

25 January 2022

s7(2)(a)



Dear s7(2)(a)

Request for Information – Local Government Official Information and Meetings Act (LGOIMA) 1987

We refer to your official information request dated 19 November 2021 for information about street furniture advertising contracts/agreements and all documents relating to the proposed procurement process for the services covered by the above contracts/agreements.

Hutt City Council is responsible for street furniture that is permanently installed along the roads and streets. This includes benches, streetlamps and rubbish bins. It does not include pedestrian shelter assets, such as at bus stops, although Council is responsible for the associated road reserve.

Responses to your specific questions follow. Please note that one document that falls within the scope of your request has been withheld in full under Section 7(2)(b)(ii), to protect information, where making it available would be likely unreasonably to prejudice the commercial position of the person who supplied or is the subject of the information.

1.1 – 1.3 Supply all information and documents that Hutt City Council holds in relation to advertising agreements that Hutt City Council is a party to relating to street furniture (e.g., bus shelters).

Refer to attached Documents 1 – 8. Note that information has been withheld from these documents under the following sections of the LGOIMA:

- Section 7(2)(a) – To protect the privacy of natural persons, and
- Section 7(2)(b)(ii) – To protect information, where making it available would be likely unreasonably to prejudice the commercial position of the person who supplied or is the subject of the information.

1.3 Supply Hutt City Council's proposed procurement process for the services covered by the above agreements in the future, including:

- (a) any timelines that Hutt City Council has in place for future procurement of these services;**
- (b) whether or not the same asset classes will be included in the new agreements;**
- (c) whether or not the new agreement will require the removal and replacement of some or all existing assets (if less than all in a class, please specify the percentage to be removed and replaced);**
- (d) whether or not Hutt City Council will be entering into a consortium with one or more other councils for the next agreement and, if so, which one(s).**

Refer to attached Documents 10 – 12.

With respect to your specific requests (a) – (d), HCC does not hold information about future procurement processes or agreements. Your request for this information is therefore refused under section 17(e) of the LGOIMA, on the grounds that the information does not exist.

1.4 For each class of street furniture asset covered by the agreements referred to above:

- (a) how many of that asset there are;**
- (b) the approximate age of each asset;**
- (c) the state of repair of each asset (e.g., brand new, used, in need of minor repairs, in need of major repairs, damaged beyond repair);**
- (d) the location of each asset (please use GPS coordinates);**

With regards to your requests (a) – (d) above, we estimate there to be approximately 40-50 advertising pedestrian shelters covered by the agreements between third parties and Hutt City Council.

The relevant addresses and coordinates for the set of assets have been withheld under section 7(2)(b)(ii), to protect information, where making it available would be likely unreasonably to prejudice the commercial position of the person who supplied or is the subject of the information. While the address of each asset individually is unlikely to have commercial implications, we consider the set consisting of the placement of all addresses does.

The Council does not hold information about the age or condition of these assets. Your request for this information is therefore refused under section 17(e) of the LGOIMA, on the grounds that the information does not exist.

(e) which assets are owned by Hutt City Council;

Hutt City Council is responsible for street furniture that is installed along the roads and streets, however these assets are seldom used for advertising and the Council tends to manage these occasions internally. Those used for advertising are:

- Event signboards on Waione Street, Kennedy Good Bridge, Ewen Bridge and Cambridge Terrace.
- Flags on some streetlights across the city.
- Temporary clip-on signage for some streetlights.

The flags are used almost exclusively for internal Council advertising or for city decoration at significant times, such as Christmas and ANZAC day. Where the flags are used externally, any advertising is usually arranged directly with the Council, with no external advertiser being involved. On rare occasions the Council may advertise with an external provider who may use street assets, but this arrangement is done only as required.

(f) any assets that are proposed to be built/added prior to the end of the current agreements (and who will own them);

(g) any assets that are proposed to be built/added after the end of the current agreements;

The Council does not hold the information requested in (f) and (g) above. Your request for this information is therefore refused under section 17(e) of the LGOIMA, on the grounds that the information does not exist.

(h) the state of regulatory compliance of each asset;

Relevant resource consents cover each asset.

