

RESOURCE MANAGEMENT ACT 1991

CHRISTCHURCH CITY COUNCIL

Hearing before a Commissioner of an application by Isite Ltd for resource consent, 104 Victoria Street, Christchurch (RMA 20018659)

PRELIMINARY

1. This is an application by Isite Ltd to erect two outdoor advertisements on an existing building at 104 Victoria Street, Christchurch.
2. I have been authorised to hear and make a decision on this application by resolution of the Christchurch City Council (the "**Council**") Hearings Panel dated 2 December 2005.

INTRODUCTION

The application

3. The applicant is seeking to erect two outdoor advertisements ("**billboards**") on the top part of the walls of an existing building at 104 Victoria Street. One billboard having the dimensions of 10 metres by 7 metres (70m²) will be placed on the north-western wall (for simplicity referred to hereafter as the "**north**" wall). The north facing billboard will have a portrait orientation and be set back 1.8m from the Victoria Street frontage of the building. The second billboard will be on the south-eastern wall (the "**south**" wall) and will have the dimensions of 12 metres by 3 metres (36m²). The south facing billboard will have a landscape orientation and be set back 6m from the Victoria Street frontage. The height to the top of each billboard is approximately 19.5m. The contents of the billboards will not be related to the activity on the site.
4. The land subject of this application is legally described as Lot 1 DP 54250, CT CB32B/269.
5. The application site is zoned Central City - West Fringe in the Operative City Plan (the "**City Plan**").
6. The application was originally received by the Council on 24 November 2004 and was publicly notified on 15 December 2004. The notified application sought approval for two billboards having the dimensions 20m x 12m (north wall) and 23m x 6m (south wall). The notified application attracted 33 submissions (13 in support and 20 in opposition).
7. The application subsequently went through a series of three amendments (June 2005, November 2005 and finally 19 January 2006), primarily to meet concerns raised by submitters and by Council officers. I was advised that it was also proposed to reduce the number of lights from 6 x 400 watt lights to 4 x 400 watt lights on the north wall, and from 6 x 400 watt lights to 2 x 400 watt lights on the south wall. The hearing related to the amended application dated 19 January 2006.

8. The original application was made by Waho Ltd. Isite Ltd succeeded Waho as the applicant company in December 2005.
9. Mrs Beaven, a submitter in opposition, submitted that I should concern myself only with the application before me, and not be influenced by whether or not it was better (in terms of effects on the environment) than the preceding notified application. I accept Mrs Beaven's submission on this point, and I have only described the original application as part of the historical background to the hearing.
10. I was advised that the Council granted a Certificate of Compliance (RMA 20021791) on 30 January 2006 for 7.2m² of new site related signage for the building.

Surrounding environment

11. The land subject of this application is sited on the north-eastern side of Victoria Street between Salisbury Street and Bealey Avenue. There is a modern, five storey commercial building on the site. The north and south facades of the building are generally devoid of any architectural features. 9.8m² of signage is currently on the building. The application site is flanked to the north and south by generally low rise commercial buildings affording a relatively unobstructed view of the walls on which the billboards will be placed.
12. As noted above, the application site is zoned Central City - West Fringe. This is a narrow strip of commercial zoning generally no more than one property deep along both sides of Victoria Street (north of Salisbury Street). The zone (in the vicinity of the application site) contains a mixture of offices, retailing and service/café/restaurant premises. There are a number of outdoor advertising signs (mostly site related), typical of an inner city retail and business environment. There are few non-site related billboards within the immediately surrounding area.¹ To the east and west the land is zoned Living 4C and is occupied by a mix of early cottages, flats and apartments of various ages including Council flats in Conference Street. To the east of the application site, and part of the Living 4C Zone, is Special Amenity Area 26 (SAM 26), having rules applicable to street scene, residential site density and external appearance. Victoria Mansions, an apartment building erected in the 1930s, is located on the south side of the Victoria Street/ Salisbury Street intersection. This land is zoned Central City - West Fringe.
13. There are several heritage buildings in the vicinity of the application site. Ms Jenny May, a witness for the applicant, provided the following list of listed buildings in the immediate area:
 - Robertsons Bakery 92 - 96 Victoria Street
 - Victoria Mansions 89 - 91 Victoria Street
 - Provincial Government Clock (Jubilee Clock Tower) Cnr Victoria, Montreal and Salisbury Streets
 - Ironside House 32 Salisbury Street
 - Former dwelling and commercial building 137 Victoria Street
 - Santa Barbara 169 Victoria Street
 - Carlton Butchery 179 - 181 Victoria Street

¹ 149 Victoria Street, corner of Victoria and Salisbury Streets (Asko), and corner of Victoria and Durham Streets (Cophthorne Hotel).

- Knox Church 28 Bealey Avenue
- Montreal Street Cottages 402 - 410 Montreal Street.

The proposed billboards are within the same view field and/or can be seen from the above listed buildings.

14. Victoria Street is identified as a collector road in the City Plan.

The planning framework

15. The City Plan became operative in part on 21 November 2005. All rules applicable to this application are operative and therefore assessment is only required under the Operative City Plan and no assessment of the Transitional City Plan is necessary. At the time the application was notified, all rules relevant to this application were beyond challenge and under s19 they too can be treated as if they were operative.

16. The Central City zone is the principal focus for commercial, cultural, administrative and tourist activities in Christchurch. The purpose of this zone is *"to allow a diverse range of activities and the most significant scale and intensity of activities, while preserving and enhancing the important underlying features of the environment in the central city. As the environment changes, it will be necessary to achieve desirable environmental outcomes relating to urban form, pedestrian amenity, traffic management, character enhancement and the preservation of heritage features."*

17. The environmental results anticipated for this zone² of particular relevance are:

- "(a) A diverse central city having prosperity, vitality and diversity...."
- "(c) Continuation and reinforcement of the central city as a densely built-up and compact urban environment, and the dominant built feature of Christchurch."
- "(l) Protection and preservation of important historic buildings, which continue to contribute to the identity of the city and which help to define its cultural tradition."
- "(m) A built environment of high architectural quality and buildings of appropriate external appearance in relation to their neighbours and surroundings."

