash records and the Carriageway investigation found lower crash rates following the installation. The Carriageway report concluded that there was no evidence that the operation of a digital billboard gives rise to an increase in the number of crashes.
38. The second report he discussed is the Samsa Consulting Report of 2015³. This used eye tracking technology to understand where drivers were looking and for how long as they drove through complex road environments with digital signs on the roadside. The study found that the average fixation duration for all signage types was below 0.75 seconds which was considered to be minimum perception-reaction time to an unexpected event. The study found no significant difference in the observed headways with different sign types (i.e. between digital billboards, static billboards, and on-premise signs).
39. The third report was by the Australian Road Research Board (ARRB) which published some research on the "On road evaluation of the driving performance impact of digital billboards at

¹ Turner, S. (2016). *Digital and Projected Advertising Signs: Road Safety Considerations and Consent Conditions*. Prepared for Christchurch City Council. NZ

² Digital Billboard Installations: Assessment of Road Safety Records. Carriageway Consulting Ltd, May 2016.

³ Digital Billboards 'down under': are they distracting to drivers and can industry and regulators work together for a successful road safety outcome. Samsa 2015

intersections” in November 2018. The focus of this research was to determine whether and to what extent digital signage would distract drivers in complex, cognitively demanding locations such as intersections or high traffic environments. The research used video to analyse vehicle movements through two intersections with closely proximate digital billboards, and found that:

“contrary to an hypothesis that digital billboards at demanding locations will inevitably create enough distraction to negatively affect vehicle control performance, the current evaluation found that, at all dwell times, vehicle lateral control performance either improved or was unaffected by the digital billboards presence”.

40. Mr Rossiter also discussed some research he has carried out himself. He used the Waka Kotahi Crash Analysis System (CAS) to investigate the number of crashes caused by different sources of driver distraction in New Zealand in recent years. There have been over 200,000 crashes reported since the beginning of 2015. Driver distraction was identified as a contributing factor in about 14,000 crashes, about 7% of all crashes.
41. He summarised the different types of distraction that are identified within CAS and the numbers of crashes where these factors have been explicitly identified. Cell phones account for the greatest single source of distraction. Other internal factors such as passengers, in-vehicle technologies, food and beverages account for about 30% of crashes where distraction is an identified contributing factor. External factors such as traffic, scenery, people, animals and advertising account for 22% of crashes. It is likely that all of these contributing factors are underestimates because there is a large proportion of all crashes (35%) which do not have an explicitly identified distraction factor.
42. Distraction by advertising or signs accounted for the smallest number of crashes; less than one percent of all crashes where distraction has been identified as a contributing factor and is a very small percentage of all crashes, about 0.02%.
43. He provided a summary of crash numbers if the crash reports with distraction as a contributing factor are filtered to include only those crashes that occurred at intersections. While cell phones were still a major source of distraction, other vehicles and passengers were identified as the leading causes of distraction. Distraction due to advertising or signs still represents the smallest category.
44. Mr Wilke was critical of the Carriageway Consulting report, largely because of the very short time period since the billboards it studied were installed, an average of only 1.2 years. He said that with such short period, the data was insufficient to achieve a statistically significant result, and that therefore it cannot be concluded that crashes had reduced at these sites.
45. At this point I wish to record that Mr Wilke reported a personal conversation with Mr Carr, the author of the Carriageway report to the effect that Mr Carr no longer supported what were preliminary conclusions. With all due respect to Mr Wilke I think I would need to hear that from Mr Carr himself and clarify exactly what Mr Carr’s current position is before I could place much if any weight on that remark. In any case I do not need to do so because Mr Wilke’s main conclusion about duration is more than sufficient to make his point.
46. Mr Wilke was also critical of the Samsa report. He said that it does not provide details of the digital billboards included. Not all of them were at intersections and of those which were there was no information about intersection size, layout, operation or positioning of the billboards in relation to the traffic signals. In particular it did not state whether the billboards were within the drivers “cone of vision”. It did not consider the effects of sign density. It only sampled middle-aged drivers.
47. Mr Wilke noted that the Samsa study did note an increase in the average standard deviation of lane position, which could contribute to crashes such as side swipes.
48. Mr Wilke referred to the ARRB study, noted that it involved only two intersections with no details of the intersection layouts or operation or billboard location. He said that the study report itself includes a caveat that it relates only to these two sites and not to digital billboards generally.
49. Mr Wilke discussed the reliance Mr Rossiter placed on the Crash Analysis System. He said this system is based on the reports of police officers attending accidents and described numerous ways

in which the CAS system under reports the cause of accidents. In response Mr Rossiter said that CAS is the only information available to analyse particular crashes after the event.