(i) the resource consent for each asset, indicating the advertising rights associated with that asset and any conditions (e.g. for a digital site, the slot length, number of rotations and transitions);

Your request for this information is refused under section 17(f) of the LGOIMA, on the grounds that the information cannot be made available without substantial collation or research. We have, however, provided one of the resource consent decisions as an example – refer to Document 9.

(j) for each digital advertising panel, the screen specifications; and

This information is refused under Section 7(2)(b)(ii) of the LGOIMA, to protect information, where making it available would be likely unreasonably to prejudice the commercial position of the person who supplied or is the subject of the information.

(k) for each static advertising panel, the static image specific

Hutt City Council does not hold this information, however examples are provided in Document 8.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that this letter may be published on the Council's website.

Nāku noa, nā



Susan Sales

Enclosures

Document	Title
1	Contract – Hutt City Council
2	Variation Agreement
3	Bus shelter locations
4	Email 8 February 2017 and 8 attachments
5	Email 15 February 2017 and 7 attachments
6	Email 15 February 2017 and 7 attachments
7	Letter 29 March 2017 and 5 attachments
8	Examples
9	Application Approval Report
10	Hutt City Council procurement policy
11	Hutt City Council procurement guide
12	Local Government procurement guide

**STREET FURNITURE SERVICE
PROVIDER CONTRACT**

between

THE COUNCIL

and

THE SERVICE PROVIDER

Released under the Local Government Official Information and Meetings Act



SIMPSON GRIERSON
LAW

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APPENDIX A CORRESPONDENCE

APPENDIX B SPECIFICATION

THIS AGREEMENT is dated the 1 day of November 2000

BETWEEN The party whose details are set out in Schedule 1 of the one part
(the "Council")

AND The party whose details are set out in Schedule 1 of the other part
(the "Service Provider")

BACKGROUND

- A.** The Council is wanting to promote an integrated suite of Street Furniture within its territorial jurisdiction. The Street Furniture is to be functional, safe, vandal and graffiti resistant, flexible in design to meet the requirements of the Council and improve pedestrian flow by minimising street clutter.
- B.** The Service Provider operates a successful commercial operation involving the design, construction, installation and servicing of Street Furniture internationally and wishes to supply the Services (as defined below) to the Council.
- C.** The Council has agreed to appoint the Service Provider, and the Service Provider has agreed to provide, the Services on the terms and conditions of this agreement.

THE PARTIES AGREE:

1. INTERPRETATION

In this agreement, unless the context otherwise requires:

1.1 Definitions:

"**Advertise**" means to make generally or publicly known any information in any way;

"**Advertising Code of Practice**" means the codes of practice issued and administered by the Advertising Standards Authority (or similar body) and as varied from time to time;

"**Bank**" means a bank registered as a bank within the meaning of the Reserve Bank of New Zealand Act 1989 which is providing the banker's undertaking (if any) under clause 26;

"**Business Day**" means any day of the week other than:

1.1.1 Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand's anniversary day and the provincial anniversary day as observed at the place where the Council is situated; and

1.1.2 a day in the period commencing with the 24th day of December in any year, and ending with the 5th day of January in the following year;

A Business Day shall be deemed to commence at 9.00am and to terminate at 5.00pm.

"Chief Executive Officer" means the chief executive officer of the Council and the chief executive officer of Adshel Street Furniture Pty Limited;

"Commencement Date" means the date set out in Schedule 1;

"Contract Manager" means a person designated by the Council from time to time as being responsible for supervising the performance by the Service Provider of the Service Provider's obligations under this agreement which, at the date of this agreement, is the person nominated in Schedule 1;

"Correspondence" means those communications in writing, if any, between the Council and the Service Provider as attached as Appendix A to this agreement and signed by the parties for the purpose of identification;

"CPI" means the Consumer Price Index for New Zealand compiled by Statistics New Zealand, or such other index nominated by the Council in substitution of the same;

"Data" means all data and information gathered, created or developed by or on behalf of the Service Provider to enable it to provide, or as a result of providing, the Services or performing its obligations under this agreement;

"Encumbrances" means any mortgage, charge, lien, pledge, title retention, arrangement, trust, power or other encumbrance to secure the payment of a monetary obligation or the performance or observance of any other obligation;

"Financial Reports" means the reports specified in the Specification comprising such financial and other information required by the Council and if not so specified, comprising the information in the format required by the Council as varied from time to time by the Council;