18. The proposal fails to comply with the following rules in the City Plan

- Part 10 - 3.4.1 (b)(i) - Area and number (the maximum permitted area of outdoor advertising for the site is 23m² and the area associated with the proposed billboards is 106m² plus existing signage on the site). (*Development standard*)
- Part 10 - 3.4.3 (c)(ii) - Height (the maximum height of any outdoor advertisement is 6m above street level and the proposed billboards will be 19.5m above street level). (*Development standard*)
- Part 10 - 3.5.1 - Relationship to site (the content of the proposed billboards will not be associated with the site they are displayed on) (*Critical standard*)

² City Plan Volume 3, Part 3, Section 1.2, pages 3/3 and 3/4.

Due to non-compliance with the critical standard, the proposal falls to be assessed as a non-complying activity under the City Plan. This categorisation was accepted by the applicant.

19. Written approvals were obtained from five persons. There is some doubt over the validity of the written approvals, as the approval documents appear to be incomplete and there is no certainty that the parties were aware of the billboard dimensions when signing the forms. Nevertheless, three of these persons made submissions in support of the proposal.

Submissions

20. As noted earlier, the notified application attracted a total of 33 submissions (13 in support and 20 in opposition).
21. The submissions in support contended that the proposal will promote economic growth.
22. The submissions in opposition raised the following concerns:
- Adverse impacts on residential character and amenities, and conflict with the Council's intention to promote inner city living.
 - Incompatibility with the amenity values of retail and café businesses in the area.
 - Will dominate existing complying signage in the area and the scale of existing small buildings.
 - No control over content, which could conflict with existing businesses or amenity and character values.
 - Distraction for motorists.
 - Cumulative effects of billboards because of existing billboards on the Copthorne Hotel (corner of Durham and Victoria Streets).
 - Visual clutter.
 - Impacts on heritage buildings and the streetscapes of heritage buildings.
 - Access to the site for changing billboard skins/potential for lighting poles to overhang other properties
23. Five submissions in opposition were received after the closing date for submissions, and I must decide whether or not to waive or extend the timeframes for receiving late submissions. The criteria for doing this are set out in sections 37 and 37A of the Act. Having considered the requirements in s37 and s37A, I have decided that the timeframes be **extended or waived** in accordance with section 37 of the Act for the following reasons:
- (i) The late submissions do not raise any new grounds for opposition and thus the extension of time does not adversely affect the interests of any other person.
 - (ii) Allowing the late submissions better serves the interests of the community in achieving an adequate assessment of the proposal.
 - (iii) The latest submission was received only three days after the close of submissions, therefore the late submissions do not result in the failure to meet statutory processing timeframes or unreasonable delay.

The extension or waiver of timeframes was not opposed by Mr A J Prebble, legal counsel for the applicant.

24. A report prepared under section 42A of the Act by the Council's consultant reporting officer, Mr S Elvines, was circulated prior to the hearing. Mr Elvines' report had been prepared with advice from Mr B Smyth, an urban designer; Mr R Chesterman, Senior Traffic Planner, and Ms I Stout, Senior Environmental Health Officer. Copies of all three reports were attached to the reporting officer's report.
25. Mr Elvines concluded that the proposal will have no more than minor effects on visual amenities, traffic safety and the environment (glare). He also concluded that the proposal is not contrary to the objectives and policies of the City Plan and is consistent with Part II of the Act. With respect to cumulative effects, he considered that there is no potential for adverse effects because of the significant distance between the proposed billboard and others of a similar nature and scale. Mr Elvines recommended that the application be granted subject only to the condition that the proposal proceeds in accordance with the amended application.

THE HEARING

26. The hearing took place at the Christchurch City Council Linwood Service Centre on 2 February 2006.
27. Those present at the hearing and making submissions or presenting evidence were:
 - Mr A J Prebble, legal counsel for the applicant
 - Mr F Costello, South Island Manager of Isite Limited
 - Ms J S May, architectural historian
 - Ms S Totty, resource management planner
 - Mrs L Beaven, 402 Montreal Street (submitter in opposition)
 - Ms J Hazlehurst on behalf of the Victoria Neighbourhood Group and Heather McVicar (submitters in opposition)
 - Mr J F Wilson, owner of commercial properties at 86 - 88 Victoria Street, 90 - 96 Victoria Street and 102 Victoria Street (submitter in opposition)
 - Mr B J Dacombe, Architect, Warren & Mahoney Ltd, 131 Victoria Street (submitter in opposition)
 - Mr B E Arnold on behalf of J Miller, N Brown and R Burt (submitters in opposition)
 - Mr S Elvines, consultant planner, reporting officer
 - Mr B Smyth, Urban Designer - Architecture, Christchurch City Council.

I was advised by fax message that J Miller, N Brown and R Burt were unable to attend the hearing. Evidence on their behalf was given by Mr Arnold.

28. There were no matters of jurisdiction raised by any party at the hearing.
29. Mr Prebble, legal counsel for the applicant, drew my attention to the Environment Court's decision on Awly Investments Limited v Christchurch City Council (C103/02, 22 August 2002) which, he submitted, represented the only statement of law as to the proper approach for assessing the potential effects of a billboard on heritage values within a central city context and within the context

of the current policy framework in the City Plan.³ Mr Prebble argued that this confirmed the proposition that:

"....it is not enough to simply be able to see the billboard within some views of a heritage building, or a group of heritage buildings. Instead, particular recognition should be given to the receiving environment and the presence of modern buildings, signage and other commercial activities that may influence the view of heritage buildings" (Prebble, paragraph 21).