50. Mr Wilke also noted that on the westbound approach to the intersection on Moorhouse Avenue, there is another very large existing billboard close to the intersection, at the point where a minor road, Grove Road joins the intersection. The intersection was modified a few years ago to provide a left turn only movement into Grove Road. The sign is close to the Grove Road frontage. It is double-sided and elevated relatively high above the road. Lincoln Road also joins this intersection at this point, at an acute angle to Moorhouse Avenue. Because of the angles of the sightlines, at a certain point on the westbound approach this sign would seem to overlap the proposed sign from above, and then closer to the intersection would seem to be alongside it before they diverge visually close to the intersection. On that approach there is a stretch where the Grove Road sign actually appears to be above Lincoln Road and covers it completely. Fortunately it is high enough not to obscure the view of that road or the signals at that point. I believe Mr Wilke's point here is that there would be a cumulative effect with these two large signs appearing so close together, and that it would be difficult for approaching drivers not to be distracted by so much signage.

Conclusion on driver distraction

51. I am faced with two very different points of view from two qualified and experienced experts in the field.
52. I have encountered the Carriageway Consulting report previously in similar hearings, including the applications for the other two large billboards close to this intersection. For me the report is indicative but not conclusive. I consider each proposal needs to be considered according to its own circumstances. I do not know if any of the sites studied were sufficiently similar to this one to make valid comparisons or draw any conclusions. I accept Mr Wilke's point about the very short duration of each of the case studies.
53. With regard to the Samsa study, there are two other points that neither expert mentioned but which I consider relevant. That was a study of glances at the billboards. In this case, on the westbound direction on Moorhouse Avenue it will not be a matter of glances, because the billboard will be so central in the driver's cone of vision. It will be continuously visible, and much larger than almost anything else there other than heavy vehicles such as trucks and buses. It will be very difficult to ignore.
54. I have also long been sceptical of these types of studies that involve electronic monitoring of glance durations. The drivers concerned are likely to be aware that they are participating in a research study involving driving. They will also be aware of the camera equipment and the observers in the car. They will be on high alert and on their best driving behaviour. I do not see how it can possibly be a real world situation.
55. For these reasons, as well as Mr Wilke's critique, I have concluded that I should place limited weight on the Samsa study in the circumstances of this case. The aspect that does seem to me to be of relevance is the finding about lane deviation. I return to that later.
56. With regard to the ARRB study, I will disregard it for the reasons Mr Wilke gave.
57. My conclusion on driver distraction is that it remains a distinct possibility. This is a large, unusual and complex intersection, in that it is essentially Y-shaped, has multiple lanes, several cycle lanes, heavy traffic and significant numbers of cyclists and pedestrians. The proposed billboard will be sited at the western edge of the intersection, on the point of land between Lincoln Road and Moorhouse Avenue. On approach it will combine visually with the even larger Grove Road billboard. At or within the intersection it will be a very prominent feature in the centre of a drivers' field of view. As the ViaStrada experts said, such billboards are specifically designed to attract drivers' attention, and while I believe that almost all drivers will be able to negotiate the intersection successfully without being unduly distracted, I am not confident that all drivers will always be able to do so without distraction, ie to a point where distraction should be disregarded. I judge this effect to be more than minor, because potential consequences could be very severe including

serious injuries or fatalities. This puts the effect into the low probability but high potential impact category referred to in the RMA's definition of effect⁴.