"Implementation Plan" means the plan (attached as Part 5 of the Specification Forms compiled by the Service Provider) for the design, manufacture, installation and maintenance (the maintenance component of which will be the Maintenance Programme) of Street Furniture, (including

the removal of existing street furniture) and as varied from time to time in accordance with this agreement;

"Intellectual Property" means all inventions, patents, patent applications, trade marks (whether registered or not), brand names, designs, copyright (including copyright in any computer software or hardware or any works associated with such software or hardware), know-how, commercially sensitive or valuable information, trade secrets or other proprietary rights which may arise from intellectual activity;

"Licence Fee" means the amount payable by the Service Provider to the Council in accordance with clause 12 of this agreement;

"Licensed Operator" means any third party granted a licence by the Council to occupy any Service Area;

"Maintenance Information System" means a computerised street furniture management system created and managed by the Service Provider in accordance with the Specification and includes an on-line connection to the Council, which the Council may access at any time and which will produce all reports referred to in this agreement;

"Maintenance Programme" means the programme (attached as Part 6 of the Specification Forms compiled by the Service Provider) for the maintenance and management of the Street Furniture, including the maintenance and management of existing street furniture detailed in the Specification, as varied from time to time in accordance with this agreement;

"Milestones" means the time by which certain events must have occurred as set out in each of the Implementation Plan and the Maintenance Programme for the provision of relevant Services;

"Objectives" means the objectives and goals of the Council as set out in clause 2 of the Specification;

"Operational Reports" means the reports specified in clause 20 of the Specification comprising such management statistical or other information required by the Council and if not so specified, comprising the information in the format required by the Council as varied from time to time by the Council;

"Permit" means permits, consents, licences or approvals required from the Council or any other authority to enable the Service Provider to provide the Services;

"Performance Criteria" means the advertising obligations expressed in clause 4.10 and the time, quality and cost outcomes of the performance of

the Services (attached as Part 6 and Part 7 of the Specification Forms compiled by the Service Provider) that the Service Provider must satisfy:

"Performance Period" means the periods over which the Performance Criteria will be assessed;

"Public Safety" means any event which could be reasonably expected to cause or be likely to cause injury to any person;

"Representative" means the person appointed by the Service Provider in accordance with clause 3.7;

"Schedule of Fees and Rates" means the fees and rates set out in Schedule 3;

"Service Areas" means sites designated by the Contract Manager in accordance with the Specification and this agreement for the removal or installation of Street Furniture;

"Services" means the services and obligations to be performed by the Service Provider, as set out in this agreement and the Specification and shall include, but not be limited to, the design, construction, installation, removal, relocation, refurbishment, upgrade, maintenance of, and advertising on, not less than the minimum quantity of Street Furniture referred to in Table B of PART 2 of the Specification Forms. The minimum quantities of Street Furniture does not include existing street furniture already installed as at the date of this agreement under the terms of the existing agreements referred to in clause 31.15. Where provision is made in the Specification for Street Furniture to be provided by the Service Provider, references to Services shall be deemed to mean the provision of Services or Street Furniture and Services, as applicable;

"Service Provider" means the party set out in Schedule 1;

"Specification" means the Specification supplied by the Council and attached to this agreement as Appendix B and shall include the Specification Forms;

"Shareholders" means the shareholders of the Service Provider as at the date of this agreement, being APN News & Media Limited and Clear Channel Communications Incorporated;

"Specification Forms" means the forms attached to the Specification;

"Specified Personnel" means the personnel specified in Schedule 1;

"Street Furniture" means goods made available by the Service Provider as part of the Services supplied under this agreement, (being the types of

Street Furniture listed in the Specification and not less than the quantities of Street Furniture referred to in Part 2, Table B of the Specification Forms), and subject to the provisions of clause 31.15, excludes all goods that are of a temporary nature and existing street furniture that the Council determines is not part of Services to be provided by the Service Provider;

"Term" means the term set out in Schedule 1;

- 1.2 **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the schedules and appendices;
- 1.3 **Dollars and \$:** references to "dollars" and "\$" are references to New Zealand dollars;
- 1.4 **Gender:** words denoting a gender shall include any other genders;
- 1.5 **Headings:** clause headings and other headings are for ease of reference only and will not affect the interpretation of this agreement;
- 1.6 **Negative Obligations:** any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- 1.7 **Parties:** references to parties are references to parties to this agreement and will be deemed to include the assignees, transferees and successors of the parties;
- 1.8 **Persons:** references to persons will be deemed to include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality;
- 1.9 **Plural and Singular:** words importing the singular will include the plural and vice versa;
- 1.10 **Schedules etc:** any schedules and appendices to this agreement and the provisions and conditions contained in such schedules and appendices will have the same effect as if set out in the body of this agreement; and
- 1.11 **Statutes and Regulations:** references to a statute include references to regulations, orders or notices made under that statute, and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise including a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.