30. With regard to other effects on visual amenity, Mr Prebble submitted that the nature of assessment anticipated by the City Plan was that signs must also be assessed in terms of the character of the *"receiving environment"*. He submitted that whilst the billboards may be visible from some residential properties in the adjoining Living 4C zone, these views will already be of a large scale commercial building in a long established commercial zone and *"such development must be recognised as part of the often changing character of inner city areas"* (Prebble, paragraph 27.4).
31. Mr Prebble submitted that the adverse effects of the proposal were no more than minor. He argued that given the minor adverse effects of the proposal and other outdoor advertising in the surrounding area, there was no basis for a finding as to cumulative effects. Similarly, he submitted that there were a number of distinguishing features associated with the present proposal including

- the walls at issue being perpendicular to the fronting roads, large in area and almost devoid of architectural features of any kind, and
- the walls being relatively unobscured by surrounding buildings due to their bulk and location and separating distances

and therefore there was no basis to conclude that the application should be declined by reason of precedent.

32. Mr Prebble stated that the applicant generally concurred with the conclusions reached in the Council officers' reports and accepted the condition recommended by Mr Elvines. In addition, he said that the applicant was prepared to accept conditions that the billboards not contain any moving parts and compliance with the glare standards in Part 11 of the City Plan.
33. Mr Costello, the South Island Manager of Isite Ltd, stated that Isite is a major contributor to the Outdoor Advertising Association of New Zealand (OAANZ), which is a self-regulating industry body. OAANZ sets standards for the use and content of advertising material displayed on member companies' billboard sites. In addition, content was regulated by the Advertising Standards Authority.
34. Mr Costello said that he was familiar with the outdoor advertising sites throughout Christchurch. He stated that he was not aware of any other sites

³ At paragraph 143 the Court stated:

"The heritage values of the particular buildings" (Canterbury Provincial Council buildings and the former Canterbury Society of Arts building) "are not in dispute.....However, in terms of evaluation of effects, we....find that viewing the billboard in the context of modern buildings, signage and activities in the area will not detract from the heritage values of the building or the enjoyment of them. We find that simply being able to see the billboard from some views is not itself necessarily adverse...."

that presented the same "*opportunities*" (ie distinguishing features) for outdoor advertising as the application site.

35. Ms May, an architectural historian called by the applicant, provided an assessment of the potential effects of the proposal on heritage values.⁴ She noted that outdoor advertising (including advertising unrelated to activities on the site) has been part of the traditional nature of commercial activity in the area. Ms May considered that, given the reduction in the billboard size and placement within the framework of the building profile, the proposed billboards would not detract from viewing the heritage buildings in the immediate vicinity. She considered that views of the Montreal Street cottages would not be significantly compromised because, while the proposed billboard is clearly visible when driving north along Montreal Street, it is set back well within the commercial/business frame of the area and clearly relates to the "*urban*" views of the area and not the residential views of the cottages. Similarly, Ms May considered that the proposed billboards will not have an adverse effect on the "*reading*" of the architectural form of the building on which they are to be placed.
36. Ms May acknowledged that she had some concern that billboard advertising which was not related to the site could create a situation where the images may to some degree detract from the built and planted values of an area. However, she believed that the effect of this is not more than minor given the frequent changing nature of the content. Ms May noted that billboards were removable and had no irreversible negative effects on the building or urban form of the area. She did not suggest that consent be granted for a limited period.
37. In presenting an overview on the effects of the proposal Ms Totty, a resource management planner giving evidence for the applicant, considered that the context within which the billboards are to be placed, rather than their size and visibility, will determine the extent and scale of any potential adverse effects on the amenity values of the surrounding environment. Given the combination of factors such as the inner city business environment, the size, height and position of the billboards, she considered that the proposed billboards would not result in any adverse effects on the amenity values of the central city zone and the adjoining inner city living zone, on the street scene, or on traffic safety. Having regard to her conclusion on environmental effects, Ms Totty was also of the opinion that the proposed activity is not contrary to the relevant objectives and policies of the plan in the sense of being repugnant to them.
38. With regard to residential views and amenities, Ms Totty presented a series of photographs showing views from points within Montreal Street, Conference Street and other streets within the surrounding area towards the walls of the building on which the proposed billboards would be attached. While she noted that some residential properties in the surrounding area will have views of the billboards she said that they would either be partial, angled or limited views from a distance and she did not consider there were any adverse effects on residential views or properties.

⁴ Mr Prebble informed me (at Ms May's request) that Ms May was a trustee of the Christchurch Symphony Orchestra Foundation Trust. The CSO had been a recipient of funding by the applicant company. Mr Prebble stated that the Trust had no dealings with sponsorship and Ms May had no knowledge of the sponsorship by the applicant company. I accept that Ms May's evidence is not compromised by this relationship.