58. A particular factor in this proposal is the relatively low elevation of the sign. There are two other large digital signs close to this intersection, which I refer to as the Grove Road sign and the Hagley Avenue sign. The Grove Road sign has already been referred to, and the Hagley Avenue sign is discussed below. Both these signs are relatively high above road level by comparison to the current proposal. While they may still be in or close to a driver's cone of vision, during part of the approach to the intersection, in my opinion their elevation provides some visual separation from the road and the traffic signals and possibly means a driver can glance at them quickly and away as described in the Samsa study. By contrast the proposed sign would be much closer to drivers' eye level and the level of the signals and will be a large central feature that cannot simply be glanced at.
59. The Hagley Avenue sign is another large billboard on another triangular corner of the intersection. On the north-eastern side of the intersection Hagley Avenue meets Moorhouse Avenue in another Y-shaped formation and there is another large, elevated billboard on that point of land, although set back from the edge of the intersection. Formerly Hagley Avenue was the continuation of Lincoln Road and traffic could pass across the intersection or turn into Moorhouse Avenue from either road. However Hagley Avenue, like Grove Road, has been modified through this intersection. In its case the only connection to Moorhouse Avenue is a left turn out of Hagley Avenue, on a free turn curving alignment a little distance beyond the intersection proper. There is no right turn available out of Hagley Avenue to Moorhouse Avenue or through movement to Lincoln Road. This billboard would be visible to east bound traffic on Moorhouse Avenue, where it would appear to the left of the road, and also to traffic turning right into Lincoln Road. It would also be clearly visible to eastbound traffic turning right out of Lincoln Road. The Grove Road sign would also be visible from Lincoln Road to the right of Moorhouse Avenue. However there is much less potential for two large signs to appear very close together at this point because of the width of Moorhouse Avenue. They are also both high enough to enable drivers to only glance at them and are set to the sides of the roads where they would be expected to be and therefore easy to ignore. In my considered opinion it is the westbound leg of Moorhouse Avenue which will be most affected, by the cumulative effect of the signage and that is because Lincoln Road remains open whereas Hagley Avenue has been effectively closed other than the left-out only lane.
60. In case I am wrong in that conclusion and the existing Grove Road and Hagley Avenue signs would create cumulative effects in conjunction with the proposed signs, that would only add to the potential adverse effects of yet another billboard. Visually, these two existing signs are widely separated at present due to the width of Moorhouse Avenue. Placing the proposed billboards centrally between the two as seen from the western leg of Moorhouse Avenue would significantly increase any cumulative effect.

Cycleways

61. On the westbound leg of Moorhouse Avenue at the intersection there are two cycle lanes, one adjacent to the kerb for cyclists turning into Grove Road or Lincoln Road, and another between the left turning vehicle lane and the middle lane for cyclists heading west on Moorhouse Avenue. The traffic experts all agreed that it can be difficult for large vehicles such as trucks and buses turning into Lincoln Road to avoid encroaching on the left hand cycle lane and indeed on my site visit, I saw a bus and even a car do just that. Mr Rossiter was not concerned about this, considering that it is an existing problem, and that the Council is aware of it and has a plan to route this part of the cycleway off the road and onto the footpath past the intersection. Mr Wilke was less confident, pointing out that even if the Council does alter the layout it will not be before 2022 at the earliest and there is a possibility that it may not proceed due to funding constraints. Mr Wilke also pointed out to me that truck drivers might not even be aware of a cyclist alongside them or close behind due to the very large blind spot in that area. Added to the potential for drivers to be distracted by the signs at this point this adds to the existing problem. A collision between a cyclist and a truck or

⁴ See Section 3 of the Resource Management Act 1991.

bus at this point could be extremely serious or fatal. There was a suggestion that if this application is approved it should not be allowed to commence until after the cycleway is modified, but I would be reluctant to impose such a condition unless reasonably certain that the modification would be taking place in the near future.

Conclusion as to effects on the cycleway

62. My conclusion is that this is a potential addition to an existing problem with a relatively low risk probability but extremely high consequence. At this time I place no reliance on the somewhat uncertain prospect of a reconfiguration of this cycleway.