2. APPOINTMENT

2.1 Appointment: The Council appoints the Service Provider to provide the Services within the territorial jurisdiction of the Council, subject to the terms of this agreement. The Service Provider accepts such appointment. If, during the Term of this agreement, the territorial boundary of the Council changes, the Council shall use its best endeavours to ensure that Service Provider can continue to provide the Services over the same geographic area as is administered by the Council at the date of this agreement.

2.2 Term of Appointment: The appointment shall be for the Term which shall commence on the Commencement Date and continue until the Term expires unless it is terminated earlier under clause 20.

2.3 Restriction: The Council grants to the Service Provider the exclusive right to advertise during the Term on all street furniture displaying advertising panels and other similar structures displaying advertising panels, but only to the extent the street furniture or other similar structures are on footpaths and open spaces owned and under the direct control of the Council. The maximum size of advertising panels shall be 1.8 metres by 1.2 metres unless another size is agreed to by the Council. The Service Provider's advertising rights shall be subject to:

2.3.1 Council Advertising: the rights of the Council to advertise any:

- (a) of its business activities;
- (b) events that in the opinion of the Council are of local, national or international importance;
- (c) entertainment events; or
- (d) community activities;

where such advertisement is on, over or adjacent to any footpath or road owned by the Council whether or not the Council uses the same or a similar format of advertising as used by the Service Provider (which advertising will include, but will not necessarily be limited to, the advertising medium of banners, sandwich boards, vending machines and community poster structures notwithstanding that such advertising medium may be the same or similar in size to the advertising panel approved by the Council pursuant to clause 2.3 and which at the date of this agreement is 1.8 metres by 1.2 metres);

2.3.2 Business Advertising: the rights of businesses to advertise (adjacent to their place of business) the goods, services or

business activity of such business on, over on any footpath or road owned by the Council whether or not the business uses the same or a similar format of advertising as used by the Service Provider (which advertising will include, but will not necessarily be limited to, the advertising medium of banners, sandwich boards and vending machines notwithstanding that such advertising medium may be the same or similar in size to the advertising panel approved by the Council pursuant to clause 2.3 and which at the date of this agreement is 1.8 metres by 1.2 metres);

- 2.3.3 Further Agreement:** the rights of the Council to enter into agreements with third parties for the provision of automatic public toilets and street furniture that does not contain advertising, notwithstanding that such public toilets and Street Furniture may also be provided by the Service Provider under the terms of this agreement;
- 2.3.4 Advertising Panel Dimensions:** the rights of the Council and third parties to advertise on structures not being street furniture using any advertising medium (including the medium used by the Service Provider) where the size of such advertising is outside a range of plus or minus 20% of the maximum dimensions of the advertising panel (currently 1.8 metres by 1.2 metres) used by the Service Provider under this agreement; or
- 2.3.5 Contractual Obligations:** the current contractual rights of third party advertisers to advertise on similar structures, provided however the Council undertakes not to renew such contracts.

3. SERVICES

- 3.1 Service Performance:** The Service Provider shall perform the Services:
- 3.1.1 Times:** at the times and in the manner specified in the Specification;
- 3.1.2 Diligence:** in a conscientious, diligent and professional manner, which is higher than or equal to the degree of skill, care and diligence normally exercised by recognised professional persons that supply services of a similar nature;
- 3.1.3 Objectives:** in accordance with, and in order to achieve, the Objectives;
- 3.1.4 Fitness for Purpose:** so that all Street Furniture is fit for its designated or intended purpose or purposes; and

3.1.5 Satisfaction of Criteria: in a way that satisfies the Performance Criteria.

Failure by the Service Provider to comply with this clause 3.1 shall entitle the Council to give notice to the Service Provider under clause 20.1.

