IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU

Decision [2024] NZEnvC 080

IN THE MATTER	of an application for a declaration under s 311 of the Resource Management Act 1991
BETWEEN	DIGITAL SIGNS LIMITED
	(ENV-2023-AKL-126)
	Applicant
AND	AUCKLAND COUNCIL
	Respondent

Court:	Chief Environment Court Judge D A Kirkpatrick sitting alone under s 309 of the Act
Hearing:	In chambers, on the papers
Last case event:	14 November 2023
Date of Decision:	16 April 2024
Date of Issue:	16 April 2024

DECISION OF THE ENVIRONMENT COURT

A: The application is refused.

B: There is no order as to costs.

REASONS

Introduction

[1] Digital Signs Ltd applies under s 310 of the Resource Management Act 1991 (**RMA**) for the following declaration:

> A resource consent is not required to erect domes and LED displays at 89 Gavin Street, Ellerslie, Auckland as per building consent plans BCO10367792.

[2] Auckland Council opposes the making of this declaration.

[3] The application has, by consent, been heard by a judge sitting alone under s 309(1) of the Act and on the papers on the basis that the issue between the parties is a matter of the interpretation of the provisions of the Auckland Unitary Plan (**AUP**) in Chapter E23 relating to signs.

Background

[4] Algorithm Enterprises Ltd owns the site at 89 Gavin Street, Ellerslie, Auckland. The site is on the north-eastern side of the Southern Motorway. There is an existing industrial building on the site which is occupied by NZ Fire Doors. The site is zoned Business – Light Industry in the AUP.

[5] Digital Signs has been engaged by Algorithm:

(a) to erect two half-round domes, each 14 m wide and 7 m high, at either end of the roof of Algorithm's building on the side closest to the motorway;

(b) to apply long-life decals of a photo-real image of Pōhutukawa trees on the exterior of the domes; and

(c) to fit two LED displays on the side of each dome visible from the motorway.

[6] The documents forming the application for a building consent which have been put before the Court clearly show the domes being additional structures located on the roof of the existing building. They show the flattened sides of the domes facing

towards the motorway as it approaches the site, one generally towards the east and the other generally towards the south. On each flattened face it is proposed to attach a LED display. The dimensions of each LED display are not specified, but the overall area is stated to be 72m^2. Given the size of each dome as 14 x 7m, it appears that each LED display would be of the order of 10 x 7m.

[7] Mr David Jaques, the sole director of Digital Signs, explains in his affidavit sworn on 14 July 2023 that the LED displays will only show a static image of the same Pōhutukawa trees as are on the decals applied to the domes, with the brightness of the displays at night adjusted to comply with the AUP so that the artwork can be seen day and night.

[8] Ms Bridget O'Leary, a planner employed by AECOM New Zealand Ltd and engaged by the Council to give expert evidence for it, says in her affidavit affirmed on 20 October 2023:

(a) A resource consent application was lodged with Council on 20 March 2022 to erect and operate two new digital billboards of 72 m^2 each at 89 Gavin Street.

(b) The billboards are in the same location as shown on plans submitted on 18 May 2023 with a building consent application in respect of the two domes.

(c) The building consent application described the building work as follows:

> New ancillary structure external to the building envelope, supporting LED digital display with static pohutukawa image.

(d) The Council attached a certificate to the building consent application under s 37 of the Building Act 2004 restricting commencement of the building work until the resource consent was approved.

[9] Mr Jaques considers it is unreasonable for the Council to require Digital Signs to alter its building consent application to remove the LED displays before it will permit work to commence. In his view, it would be a permitted activity to build the domes, and then to later fit the same displays. Digital Signs accordingly applies for a

declaration to that effect.