Visual amenity effects

63. The evidence for this was presented by Mr Richard Knott for the applicant and Mr David Hattam for the Council. Their approaches were quite similar. Both considered that the relevant effects that should be assessed would be effects on the visual amenity perceived to users on the shared walking and cycling path within Hagley Park. This runs parallel to Hagley Avenue and the western leg of Moorhouse Avenue. Both considered that it is the Hagley Avenue frontage where the general standard of amenity including visual is highest. The Moorhouse Avenue frontage is similar in its layout but the road is wider and traffic is much heavier with a corresponding increase in traffic noise. The far side of the road is developed with industrial and commercial buildings.
64. Outside the park and Hagley Avenue they agreed that amenity is quite low due to the wide roads, heavy traffic and industrial development.
65. This path alongside Hagley Avenue is a very attractive one. It is part of a wider network of others which surround virtually all of Hagley Park, except in the vicinity of Christchurch Hospital, the Botanic Gardens and Rolleston Avenue. The path connects with other paths which cross South Hagley Park. It is lined with large mature trees on both sides. To one side is Hagley Park, which is a very large and attractive open space, developed for sports grounds, with more large trees visible in the distance across South Hagley Park. The hospital buildings can be seen in the distance, as can the back of the Hagley Cricket Oval complex. On the other side, separated by the trees is Hagley Avenue, which in this vicinity is largely a medium density residential precinct. Since its partial closure to Moorhouse Avenue, the carriageway has been narrowed and a large parking precinct has been developed. Traffic speeds are slow and there is little traffic noise.
66. The shared path, while situated on the fringe of Hagley Park, holds significant heritage and amenity value for the public as a high quality recreation space. Users of this space include large numbers of commuting pedestrians and cyclists and people using it for recreation.
67. When proceeding in a southwest direction along this path towards the intersection with Moorhouse and Lincoln Roads, the proposed billboard would appear immediately above the path, framed by the trees on either side of the path. The only real difference between the evidence of Mr Knott and Mr Hattam is the significance of the effects on the visual amenity enjoyed by users of the Hagley Avenue path.
68. Mr Knott produced a set of visual simulations at different distances from the sign, based on photographs, with the billboard inserted in its correct location and size. He provided simulations at distances of 200, 100 and 50 metres from the proposed. It was his opinion that any closer to the sign the amenity of the area would be so dominated by the traffic levels that any additional effects from the billboard would be less than minor. At further than 200 metres from the sign he considered the effects would be less than minor. I was able to identify Mr Knott's photo locations easily by finding the relevant combinations of trees and lamp posts and was able to confirm that the view that would be available from those locations was accurately portrayed.
69. Mr Knott's photographs were taken in winter when the trees were bare of leaves.
70. Mr Knott's selected viewpoints were more limited than those selected by Mr Hattam, who included more distant viewpoints. However Mr Knott concluded that from the various viewpoints along the shared path within Hagley Park including those considered by Mr Hattam in the worst instance that the effects of the proposed billboards would be low, equivalent to a minor adverse effect.

71. Mr Knott relied in part on the effects of what is termed the cross-dissolve. This is the transition between advertisements on the billboards. Under this system, an advertisement fades to black and the next image appears over a period of 0.5 seconds. Many digital billboards now employ this system and it has become a standard condition of approval on most resource consents. However billboards still exist that use an instant transition. Mr Hattam said that the transition appears as a movement and draws attention to them. As I understand Mr Knott, he strongly believes that the use of a cross dissolve transition softens this impact to the point where it becomes acceptable.
72. As a result of this evidence, I spent some time after the hearing at other digital billboard sites with and without the cross-dissolve. As a result I can see Mr Knott's point but only in part. If one is deliberately watching the billboard, as one might for example while waiting at a red light, then an instantaneous transition can be sudden, jerky, and uncomfortable to see. I thought then that a cross-dissolve is gentler on the eyes. However if not deliberately watching the advertisements, or trying to avoid watching them at all, I did not find the cross-dissolve helpful. It is still a flicker that draws attention to itself and may even be worse because it is actually two movements, albeit very close together.
73. Mr Knott also considered the effects on the visual amenity enjoyed by residents of two new apartment buildings nearby, at 420 Hagley Avenue. This is a triangular site at the north-east intersection of Hagley and Moorhouse Avenues. He concluded that only two apartments would be able to view the billboards. At paragraph 19 of his evidence he said that:
- In the view from these two apartments the east facing billboard will be seen against the backdrop of the existing canopy and building on the site and within the context of the buildings on the Industrial General land around and behind the site, and against the Commercial Office zoned land to the rear. The billboard structure will appear lower than other buildings in the view, although marginally taller than the filling station canopy. It will not appear out of place or out of scale in the industrial commercial character of the area. When the proposed billboards are seen combined and sequentially with existing billboards they will not create cumulative impact or clutter in the street. They would have less cumulative impact and create less clutter than a permitted scenario.*
74. At paragraph 23 his conclusion was:
- I am of the opinion, that from these apartments the proposed billboard would result in only a slight loss to the existing character, features or landscape quality for the occupiers, meaning a low visual effect and a minor adverse effect.*
75. At the hearing a submitter, Mr Paul Garlick appeared. He is the owner of an apartment at No. 420. One of his principal concerns, which he said would affect most of the apartments, was that the billboards might cast reflected light on the trees in Hagley Park which would be unwelcome to the residents of the apartments. Mr Knott responded to this by saying that the light emissions are automatically reduced at night to the point where this would not be an issue.
76. I accept Mr Knott's advice and consider any effect visible from the apartments would be less than minor and probably negligible if it happened at all.
77. Mr Hattam also considered the effects on visual amenity from the pathway and the apartment buildings. With regard to the pathway he also produced photographs from selected distances. Mr Hattam does not have access to the visual simulation technology that Mr Knott used. His photographs were taken on a cell phone and not corrected. As a result his photographs were slightly wide-angled. This actually counts against Mr Hattam because the image would exaggerate the apparent distance to the billboard and reduce its apparent size. Being aware of this Mr Hattam also produced a "detail" version of many of his images by slightly enlarging the central part of it to resemble an actual human scale view. This is not a particularly scientific way of carrying out this exercise, but I was able to identify all his locations and I found, by comparing the size of the trees, lamp posts and the width of the path with the actual view, that his "detail" images were actually quite close to what I was seeing.