3.2 Standard of Performance: The Service Provider shall fully inform itself of the Council's requirements from time to time and for that purpose shall consult with the Council throughout the Term. Without limiting clause 3.1 and this clause 3.2, the Service Provider shall supply the Services in accordance with:

3.2.1 Representations: the specifications and the representations made by the Service Provider in the Correspondence;

3.2.2 Specification: the requirements of the Council set out in the Specification, as amended, if at all, by the Council in the Correspondence; and

3.2.3 New Zealand Standards: all applicable New Zealand standards, including those standards, if any, specified in Schedule 1.

3.3 Further Information: If the Service Provider considers reasonably that it requires any information, documents or other particulars to be made available to it by the Council to enable the Service Provider to provide the Services in accordance with this agreement, the Service Provider will advise the Council of its requirements and the Council shall provide such information, documents or other particulars as the Council deems necessary in all the circumstances and the Service Provider shall satisfy itself as to the accuracy and adequacy of such information, documents or other particulars.

3.4 Permits: The Service Provider is required to obtain and hold at the Service Provider's cost any and all Permits required for the Services and shall hold such Permits throughout the Term and provide the Council with a copy of the same on request.

3.5 Compliance: The Service Provider shall in the discharge of its duties and in the exercise of its powers under this agreement conform to, observe and comply with the following.

3.5.1 Directions: The directions from time to time made or given by the Contract Manager.

3.5.2 Obligations: All statutory and regulatory obligations.

3.5.3 Council Policies: All applicable policies, procedures and codes of conduct of the Council (hereinafter referred to as "Council Policy"). However, where the Council amends or introduces a

Council Policy that in the opinion of the Contract Manager, may upon its introduction, reduce the net profit (after tax) of the Service Provider, then the Council shall give the Service Provider fifteen (15) Business Days notice in writing, (the "Notice Period"), of the Council's intention to introduce a new Council Policy. If the Service Provider believes that such Council Policy will, or is likely to, cause the Service Provider actual loss then it must give the Council notice, in writing, of such loss prior to the expiry of the Notice Period. If the Service Provider fails to notify the Council prior to the expiry of the Notice Period then the Service Provider shall be deemed to have waived its right to compensation.

The parties shall then negotiate for a period of not greater than twenty (20) Business Days ("Negotiation Period"). If, during the Negotiation Period, the Service Provider can demonstrate, (including the provision of supporting details showing how that loss has been calculated), to the reasonable satisfaction of the Council, that the Service Provider will, or is likely to, suffer loss then the Council shall pay to the Service Provider such compensation as the parties may agree. If, upon the expiry of the Negotiation Period, the parties have not reached agreement on the amount of compensation, if any, then the provisions of clause 27 shall apply. The Council may at any time prior to the introduction of the Council Policy, by notice in writing, advise that it does not wish to introduce the new Council Policy.

- 3.5.4 Code of Practice:** The Advertising Code of Practice.
- 3.6 No Payment or Benefit:** The Service Provider shall not accept any payment or other benefit in money or in kind from any person as an inducement or reward for any matter or business transacted by or on behalf of the Council or in the provision of the Services, unless otherwise provided in this agreement; and
- 3.7 Appoint Representative:** The Service Provider shall ensure that a senior contract manager of the Service Provider is appointed for the purposes of this agreement as the Representative, who shall at the date of this agreement be the person nominated in Schedule 1.
- 3.8 Failure to Comply:** The Service Provider shall be liable for any costs or expenses incurred by the Council in the event the Service Provider fails to comply with the provisions of clause 3.4.
- 3.9 Not Employees:** The Service Provider shall not represent itself, and shall ensure that its employees and sub-contractors do not represent themselves, as being employees or agents of the Council except where specifically authorised in writing by the Council to act as agent.

3.10 Performance in Accordance with Principles: Subject to the rights of the parties to engage in the negotiation process referred to in clause 3.5.3 above, the Service Provider shall supply the Services in a manner which is consistent with, and in accordance with, the principles of the Council's annual plan and the Local Government Act 1974 (as amended from time to time) including the following principles:

3.10.1 Services and Facilities: to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;

3.10.2 Environment: to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which the Council is responsible;

3.10.3 Effect of Decisions: to have regard to the long term and cumulative effects of the Council's decisions; and

3.10.4 Public Assets: to bear in mind that the Council is the custodian and trustee of public assets and to effectively account for and manage the assets for which the Council is responsible.