Jurisdiction

[10] Under s 311 of the RMA, any person may at any time apply to the Court for a declaration. The scope and effect of a declaration that may be made by the Court is prescribed in s 310 and may relevantly include:

> (a) the existence or extent of any function, power, right, or duty under this Act, …
>
> (c) whether or not an act or omission, or a proposed act or omission, contravenes or is likely to contravene this Act, … or a rule in a plan or proposed plan, …; or
>
> (d) whether or not an act or omission, or a proposed act or omission, is a permitted activity, controlled activity, discretionary activity, non-complying activity, or prohibited activity, …;

[11] Under s 313 of the RMA, the Court may, after hearing the applicant and any interested party:

> (a) make the declaration sought by an application under section 311, with or without modification; or
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> (b) make any other declaration that it considers necessary or desirable; or
>
> (c) decline to make a declaration.

[12] This jurisdiction under the RMA is quite separate from the jurisdiction of the High Court, both original and under the Declaratory Judgments Act 1908. Nonetheless, the jurisprudence of the High Court in relation to making declarations is still authoritative in the absence of any contrary or inconsistent provisions in the RMA.

[13] The absence of any statement of principles as to the basis on which the discretion is to be exercised under s 313 of the RMA points to an intention to confer a broad judicial discretion as to how the Court should determine an application for a declaration.[1]

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1 *Wellington Regional Council v Burrell Demolition Ltd*, HC Wellington AP 25/01, 30 April 2001.

[14] A judicial discretion, however broad, must be exercised on a principled basis even where there is no express statement of principles. The fundamental principles as to the making of declarations were set out by the Court of Appeal as follows (citations omitted):[2]

> [141] It may be worth reiterating the fundamental principles. First, there must be an actual controversy between the parties (or as it is sometimes put, a real and not a theoretical question to be answered). As part of that concern there must be a proper contradictor. That is, there must be someone before the court with a true interest to oppose the declaration sought. Secondly, there is the question of whether a declaration may have a practical effect on non-parties. Thirdly, it is generally accepted that a declaration must have utility, which can encompass a wide range of factors. Fourthly, declarations should not normally pre-empt or somehow supplant findings which would need to be made in a criminal prosecution. Fifthly, the availability of other remedies is a relevant factor. But sixthly, and perhaps most importantly, the rule of law itself requires that if a law has been contravened that should be publicly enunciated and formally made known. In that respect it is to be noted that the emphasis in the discretionary exercise has recently shifted somewhat to a consideration of whether there are grounds to *refuse* relief following a finding of error of law.

[15] The sixth point has been emphasised in recent decisions.[3]

[16] There is no dispute between the parties as to what the relevant principles are, but substantial disagreement as to their application to this case.

[17] Digital Signs' application, in its terms, seeks that the Court declare whether an activity described in a building consent would require a resource consent. The Council has issued a certificate under s 37 of the Building Act 2004 dated 7 July 2003 stating that the proposal is designed to be used as a billboard and that it requires resource consent.

[18] While both parties agree (and I accept) that the declaratory power under the RMA does not extend to matters governed by the Building Act 2004, I consider that this application for a declaration is within the Court's jurisdiction as it does not relate to whether an activity would require a building consent, but instead asks whether a particular activity described in a building consent would require a resource consent. It is not an application to review the issuing of the certificate under s 37 of the Building

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2 *Wool Board Disestablishment Co Ltd v Saxmere Co Ltd* [2010] NZCA 513, [2011] 2 NZLR 442 at [141].

3 *Williams v Auckland Council* [2015] NZCA 479 at [99]; *Dilworth Trust Board v Attorney-General* [2021] NZCA 48, [2021] 3 NZLR 857 at [76].

Act, rather it is an application for a declaration about the lawfulness of matters under the RMA and the AUP that is within the bounds of s 310(a), (c) or (d).

[19] The Council submits, in reliance on *Re an application by Trolove*,[4] that it is not appropriate to seek a declaration where the factual position is unclear or in dispute. In this case, it submits that there is a dispute between the parties as to the classification of the proposed activity and that it would accordingly be inappropriate for the Court to make the declaration sought.