78. Nevertheless I would like to encourage the Council to invest in a suitable camera and the necessary software to produce accurate simulations rather than the crude but somewhat effective techniques Mr Hattam used.
79. Mr Hattam started his series of photographs from much further than Mr Knott. He provided images from the intersection of St Asaph Street and Hagley Avenue, a distance of 700 metres, the Selwyn Street intersection (450m), 300 metres, 220 metres, 150 metres and 50 metres.
80. I reproduce below Mr Hattam's table summarising his conclusions on the severity of effects on the visual amenity as seen from the Hagley Avenue path.

Distance	Quality of the Surroundings	Sensitivity of Users	Extent of Change	Visual Impact
700m	High	High	Low	Negligible
450m	High	High	Low	Low
300m	Very High	High	Medium	Moderate
220m	Very High	High	High	High
150m	Very High	High	High	High
50m	Low	High	Low	Low

81. The reason for the reduction from high to medium for the 50m distance is because at that distance Mr Hattam considered the visual amenity was so affected by the proximity to the intersection, the traffic and the industrial and commercial buildings in the vicinity.
82. He considered that the effect on the visual amenity from the path alongside the western leg of Moorhouse Avenue would be moderate commencing at 100 metres from the sign because of the cumulative effect of the proposed billboard as well as the other large digital signs in the vicinity.
83. I found it helpful that Mr Hattam started his analysis from so much further out because it helps to illustrate the way the prominence of the proposed billboard would increase as one approaches the site. I walked this section of the path a number of times and find that I generally agree with Mr Hattam's conclusions. I would probably put the transition from high to moderate to low at say 100m where the effects of the road start to become more apparent. This is from the perspective of a pedestrian walking steadily, although I observed a number passing through much more slowly or lingering. I consider the effect on cyclists would be more transitory and therefore somewhat less because of the shorter time to pass through and the lesser opportunity to look at the scenery while riding on a busy path. At the time of my site visit the trees were in full leaf and this would diminish the prominence of the proposed billboard somewhat. Mr Hattam visited the site and took his images in the spring when the trees were just coming into leaf, so his conclusions are probably valid for that time of year.
84. With regard to the apartment building, Mr Hattam originally considered that four apartments would be affected, but at the hearing he accepted Mr Knott's position that it would be only two.
85. Mr Hattam considered the various permitted baseline scenarios put forward by the applicant, which could have resulted in two double-sided billboards placed along either of the road frontages at a distance of at least 50 metres from the intersection. He considered all of them would have less adverse effects than the proposal.

Conclusion on adverse effects on visual amenity

86. Visual simulations can only take a decision maker so far. They are useful at hearings and when away from the site but are not a complete substitute for spending time on site. I have visited the area on several occasions to become familiar with it, and checking and comparing the evidence of Mr Knott and Mr Hattam.

87. My conclusion is that the proposed billboards would have effects on the visual amenity of the Hagley Avenue shared pathway, facing towards the site, that would be medium or high between 300 metres and 100 metres from the site. I also consider that from the roads the billboards would cause a cumulative visual clutter effect with all the existing signage in the area, particularly the two existing large digital signs but also the pylon signs advertising the new Gull service station being erected on the same site.
88. With regard to the permitted baseline I consider all the scenarios put forward would have less effects on the visual amenity than the proposal. I regard the scenario with two 18m² signs on the Moorhouse Avenue frontage close together and very close to the Gull pylon sign as fanciful, because the three signs would tend to obscure each other at least in part and I think it unlikely that the owners of the site or Gull would let this happen. I think the most likely permitted baseline that could be anticipated on this site would be a single double-sided billboard of 18m² per side on each of the two road frontages at least 50m from the intersection. These would be similar to an existing digital billboard at 26 Moorhouse Avenue, a little further to the west, which I consider to be acceptable in its context. Because of the limited space available due to buildings these would probably have a vertical format. This is the permitted baseline that I am prepared to consider the application against and I think it would have less effects on both the visual amenity and also on traffic safety.