39. Turning to the submitters in opposition, I heard first from Mrs Beaven. Mrs Beaven lives at 402 Montreal Street (one of a row of five protected cottages) and is almost opposite the building at 104 Victoria Street. The cottage would have an obliquely angled view of the proposed billboard on the south wall of the building. Mrs Beaven said she considered that the proposal would detract from her amenity value and that of many others in the area to the south and east because of its *"visual dominance"*. She said that when she moved to the dwelling in 1987 she could and should not have expected this proposed advertising billboard, which is to be *"so very much larger and more brightly lit"* (than earlier signage on the building); *"to change regularly with unknown design and content; and to be intended to have maximum visual impact, with bright colours and pictures and mixed lettering"* (Mrs Beaven, paragraph 5). She considered that the proposed billboards will dominate because of their size and height, which are out of scale with the residential neighbourhood. She believed she was protected by the critical standard (3.5.1. Relationship to the site) in the City Plan.
40. Mrs Beaven disagreed with the assessment in the officers' reports that the proposed advertising will have only minor effect and be within the objectives and policies of the City Plan. She suggested that the officers' reports did not give sufficient weight to a number of assessment matters (with reference to the display of outdoor advertisements),⁵ in particular those relating to the proximity of dwellings and the visual intrusion of the proposed display from nearby dwellings ((a) (i), (ii), (viii), (ix) and (b) (iv)). She said that at present no *"commercial"* advertising is visible from the Conference/Montreal Streets corner and along Conference Street.
41. She said that her concerns would be lessened if the advertising was related to the site (even at its present size). She considered that site related signage had a more understated, restrained graphic design approach, was fixed and generally required less lighting.
42. Ms Hazlehurst presented a submission on behalf of the Victoria Neighbourhood Group and Heather McVicar. She is a long time resident of Beveridge Street and a member of the Victoria Neighbourhood Group. She was authorised to speak on behalf of the Neighbourhood Group.
43. Ms Hazlehurst submitted that the proposal was inappropriate at this location, and that Council officers had erred in giving too little weight to the negative impacts of the proposal, particularly on the Living 4C residential areas either side of the Central City Zone. The submitters requested that the application be refused. Failing that, she requested that there be a number of conditions imposed which could mitigate these negative effects, including restrictions on size, height, and intensity and duration of lighting.
44. Ms Hazlehurst submitted that the negative impact of the proposal is caused by the special circumstance that this part of the Central City commercial zone is only one property wide each side of Victoria Street. As a result, the impacts of billboards will be quite different from those if it were a large contiguous area of commercial zoning. She submitted that the narrow size of the commercial zone and the close proximity of residential areas should be given great weight. This weight was added to by the identification of much of the area as a Special Amenity Area. Ms Hazlehurst acknowledged that living close to the inner city

⁵ City Plan Volume 3, Part 10, Section 3.6.2, pages 10/19 and 10/20.

meant that there will be more noise and other intrusions from commercial and traffic activities than would be found in the suburbs. However, *"that is a long way from saying that a non-complying activity like billboards which are so far in excess of the sizes normally permitted shall be approved on a site that is directing this visual clutter more towards residential properties than towards commercial ones. Therefore we submit that it would be contrary to the stated intentions and rules of the City Plan to weaken residential amenity in this way"* (Ms Hazlehurst, paragraph 8).

45. I then heard from Mr Wilson, the owner of several commercial properties in Victoria Street to the south of and adjoining the application site. He submitted that the proposed billboard on the south wall would dominate the view across the top of his buildings, reducing the value of existing complying advertising and the future rental (consequently capital) value of those properties.
46. Mr Dacombe, a registered architect of some 40 years experience, submitted that there was inadequate protection of amenities under the City Plan. He was critical of the proliferation and clutter of signage generally, but particularly of signage unrelated to activities on the site. He considered that the proposed signage, although reduced in size, was not in proportion to the building and detracted from the architectural style of the building.
47. Finally I heard from Mr Arnold, who presented evidence on behalf of J Miller, N Brown and R Burt. Mr Arnold is a recreational planner, and is familiar with district plans and had taken part in a number of hearings (on behalf of the Canterbury Regional Committee of the NZ Historic Places Trust) seeking approval for billboards on or in the vicinity of heritage buildings.⁶ He considered that the proposal was out of context with the environment in this part of Victoria Street. In Mr Arnold's opinion, the size, positioning, and consequent visual intrusiveness of the proposed billboards will result in significant visual prominence and a loss of visual amenity in Victoria Street and the adjoining residential areas. He said that the proposal would result in an unacceptable cumulative effect on the environment and amenity of Victoria Street and would produce the first major signage at such a height above the street creating significant visual effects across zone boundaries. He believed there were a number of buildings which offered similar opportunities for the erection of billboards unrelated to activities on the site and the grant of consent would have a precedent effect.
48. With regard to the officers' reports, Mr Smyth (the Council's Urban Designer) provided an assessment of the original proposal (report dated 2 February 2005) with two subsequent amendments dated 15 November 2005 and 19 January 2006. In his original report, Mr Smyth concluded that the proposal (as notified) would dominate and serve to undermine the sense of local identity, detract from the setting and appreciation of heritage buildings in the surrounding area, and have unacceptable cumulative effects on the amenities of the street. In his subsequent reports, Mr Smyth considered that the amended proposal would result in *"only insignificant adverse visual effects on the surrounding environment of both Victoria Street and the nearby residential area..."*

⁶ I note that Mr Arnold was not appearing on behalf of either the Canterbury Regional Committee of the NZ Historic Places Trust or the Department of Conservation, where he is employed. Neither is a party to the present application. Mr Arnold's evidence had been prepared with the knowledge of and endorsed by the secretary of the Victoria Neighbourhood Group.