[20] The Council further submits that the courts will expect there to be a "real issue" before it will entertain an application for declaration.[5] This has sometimes been described as an issue of the utility of the declaration sought, and the Court has stated that courts will not make declarations that have no utility.[6]

[21] The onus is on the applicant for a declaration to prove, on the balance of probabilities, the essential factual matters necessary to justify a declaration. In this case, the Council submits that Digital Signs has not proved the factual matters or its interpretation of the relevant plan provisions on the balance of probabilities and therefore the declaration should not be granted.

[22] Further, an application for a declaration should not be used to subvert or circumvent or otherwise abuse the process of the Court. In *Karmarkar v Auckland Council*, a declaration was sought as to the ability to build a house in the national grid yard which was an overlay on the site of the proposed house. In that case both the Environment Court and the High Court found that the application for a declaration was an attempt to prevent Transpower from objecting to the proposal and refused to make the declaration.[7]

[23] I do not accept the Council's submission that the factual position is unclear in this case. While I recognise that it is necessary that all relevant factual matters be known before a Court attempts to formulate a declaration, I do not accept that the

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4 *Re an application by Trolove* C052/94 (PT).

5 *Re Christchurch City Council* [1995] NZRMA 129, 133-5.

6 *Environmental Defence Society v Kaipara District Council* [2010] NZEnvC 284 at [57].

7 *Karmakar v Auckland Council* [2022] NZEnvC 23 at [18]-[19], upheld in *Karmarkar v Auckland Council* [2022] NZHC 1119 at [8]-[11].

classification of a proposed activity is a matter of fact. Classes of activities (often referred to as their activity status) are defined in s 87A of the RMA, and the power to make rules which categorise activities into a class is conferred by s 77A. The word "activity" is not defined in the RMA, but its meaning in the context of resource management is closely akin to "use" which is defined very broadly in s 2, particularly in the sense of a use of land.[8] The exercise of identifying what an activity consists of is a matter of fact, but the consequential identification of its class or status under the rules of the relevant plan depends on the application and interpretation of the relevant rules, which is a matter of law.[9]

[24] I also do not consider that the factual circumstances in this case are as unproven as the Council submits. In my judgment, the nature and extent of the proposed activity is reasonably clear from the evidence presented by the applicant which includes the application for building consent. Insofar as there are some hypothetical elements to the proposed activity including what may happen in the future, every case is likely to include such elements. This is a consequence of any consenting process and is fully within the prospective nature of the Environment Court's jurisdiction under the RMA. It is reflected in the scope of s 310(c) and (d), which both enable consideration of proposed acts or omissions and where s 310(c) also contemplates the likelihood of a contravention of the Act.

[25] I am satisfied that there are real issues presented by this application. There is the obvious issue as to whether this particular use of this land requires a resource consent, which involves an analysis of the relevant rules in the AUP. As well as that, there is an element of the proposal which requires consideration of whether the Court may assess the likelihood of a possible use which will be enabled by the structures which are proposed. If the Court can assess such a possible use and finds that it requires a resource consent, then there is the further issue of whether it is appropriate to make a declaration as to lawfulness where that may amount to an order in the nature of an injunction or which may be an abuse of process.

[26] Alternatively, the issue may be framed as whether the Council and the Court are

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8 *Smith v Auckland City Council* [1996] NZRMA 27 (HC), [1996] NZRMA 276 (CA).
9 *Toy Warehouse Ltd v Hamilton City Council* (1986) 11 NZTPA 465 (HC).

obliged to wait and see whether a structure or other facility were to be used for an activity requiring resource consent before a declaration about that could be made. The consequences of this outcome should also be considered, as the prospective jurisdiction of the Court requires future effects to be considered with other kinds of effect[10] in determining matters in accordance with the purpose of promoting the sustainable management of resources, including dealing with any adverse effects of the use, development and protection of resources.