Positive Effects

89. I accept that the billboards would have positive effects, contributing to the business prosperity of the owners of the site and the billboards, and also by enabling businesses and organisations to advertise and promote their offerings. I consider this would be a relatively modest benefit in relation to the whole economy, and also the other opportunities that are available for advertising and promotion. I do not consider it outweighs the adverse effects which I have described.

Relevant Objectives, Policies, and other Provisions of a Plan or a Proposed Plan (S.104 (1) (b))

90. Mr Klomp made an evaluation of the relevant objectives and policies of the District Plan. I accept and adopt his assessment and do not need to repeat it. However I draw attention to Policy 6.8.2.1.6(iii), which is to enable signage where it *will not cause or contribute to visual clutter and other cumulative adverse effects*.
91. If ever there is an intersection which is becoming cluttered with large advertising signs it would be this one. I consider the immediate area has reached the point where any more large signs will cause an unacceptable increase in visual clutter, whether or not it would have an adverse effect on traffic safety.

Other provisions of the District Plan.

92. As this application is for a restricted discretionary activity it is necessary to consider it against the relevant matters for discretion. The relevant clause is:

6.8.5.3 Static and digital billboards

- a. *Whether the scale, design, colour, location and nature of the billboard will have impacts on the architectural integrity, amenity values, character, visual coherence, and heritage values of:*
 - i. *the building and the veranda on which the billboard is displayed and its ability to accommodate the signage;*
 - ii. *the surrounding area (including anticipated changes in the area);*
 - iii. *residential activities; and*
 - iv. *heritage items or heritage settings, open spaces, protected trees or areas possessing significant natural values.*
- b. *Whether the extent of the impacts of the billboard are increased or lessened due to:*
 - i. *the design, dimensions, nature and colour of the sign or support structure;*
 - ii. *the level of visibility of the billboard; and*
 - iii. *vegetation or other mitigating features.*

- c. *Whether the billboard combines with existing signage on the building, the site or in the vicinity, to create visual clutter or set a precedent for further similar signage.*
- d. *Whether the billboard:*
 - i. *enlivens a space or screens unsightly activities; and*
 - ii. *will result in an orderly and coordinated display.*
- e. *Whether the extent of the impacts of the billboard are increased or lessened due to:*
 - i. *the frequency and intensity of intermittent or flashing light sources, and the proposed periods of illumination and frequency of image changes;*
 - ii. *the prominence of the billboard due to its illuminated or animated nature and ability to draw the eye;*
 - iii. *the nature of surrounding land use activities;.*
 - iv. *the proximity of the display to other properties and the likely effects of such intermittent or flashing lights or changing images upon those properties and their occupants; and*
 - v. *The potential of the billboard to cause distraction or confusion to motorists in their observance of traffic conditions, directions or controls.*

93. Under subclause a. subclauses ii. and iv. I consider that the scale location and nature of the proposal will have adverse effects on surrounding areas especially Hagley Park which is listed as a 'Highly Significant' Heritage Item in the District Plan.
94. Under subclause b. these effects are not lessened in any way.
95. Under subclause c. the proposed signage will contribute significantly to visual clutter in the vicinity.
96. Under subclause d. it will not enliven a space or screen an unsightly activity.
97. Under subclause e. the impacts of the sign would be increased in the ways described in subclauses ii., iii. and v.

Relevant higher order planning instruments

98. I do not consider that this localised matter needs to be considered under any of the other planning instruments described in section 104 (1) (b) of the RMA. The District Plan was prepared recently by a competent process and must be deemed to give effect to them in the absence of any indication to the contrary.

Part 2 of the Resource Management Act

99. Taking guidance from the most recent case law⁵, the District Plan is considered to be the mechanism by which the purpose and principles of the Act are given effect to in the Christchurch District. It was competently prepared through an independent hearing and decision-making process in a manner that appropriately reflects the provisions of sections 5-8 of the Act.
100. Accordingly no further assessment against Part 2 is considered necessary.

The decision

101. My decision therefore is that the application is declined, for the reasons set out in the preceding discussion.

D. L. Mountfort

David Mountfort

Hearings Commissioner

20 December 2020

⁵ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316