49. Mr Smyth explained that the revision of his assessment was related partly to the reduced size of the billboards, resulting in proportions more appropriate to their location, but partly also to the positioning of the billboards on the building facades in a more sympathetic way. This would result in the orientation of the billboards more towards the commercial area and reduced visual impact on the appreciation of heritage buildings. He considered that while the south facing billboard will still be visible from Conference Street and other streets in the surrounding area, it will be less visually dominant and more part of the background rather than the dominant element in the field of view.
50. Mr Elvines, the consultant reporting officer, confirmed that his assessment and recommendation remained unchanged in the light of the submitters' evidence. He acknowledged that any additional conditions would reduce any potential effects, but considered they could not be justified since, in his assessment, the effects were no more than minor. He said that the proposed lighting of the billboards complied with the glare standards in the City Plan, and any additional condition on lighting (such as those sought by submitters) were beyond what the plan required.
51. In exercising his right of reply, Mr Prebble emphasised the need to assess the proposal against the policy framework of the City Plan in its entirety, rather than picking out individual assessment criteria. He said that the plan gave no *policy* support for any expectations as to the nature of outdoor advertising on commercial sites adjoining or visible from residential areas. Mr Prebble concurred with Mr Elvines' comments that the conditions sought by submitters on the area and height of the billboards were unnecessary, because the potential effects were (in his submission) no more than minor, and any controls on lighting (including hours of illumination) were unreasonable and therefore invalid because the effects fell within what were permitted by the plan.
52. With regard to the submission by Mr Wilson, Mr Prebble said that any effect on rental income of another property owner was a matter of trade competition and under s104(3)(a) of the Act was not a matter I could have regard to.

DISCUSSION

Statutory duty

53. For the reasons set out earlier, the application falls to be assessed as a non-complying activity. Section 104 of the Act sets out the matters that a consent authority shall have regard to when considering an application for resource consent. Subject to Part II (sections 5, 6, 7 and 8 of the Act), the consent authority shall have regard to:
- any actual and potential effects on the environment of allowing the activity; and
 - any relevant provisions of a regional policy statement, plan or proposed plan; and
 - any other matters the consent authority considers relevant and reasonably necessary to determine the application.
54. Section 5 sets out the purpose of the Act, section 6 details matters of national importance that must be considered, section 7 details other matters to be

considered, and section 8 requires consideration of the Treaty of Waitangi. Of relevance to this application are:

Section 5

"5(2)....managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their...social (and) economic... wellbeing...while..."

"(c) Avoiding, remedying, or mitigating any adverse effects on the environment."

Section 6

"(f) The protection of historic heritage from inappropriate subdivision, use, and development:"

Section 7

"(b) The efficient use and development of natural and physical resources:"

"(c) The maintenance and enhancement of amenity values:"

"(f) Maintenance and enhancement of the quality of the environment."

55. As a non-complying activity, section 104D of the Act requires that the application be refused unless one of two tests are met, being:

- the adverse effects on the environment will be minor; or
- the application is for an activity that will not be contrary to the objectives and policies of the relevant plan.

If one or both tests are met, the decision maker has a discretion as to whether or not to grant consent.

56. The assessment in the s42A report identified the following actual or potential effects of the proposed activity:

- visual amenity
- traffic safety
- environmental effects (glare)
- cumulative effects

57. The City Plan seeks to provide for outdoor advertisements in a manner that does not detract from amenity values, detrimentally impact upon natural and built heritage values, nor cause danger to public safety. The following are the objectives and policies relating to outdoor advertising:⁷

City identity

Objective: Outdoor advertising

"4.4 The provision for outdoor advertisements, whether temporary or otherwise, that does not have a detrimental impact upon natural and built heritage values, nor cause potential danger to public safety."

⁷ City Plan Volume 2, Part 4, pages 4/19 - 4/21

Policy: Amenity values

"4.4.1 To ensure that the scale and extent of outdoor advertising, whether temporary or otherwise, is appropriate to the character of the receiving environment and does not detract from the amenity values of that environment."

Policy: Traffic safety and health

"4.4.2 To ensure outdoor advertising whether temporary or otherwise:

- (a) does not have the potential to confuse or distract motorists, particularly in proximity to intersections or other complex traffic environments;
- (b) does not obstruct roads or footpaths, or create a hazard to vehicles, cyclists or pedestrians;"

Policy: Natural and built heritage

"4.4.3 To ensure that the presence, scale and placement of outdoor advertising, whether temporary or otherwise, does not detract from:

- (a) heritage values;"

58. The objectives and policies relating to outdoor advertising are expected to produce the following outcomes:⁸

- "(c) Maintenance and enhancement of amenity values through the sensitive and considerate location, size, number, height, placement, design, illumination; and movement and content of outdoor advertising."
- "(d) Outdoor advertisements that are sensitive to heritage values... and which are appropriate to the area of the City in which they are displayed."
- "(e) A safe and efficient road network where outdoor advertisements do not distract or obscure visibility for drivers."
- "(f) A safe environment where outdoor advertisements do not create a hazard and do not cause nuisance to residents."
- "(g) The avoidance of the cumulative effects of outdoor advertising on the amenity, heritage and natural values and traffic safety."

59. Section 104(2) of the Act provides that a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect (the 'permitted baseline'). Mr Elvines advised that as there is a significant difference between what is permitted outdoor advertising on the site (23m²) and what is being proposed (106m²), any assessment of its impact on the existing environment is not helpful. I agree with Mr Elvines on this point.

⁸ City Plan Volume 2, Part 4, page 4/21.

Assessment

(i) Actual and potential effects on the environment (s104(1)(a))