Interpretation of plan provisions

[27] The Legislation Act 2019, in s 10, requires the meaning of legislation to be ascertained as follows:

> **10 How to ascertain meaning of legislation**
>
> (1) The meaning of legislation must be ascertained from its text and in the light of its purpose and its context.
>
> (2) Subsection (1) applies whether or not the legislation's purpose is stated in the legislation.
>
> (3) The text of legislation includes the indications provided in the legislation.
>
> (4) Examples of those indications are preambles, a table of contents, headings, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation.

[28] That Act defines "legislation" to include any "secondary legislation", which in turn includes:

> an instrument (whatever it is called) that—
>
> (a) is made under an Act if the Act (or any other legislation) states that the instrument is secondary legislation; …

[29] Section 76(2) of the RMA states that a rule in a district plan shall have the force and effect of a regulation in force under the RMA. In *Powell v Dunedin City Council*[11] the Court of Appeal, applying s 5 of the Interpretation Act 1999 (which was the predecessor to s 10 of the Legislation Act) and the term "enactment" (which was defined to include regulations), stated that plan provisions under the RMA are a form of secondary legislation and are to be interpreted accordingly. I respectfully proceed

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10 Resource Management Act 1991, s 3.

11 *Powell v Dunedin City Council* [2004] 3 NZLR 721, [2005] NZRMA 174 (CA).

on the basis that this reasoning remains authoritative under the Legislation Act.

[30] As well as the statutory purpose and principles in Part 2 of the RMA, the purpose of plan provisions should also be understood from the relevant objectives and policies of the plan which form part of the context of the provisions.[12]

Relevant Plan provisions

[31] The site is zoned Business – Light Industry. Chapter H17 of the AUP sets out the particular rules for that zone, but the relevant Auckland-wide rules of the AUP in relation to signs are in Chapter E23 Signs.

[32] The objectives of the zone in section H17.2 of the AUP are:

> (1) Light industrial activities locate and function efficiently within the zone.
>
> (2) The establishment of activities that may compromise the efficiency and functionality of the zone for light industrial activities is avoided.
>
> (3) Adverse effects on amenity values and the natural environment, both within the zone and on adjacent areas, are managed.
>
> (4) Development avoids, remedies or mitigates adverse effects on the amenity of adjacent public open spaces and residential zones.

[33] Relevant policies in section H17.3 are:

> (3) Avoid activities that do not support the primary function of the zone.
>
> (4) Require development adjacent to open space zones, residential zones and special purpose zones to manage adverse amenity effects on those zones.

[34] The objectives for signs in section E23.2 are:

> (1) Appropriate billboards and comprehensive development signage contribute to the social and economic well-being of communities through identifying places, providing information including for convenience and safety purposes, and advertising goods and services.
>
> (2) Billboards and comprehensive development signage are managed to maintain traffic and pedestrian safety, historic heritage values and the visual amenity values of buildings and the surrounding environment

[35] Relevant policies in section E23.3 are:

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12 *J Rattray & Son Ltd v Christchurch City Council* (1984) 10 NZTPA 59 at 61.

(1) Require billboards and comprehensive development signage to meet the relevant permitted activity standards (for example building height) that apply in the zone in which they are located.

(2) Require the placement, location and size of billboards and comprehensive development signage on buildings to not significantly detract from the profile or appearance of a building, or cover any significant architectural features on the façade of a building.

(3) Enable billboards and comprehensive development signage while avoiding signs creating clutter or dominating the building or environment by controlling the size, number and location of signs.

(4) Require traffic and pedestrian safety standards to apply to billboards and comprehensive development signage, particularly to the wording, lighting and location of signs, and changeable message, illuminated, flashing or revolving sign.