(a) Visual amenity

60. The evidence showed that there were three elements of the environment where there is a potential for the proposed billboards to have an adverse effect: these are the built character of the Central City zone, heritage values and residential amenities.
61. With regard to the Central City zone, the built environment in the area immediately surrounding the application site comprises a mix of building styles and ages (several of recent construction). As noted earlier, Victoria Street exhibits the typical array of signage evident in any inner city retail and business environment, including a small number of non-site related outdoor advertisements. Having regard to the existing built environment, the existing commercial activity along this section of Victoria Street, and the traditional nature of outdoor advertising (including advertising unrelated to activity on the site), I am satisfied on the evidence that two billboards of this size will not detract from the amenity values of the built environment. I am also satisfied that any contribution to 'visual clutter' arising from consent to the proposed billboards is not out of character within a commercial environment.
62. Conflicting evidence was given by Mr Smyth, Ms May and Mr Dacombe on whether the proposed billboards would detract from the architectural style of the building on which they will be placed. The City Plan offers little guidance in this regard. However, it is apparent from an examination of the (amended) application that the proposed billboards will be contained within the framework of the building profile and will not obscure any architectural features (other than a small window on the south wall). Having regard to the foregoing, I am inclined to prefer the evidence of Mr Smyth and Ms May that the proposed billboards will not have an adverse effect on the architectural style of the building on which they will be placed.
63. Turning to the effects on heritage values, I need to consider both the nature of the 'receiving' environment and the direct effect on items of heritage value. Following the approach in *Awly*, I acknowledge that the proposed billboards will be seen within the view of individual heritage buildings and groups of heritage buildings (in particular the group of heritage buildings at the corner of Victoria Street and Salisbury Street comprising Victoria Mansions, the Jubilee Clock Tower and Ironside House). However, these views, when obtained from points which would include the proposed billboards, also include views of modern buildings (which generally have not been designed in sympathy with the heritage items), signage and other activities in the area. With regard to the views of the Montreal Street cottages, I agree with Ms May that the views of these cottages would not be significantly compromised because the billboard on the south wall of the building (as viewed when driving north along Montreal Street) is set back within the commercial/business frame of the area, and clearly relates to a view of the commercial area and not the residential views of the cottages.
64. In terms of direct effects on items of heritage value, I note that the proposed billboards do not extend beyond the frame of the building on which they will be

placed and therefore do not impinge directly on the view of any heritage building.

65. For the foregoing reasons, I am satisfied that the proposal will not have more than a minor adverse effect on the heritage values of buildings in the surrounding environment, or on the enjoyment of them.
66. With regard to the effects on residential amenities, I must consider both views of the billboards from within the residential area and effects on the character and amenities of the area. In assessing the effects of outdoor advertisements on residential amenities, I need to have regard to (amongst other things) whether the proposed display would be "*obtrusively visible*" beyond 50m (particularly in residential areas), the proximity of dwellings and the visual intrusion of the proposed display from dwellings on adjoining property or across the road from the proposed display, the nature and degree of compatibility of any other existing land use activities within 50m of the proposed display, the likely visual prominence of the proposed display in comparison with what it may have looked like in compliance with the rules in the plan, and the likely prominence of the proposed display in relation to adjoining sites and the visual amenities of the street scene generally.⁹
67. Considerable evidence was given (both on behalf of the applicant and by submitters) on the extent to which the proposed billboards will be seen from residential streets and from individual properties within the residential area. There is no question that the proposed billboards will be able to be seen from a relatively wide area. These views will be from both nearby residences and from a distance. The nearest views from a residential submitter are from the property at 402 Montreal Street (Mrs Beaven). From this viewpoint, the south facing billboard would be seen at an oblique angle. The billboards will either be not visible or only seen at a very narrow angle from the other protected cottages. There were no submissions from residential properties to the south (with wider angle views). Views from residential properties in Conference Street and other streets in the surrounding area and to the north are either from an angled position or from greater distances where the billboards and the building on which they will be placed are seen more in the background of the view.
68. To my mind, an important consideration in assessing the effects on residential properties is the orientation of the billboards. The north and south facing walls of the building on which the billboards will be placed are at right angles to Victoria Street. The orientation of the billboards is primarily towards motorists and pedestrians in Victoria Street, which is the greatest concentration of the 'viewing public'. Indeed, there would seem to be very little commercial value in orientating the billboards towards the surrounding residential area. The orientation of the billboards towards Victoria Street is, if anything, reinforced by their reduction in size and the alignment of the greater mass of the billboards towards the Victoria Street frontage of the building. It follows therefore that, to the extent that the billboards will be visible from the residential area, this is *incidental* to their main purpose of being seen from Victoria Street. Consequently, while I accept that the billboards will be seen from residential properties in the surrounding area, and the impact may be perceived as more than minor by some residents, I am satisfied on balance that the billboards will not be visually dominant (for nearby properties) nor be obtrusively visible (from properties beyond 50m) because they will be seen at an oblique angle or at a

⁹ City Plan Volume 3, Part 10, Section 3.6.2, pages 10/19 and 10/20.

distance beyond other buildings and trees in the foreground of the view. I will consider the effects of content and lighting (glare) separately.

69. Ms Hazlehurst submitted that I should give greater weight to the negative effects of the proposed billboards because of the narrow width of the commercial zone (hence proximity of residential areas) and the identification of much of the area as a Special Amenity Area. With regard to the first submission point, there is very little difference, to my mind, between the effects of the proposed billboards located in a narrow finger of commercial zone or on the edge of a broader commercial zone - the proximity of residential activities is the same. I note there were no submissions in opposition by individual residents on the west side of Victoria Street. With regard to the identification of the area as a Special Amenity Area, I note that the rules for this Special Amenity Area relate to street scene, density and the external appearance of buildings, and do not apply to the effects of activities outside the area.¹⁰

70. For the reasons set out above, I am satisfied that the proposed billboards will not have more than a minor adverse effect on the residential amenities of the surrounding area.

(b) Traffic safety

71. The Council's Senior Traffic Planner, Mr R Chesterman, provided an assessment of the proposed billboards in terms of their potential to distract drivers' attention in general as well as from traffic signals and controls in the vicinity. He concluded that, subject to compliance with a condition requiring that the billboards shall not involve moving components, the proposal would have no adverse effect on traffic safety. Mr Elvines considered that the suggested condition was unnecessary because these features were not sought by the applicant and would require a further resource consent.

72. Having viewed the site, I am satisfied that the location and height of the proposed billboards are such that they achieve sufficient separation from the traffic signals in the distance for them not to be a significant distraction for drivers. Accordingly, I agree with the Council officers that the potential effects of the proposed billboards on traffic safety are likely to be less than minor.

(c) Environmental effects (glare)

73. Concern was expressed by submitters, in particular by Mrs Beaven, on the effect of light spill and glare from the illumination of the billboards at night. It was noted earlier that the number of lights had been reduced and the lighting complies with the glare standards in the City Plan. I was informed by Mr Costello that the billboard skins will be double layer PVC (matt finish) with low reflectivity. Having regard to the compliance with the City Plan, I must conclude that the environmental effects fall within the range of what is anticipated in the City Plan.

(d) Cumulative effects

74. Cumulative effects relate to a gradual build up of consequences over time as a result of a combination of effects. A cumulative effect might be regarded as more than minor when a further addition would cross some threshold of

¹⁰ City Plan Volume 3, Part 2, Appendix 4, page 2/91.

acceptability (in terms of the combination of effects). This is a significant consideration in this instance because the content of the billboards is not related to the site and there is the potential for the proliferation of such outdoor advertisements contributing to visual clutter. For this reason, non-compliance with the site-related rule (a critical standard in the City Plan) has resulted in the present application being assessed as a con-complying activity.¹¹

75. Within the immediately surrounding area, there are already a small number of outdoor advertisements not related to the activity on the site. The proposed billboards will not be seen in the same view as the billboard on Copthorne Hotel, but they will be seen simultaneously with the billboards at 149 Victoria Street. However, I am satisfied that the proposed billboards will not be out of character within the commercial environment, and will not (in conjunction with the existing billboards at 149 Victoria Street) have more than minor cumulative effects on heritage values or residential amenities, for the reasons outlined earlier in this report.

(e) Summary with respect to effects on the environment

76. While the proposed billboards on their own may be considered to be large and visible, I accept that the extent and scale of any adverse effects are related to the context within which they are placed. Given the location of the billboards within the Central City zone, their orientation towards motorists and pedestrian traffic in Victoria Street (away from the residential area), the nature of the receiving environment, and their height and distance from traffic controls, I am satisfied that the adverse effects on visual amenities, traffic safety and the environment are no more than minor.

(ii) Objectives and policies of the City Plan (s104(1)(b))

77. Mr Prebble submitted that, if I found the potential adverse effects of the proposal to be no more than minor, then the proposal could not be contrary to the objectives and policies of the City Plan.¹² While I have some reservations about the application of this approach universally, I agree with Mr Prebble that in this instance the approach is valid because the objectives and policies at issue are primarily concerned with the *effects* of outdoor advertising.
78. The general thrust of the policy framework in the City Plan for outdoor advertisements is to ensure that the scale and extent are appropriate to the receiving environment (ie the central city zone in which the site is located and the adjoining Living 4C zone).
79. The preceding analysis on the potential effects of the proposal has led me to the conclusion that the billboards will not have more than a minor adverse effect on visual amenities (in either the central city or on the surrounding residential environment including heritage values), nor will the proposal detract from the environment (in terms of glare) or cause a danger to public safety. Accordingly, I am satisfied that the proposal is not contrary to the relevant objectives and policies of the City Plan relating to outdoor advertisements (Objective 4.4 and Policies 4.4.1, 4.4.2 and 4.4.3).

¹¹ City Plan Volume 3, Part 10, Section 3.7.13, page 10/21b.

¹² Awly paragraph 170.

(iii) Other matters relevant and reasonably necessary to determine the application (s104(1)(c))

80. Precedent is a relevant matter for consideration. The application is to establish a non-complying activity. It was contended by submitters, in particular by Mr Arnold on behalf of J Miller and others, that the proposal would have a cumulative effect over time *"by setting a benchmark for acceptable practice as future decision makers carry out their obligations to treat like with like"* (Arnold, paragraph 26). (By referring to cumulative effects in this way Mr Arnold really meant 'precedent' effect.)
81. I think that the risk of any consent setting a precedent in this instance is low, for the following reasons. Firstly, I am satisfied on the basis of the assessment above that the adverse effects of the proposal are no more than minor. Clearly, any decision maker would have to reach the same conclusion in the circumstances of other cases. Secondly, the Courts have urged caution before any finding is made based on precedent, pointing out that in factual terms no two applications are ever likely to be the same, albeit one may be similar to another.¹³ Finally, I was told by Mr Costello, the South Island Manager of Isite, that he knew of no building (in Christchurch) which offered similar *"opportunities"* for outdoor advertising, in terms of the large expanse of blank wall space not built out by other adjoining buildings and the general lack of architectural features on the walls. While this evidence was disputed by Mr Arnold, I am inclined to the opinion of Mr Costello, who has an intimate knowledge of the industry, that the *combination* of blank wall space *and* unobstructed views towards it (due to the nature of the surrounding environment) is likely to be rare, at least. For the foregoing reasons, I am satisfied that the potential for precedent effects resulting in a lack of public confidence in the integrity of the City Plan is low.

(iv) Part II of the Act

82. Having regard to the foregoing assessment, I accept that the proposal will provide for the economic wellbeing of the applicant (s5(2)) and that the use of two otherwise blank and featureless walls for non-site related outdoor advertising will result in an efficient use and development of the physical resource (in terms of s7(b) of the Act). I also accept that the proposal has the potential to contribute to the 'vitality' of the business area, also a relevant consideration under s5(2).
83. Perhaps more significant in the context of the present application is any adverse effects in terms of s5(2)(c), s6(f) and s7(c) and (f). For the reasons set out earlier in this report I am satisfied that the proposal will not have more than a minor adverse effect on heritage values, amenity values or the quality of the environment. I am therefore satisfied that the proposal is not inconsistent with the purpose of the Act. With regard to s6(f) (protection of historic heritage) I note that the proposal has no direct adverse effect on heritage buildings.