[36] Rule E23.4.1 sets out the activity table for billboards in zones and relevantly provides:

Table E23.4.1 Activity Table – Billboards in zones [rcp/dp]

Activity		Activity status		
		Free-standing billboards	**Billboards on a side or rear building façade**	**Billboards on a street facing building façade**
(A25)	Business – Light Industry Zone	RD	P	RD

[37] There is an exception to rule 23.4 which provides that signs that are permitted by, or approved pursuant to, the Auckland Transport/Auckland Council Signage Bylaw 2015 or the Auckland Transport Elections Signs Bylaw 2013 are not subject to the provisions of the AUP. That exception has not been raised in this case.

[38] The definitions of certain terms used in the AUP are in Chapter J1, including the following definition of "billboard":

Billboard

Any sign, message or notice conveyed using any visual media which is used to advertise any business, service, good, products, activities or events that are not directly related to the primary use or activities occurring on the site of the sign.

Includes:

- the sign and any associated frame and supporting device, whether permanent, temporary or moveable, whose principal function is to support the message or the notice.

Excludes

…

[39] None of the exclusions to the definition are relevant to this case.

[40] The AUP defines "sign" as:

Sign

A visual device which can be seen from a public open space (including the coastal marine area) or an adjoining property, to attract people's attention by:

- providing directions;
- giving information; and
- advertising products, businesses, services, events or activities.

Includes:

- the frame, supporting device and any associated ancillary equipment whose principal function is to support the message or notice;
- murals, banners, flags, posters, balloons, blimps, light projections, footpath signs, hoardings, projections of lights; and
- signs affixed to or incorporated within the design of a building.

[41] The important distinction between these definitions is that billboards form a subset of signs, the limiting feature of the former being the advertising of something that is not directly related to the primary use or activity on its site.

[42] There is also a definition of "changeable message signage", which adopts the meaning of the term in the Auckland Transport, Auckland Council Signage Bylaw 2015, which provides:

> means publicly visible signage with mechanical or electronic moving images or displays, including LED, neon, and electronically projected images.

[43] Ms O'Leary on behalf of the Council considers that the LED displays also meet the definition of "changeable message signage". There appears to be no contest about that. The importance of this is not so much in the definition itself, but in the implication of such signage being changeable or moving.

[44] As well as the class or status of the activity of a billboard set out in Table E23.4.1, rule E23.6.1 provides for standards for billboards in zones which all activities listed as permitted in Table E23.4.1 must comply with. Relevantly, that rule includes the following:

> (1) Billboards must:
>
> …
>
> (d) not be attached to, or placed on:
>
> … (ii) the roof of a building.
>
> …
>
> (5) A billboard must not be placed on a wall or part of a wall so that any part of the billboard is higher than the lowest point of the roof of the building adjoining the wall.
>
> (6) A billboard must not extend beyond the outer edge of any wall of the building on which it is located and the billboard must be contained entirely within the visual profile of the building.
>
> …
>
> (9) A billboard must not be installed on a building that has been altered or modified for the purpose of installing the billboard.
>
> (10) A billboard, when placed on a wall, must not exceed an area equal to 25 per cent of the wall area or 50m^2, whichever is the lesser.
>
> …

[45] If the activity does not come within any of the particular provisions of the AUP, then the general rule C1.7 in the AUP would apply and the activity would require resource consent as a discretionary activity:

> ***Rule C1.7 Activities not provided for***
>
> (1) Any activity that is not specifically classed in a rule as a permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited activity is a discretionary activity unless otherwise specified by a rule for an overlay, zone or precinct or in an Auckland-wide rule.

Submissions

[46] Mr Jaques for Digital Signs says that its application turns on whether the structure described in the application for building consent involves the erection of a "sign" or "billboard" and submits it is neither. He says that the domes alone are not being built for the purpose of supporting the LED displays and that the proposal is

for the displays to show a single static image. If the use is changed later to being a sign or a billboard, then it is accepted that the appropriate permissions will be required.

[47] Digital Signs submits that the domes could be built first and then a 50 m^2 sign could be affixed immediately as a permitted activity. If the property owner wishes to construct the domes and LEDs for a static art image, and later wishes to change that use to a "sign" it can apply for necessary permissions at the time.