CONCLUSIONS

84. The applicant proposes to erect two outdoor advertisements measuring 10 x

¹³ Russell Dye v Auckland Regional Council and Rodney District Council, [2001] NZRMA 513, paragraph 32.

7m (north wall) and 12 x 3m (south wall) on an existing building at 104 Victoria Street. The application site is zoned Central City - West Fringe in the City Plan and the proposal is a non-complying activity in that zone.

85. Having considered the application in terms of the effects on the environment, the objectives and policies of the City Plan and Part II of the Act, I am satisfied that the evidence has shown the following:
- (i) The proposed billboards will not be out of character in the commercial environment within which they will be located, nor will they detract from the amenity values of the built environment in the central city zone.
 - (ii) The proposed billboards will not detract from the form nor have an adverse effect on the architectural style of the building on which they will be placed.
 - (iii) The views towards and enjoyment of heritage buildings will not be adversely affected to any significant degree by the proposed billboards because these buildings are viewed within the context of modern buildings, other signage and commercial activities.
 - (iv) The proposed billboards are orientated primarily towards the commercial area of Victoria Street, and away from the adjoining and surrounding residential area, and the billboards will be viewed from an oblique angle or from a distance within the residential area.
 - (v) The proposed billboards will not obscure any traffic signal or sign, nor will they be a significant distraction for drivers.
 - (vi) Light spill and glare from the illumination of billboards at night fall within the levels provided for as permitted activities in the City Plan.
 - (vii) The proposal will not have more than minor adverse cumulative effects on heritage values or residential amenities.
86. For the reasons above, I am satisfied that the proposal will not have more than minor adverse effects on visual amenities, traffic safety or the environment.
87. Having regard to my conclusion on adverse effects, I am satisfied that the grant of consent would not be contrary to the objectives and policies of the City Plan or Part II of the Act.
88. I am also satisfied that, due to the distinguishing characteristics of the application site, the grant of consent is unlikely to result in a proliferation of billboards unrelated to activities on the site; and therefore the potential for precedent effects is low.
89. I have considered the concerns raised by submitters relating to the content and changing of displays. Content is of course a matter regulated by OAANZ and the Advertising Standards Authority, and is not something over which the Council has any jurisdiction. I recognise that there is a risk that the content may be from time to time incompatible with the heritage values of the environment. However, I am satisfied that any adverse effect on heritage values will be no more than minor given my reasoning above on the context within which these heritage buildings are viewed. Similarly, I consider that the

effect of changing displays is unlikely to have more than minor adverse effects on the environment.

90. I have also considered the issue of access to the site for changing billboard skins and lighting poles overhanging neighbouring properties. I am satisfied that this is a matter for agreement between property owners and is outside the resource consent process.
91. Finally, I have given consideration to the issues raised by Mr Wilson regarding the effects on rental values. I agree with Mr Prebble that this is an issue that falls within s104(3)(a) ("trade competition") and it is not a matter I can have regard to when considering the application.
92. Having regard to the foregoing, I am satisfied that the application has met both threshold tests in s104D, and I am able to grant consent.

CONDITIONS

93. As noted earlier, Ms Hazlehurst suggested that if consent was granted consideration should be given to a number of conditions including restrictions on size, height, and intensity and duration of lighting. I have given careful consideration to these matters but agree with Mr Elvines that since I have found that the adverse effects of the proposal are no more than minor then any restriction of the consent can not be justified. I also agree with Mr Elvines that I cannot impose any conditions on the intensity and duration of lighting, since the lighting (as amended) complies with the glare provisions in the City Plan.
94. Mr Prebble said that the applicant was prepared to accept conditions that the billboards not contain moving parts and compliance with glare standards in the City Plan. I agree with Mr Elvines that neither are strictly necessary because they would require a change in the proposal and therefore a further resource consent application. However, I accept that the two volunteered conditions are slightly different in as much as the former could only occur as a result of a deliberate change in the activity (triggering the consent process) whereas the latter could arise by error or omission (eg replacement of light bulbs, redirection of illumination etc). I therefore agree that it would be prudent in this instance to include the volunteered condition on lighting in order to provide some safeguard for neighbouring residents.

DETERMINATION

95. The application for a resource consent to enable the erection of two outdoor advertisements (billboards) on an existing building at 104 Victoria Street, Christchurch, is **granted**, subject to the conditions attached.

REASONS

96. The application for a resource consent to enable the erection of two outdoor advertisements (billboards) on an existing building at 104 Victoria Street, Christchurch, is granted for the reasons set out below:

- (i) the proposal will have no more than minor adverse effects on the environment;
- (ii) the proposal is not contrary to the objectives and policies of the City Plan; and
- (ii) there are probably few display sites that offer similar opportunities for the erection of billboards, and therefore the potential for a precedent to be set is likely to be low.



Max Barber
Commissioner

13 February 2006

SCHEDULE OF CONDITIONS

Consent to erect two outdoor advertisements (billboards) on an existing building at 104 Victoria Street, Christchurch (RMA 20018659).

1. That the proposal proceeds in accordance with the information submitted and plans lodged and entered into Council records as RMA 20018659/1-3.
2. That the location and dimensions of the billboards shall be those shown on the plan prepared by Tyndall and Hanham Ltd titled "Proposed Signage 104 Victoria Street" Sheet S2 Rev D, Job no 2284-25 dated 19/1/06.
3. That the billboards shall be illuminated by individual lights of no more than 400 watts each which shall comply with the City Plan glare standard 2.3.2 of no more than 4 lux spill for an adjoining Group 1 Zone.