[48] The Council submits in response that the proposed LED displays fall within the definition of "sign" and are readily capable of being used as billboards to advertise anything. Counsel submits that the domes are structures which do not form part of the existing building's façade but are located on the roof solely for the purpose of supporting, or otherwise form part of, the billboard. Counsel notes that the building consent application refers to the structure as "supporting" the LED displays.

[49] The Council further submits that the proposed LED displays are not provided for in the activity table E23.4.1 for the Business – Light Industry Zone as they are not free-standing, nor on a street-facing building façade, nor on a side or rear building façade. The domes do not meet the standards in Rule E23.6.1 as they do not form part of the building façade and are structures located on the roof of the building for the sole purpose of supporting the LED displays. As they are not provided for under those rules, they default to the general rule C1.7 in the AUP to be treated as a discretionary activity.

[50] The Council acknowledges that if the LED displays were removed so that the domes are simply standalone additions to the existing building, then those would be a permitted activity, subject to confirmation of the overall height to demonstrate compliance with the height limit of 20m in rule H17.6.1.

[51] Mr Jaques says that the overall height of the proposal (the existing building plus the domes) would be 16.675m so that building the domes without any signage would be a permitted activity. Then, once the domes are built, billboards up to 50 m^2 in area could be affixed to the side or rear façades of the domes as a permitted activity according to item (A25) in activity table E23.4.1.

[52] Mr Jaques goes on to submit that the format of a sign is irrelevant: if it provides direction or gives information or advertises something, it is a sign. The proposed LED displays would show a static illuminated image of a Pōhutukawa tree which does not provide direction or give information or advertise anything. He submits that this is art. He accepts that if the property owner were to change the image on the LED displays from a Pōhutukawa tree to an advertisement, then it would need to seek either a dispensation from the signs bylaw for a sign or a resource consent for a billboard. Until then, he submits that neither is required.

[53] The Council's response is twofold: first, art can often convey information, and second, art or artworks are not specifically provided for in Chapter E23. Chapter E22 of the AUP deals with artworks, setting out an objective and eight policies and then noting that the rules for artworks are located in the relevant zone provisions in other chapters of the AUP. The Council submits that even if the Court were to accept that the LED display was art, that would be considered as a non-complying activity in the Business-Light Industry zone as an activity not provided for in rule H17.4.1(A1). I note that this submission is inconsistent with the general rule C1.7 and proceed on the basis that the general rule would apply so that the activity would be considered as a discretionary activity.

[54] Mr Jaques concedes that the owner of the building is considering using the LED displays as billboards in the future. He submits, however, that something that is suitable for use for another purpose which may require resource consent does not require resource consent for that other purpose now. The owner could obtain any necessary consent if and when the use changes.

[55] The Council submits that the displays are readily capable of displaying other images, including advertising of goods or services not directly related to the activity on the site without any further physical works. As electronic images, they are easily able to be changed at any time.

[56] Mr Jaques says that the definitions of "sign" and "billboard" do not include anything about "having the ability" to, or "[being] capable" of, being a sign.

Evaluation

[57] The declaration sought is that a resource consent is not needed for the proposed activity of erecting the domes and the LED displays at 89 Gavin Street. In terms of the relevant provision of s 9(3) of the RMA and the absence of any reliance on an existing resource consent or any form of existing use rights, the proposed activity must therefore not contravene a rule a district rule in the AUP.

[58] The particular rules that are potentially engaged by the proposed activity are:

(a) Rule E23.4 and the provision that signs that are permitted by or approved pursuant to the Auckland Council Signage Bylaw 2015 are not subject to the provisions of the AUP;

(b) Rule E23.4.1 (A25) which classifies billboards:

i. on a side or rear building façade as permitted; and

ii. which are free-standing or on a street facing building façade as a restricted discretionary activity;

(c) Rule E23.6.1(1)(d)(ii) and (6) which require that billboards (including any associated frame and supporting device):

i. not be attached to or placed on the roof of a building;

ii. be contained entirely within the visual profile of the building.

[59] The first question to be answered is whether the proposal is outside the scope of these rules, whether as some form of decoration of the building or other kind of art which is not within the meaning of "sign". "Art" is not defined in the AUP. Artworks are the subject of objectives and policies in section E22, but the rules for them are in the relevant zone provisions. There are no such provisions in section H17 for the Business – Light Industry Zone and so, to avoid a vacuum or other lacuna, resort to the general default rule C1.7(1) means that any proposal for art on outdoor display in this zone is a discretionary activity.

[60] I will not attempt to determine or declare what art is. It is not necessary to do

that in this case. The issue here is concerned with signage. The fundamental contention of Digital Signs that its proposal is not for the purposes of signage is unreal. Signage is its business. The proposal is clearly intended to be readily capable of providing for use as signage. That capability is part of the proposal. It concedes that such use in the future may occur. In the management of activities in its district, it is appropriate for the Council to consider potential effects if there is some reasonable prospect that they will occur. It is abundantly clear that such a prospect exists here.

[61] The position might be different were the building's owner to offer some security, perhaps by way of an enforceable undertaking or a bond, that the displays would not show anything other than pōhutukawa trees or similar images without first obtaining resource consent. No such security forms part of the proposal.

[62] Proceeding on the basis that the proposal is for signage, it follows that the signage is likely to be billboards. The current occupier of the building already has signage on its façade facing the motorway. Nothing in the material presented by Digital Signs indicates any further signage relating to activities on the site is intended.

[63] Assessing the proposal as being for billboards, the plans show the dome structures which would support the displays as being on the roof. While the displays would face towards the rear of the building (which is the façade towards the motorway) rather than towards Gavin Street, they would not be on the façade but would be placed on the roof and would extend beyond the existing profile, contrary to the two standards in rule 23.6.1 cited above.

[64] Adding the domes first, without any display attached, may be within the bulk and location controls for the height of the building, but would nonetheless be an associated frame or supporting device for the displays. There is no apparent functional purpose that the domes would otherwise serve. They cannot be regarded as anything other than ancillary structures to support the displays. The declaration sought is about the domes and the LED displays and the material before the Court shows those two elements to be part of a single proposal.

[65] The best practice approach to the assessment of an activity, including a proposal for some form of development, is to consider all of the elements together so that all

of their effects, positive and negative, including any interaction of effects and any cumulative effects, can be identified and assessed in the context of the environment.[13] It is the overall use that must be identified.[14] The separation of the domes from the displays would, on the face of the documents filed with the application, be an artificial basis for any assessment. Further, it would likely hinder the Council's duty to observe and enforce the AUP, as required by s 84 of the RMA, to allow the domes to be erected as a permitted activity when the only purpose of the domes would be to support the LED displays.

Determination

[66] For the foregoing reasons I conclude that there is no proper basis on which to make the declaration sought by Digital Signs Limited. I do not consider that any modified version of the declaration sought would be appropriate. In particular I do not consider it would be appropriate to make the opposite declaration that a resource consent is required as that would be diametrically opposed to the application. I accordingly decline to make a declaration under s 313 of the RMA.

[67] The nature of the proceeding, being to clarify the interpretation of certain rules, has a public interest component. When combined with the manner in which the parties have agreed that the issues can be addressed on the papers and without a hearing, I determine under s 285 of the RMA to make no order as to costs and leave those where they fall.

D A Kirkpatrick
Chief Environment Court Judge

13 *Affco NZ Ltd v Far North District Council (No 2)* [1994] NZRMA 224 at 233-5 (PT).
14 *Centrepoint Community Trust v Takapuna City Council* [1985] 1 NZLR 702, (1984) 10 NZTPA 340 (CA).