3.11 Provide Materials: The Service Provider shall provide all plant, equipment, tools, supplies and materials necessary for use in connection with the provision of the Services.

3.12 Materials in Good Condition: The Service Provider shall ensure that all plant, equipment and tools are maintained in good working order, repair and condition at all times and are fit for the purpose of providing the Services.

4. STREET FURNITURE AND SERVICE AREAS

4.1 Provision of Services: The Service Provider shall, in the course of the provision of the Services or otherwise, do the following.

4.1.1 Operation and Maintenance: Operate and maintain the Street Furniture in accordance with the Specification and solely for the purposes for which they are designed and not damage or destroy them.

4.1.2 Removal and Installation: Remove street furniture existing at the time of this agreement and install Street Furniture at the Service Areas directed by the Contract Manager in accordance with the Implementation Plan and the Specification.

- 4.1.3 Maintenance:** Maintain (including repair and replace) and manage all Street Furniture in an as new and clean and tidy condition at all times in accordance with the Maintenance Program and the Specification in a way that satisfies the Performance Criteria, at no cost to the Council.
- 4.1.4 Report:** Provide any reports required by the Council from time to time.
- 4.1.5 No Interference:** Not create a nuisance or interfere with the comfort of patrons or members of the public.
- 4.1.6 Repair and Replace:** If an emergency situation should occur, undertake the repair or replacement of Street Furniture within the time periods detailed in clause 19 of the Specification and Part 6 and Part 7 of the Specification Forms, and where no time period is detailed, promptly repair or replace any part of the Street Furniture which is damaged during the Term to the condition that part of the Street Furniture was in immediately prior to the occurrence of the damage to the satisfaction of the Council, and to notify the Council immediately upon such damage occurring and such repair or replacement taking place. All repair and replacement will be undertaken by the Service Provider at no cost to the Council.
- 4.1.7 Remove Waste:** Ensure that waste (of any kind) caused, allowed or created by the Service Provider in a Service Area is immediately cleared and removed.
- 4.1.8 Specification:** Ensure that all Street Furniture is designed, manufactured and installed in accordance with the Specification.
- 4.2 Trespass and Damage:** The Service Provider shall ensure that:
- 4.2.1 No Damage:** no injury or damage is caused to persons or to property; and
- 4.2.2 No Trespass:** no trespass to property is committed, arising out of or in connection with this agreement,
- by the Service Provider or any employee, agent or sub-contractor of the Service Provider in the course of the provision of the Services.
- 4.3 Service Areas:** The Service Provider acknowledges that as at the date of this agreement, the Service Areas sites are those contained in the table attached to this agreement as Schedule 5. The Service Provider shall, at its discretion, allocate the initial quantity of Street Furniture among those sites. After the date of this agreement the sites shall be as agreed between the

parties and those sites so agreed shall, from time to time, be added to the table attached as Schedule 5. The parties agree that the provisions of clause 27 shall not apply if the parties cannot agree on sites. The Service Provider's rights of access to the Service Area shall be limited only to what is reasonably necessary for it to provide the Services in a prompt and efficient manner.

- 4.4 Access:** The Service Provider will be the owner of all Street Furniture, however in providing the Services, the Service Provider shall not have exclusive possession of the Service Areas and agrees to co-operate with all Licensed Operators in a matter which minimises the interruption to their operations.
- 4.5 On-line Screen Access:** The Service Provider will provide on-line screen access for the Council, at a location nominated by and at no cost to the Council, to the Maintenance Information System in accordance with the Specification including hard copy reporting capability for the duration of the Term. The Service Provider shall maintain the on-line service and shall be responsible for the cost of any associated hardware, software networks and equipment for such access and the hard copy reporting. The Service Provider shall, at its cost, provide all necessary training to the Council staff who are required to use the on-line service.
- 4.6 Continuation of On-line Access:** Upon the expiration or termination of this agreement for any reason, the Service Provider will for a period of at least one (1) year after the expiration or termination of this agreement and at no cost to the Council:
- 4.6.1** ensure that the Council's on-line access to the Maintenance Information System is continued;
 - 4.6.2** procure any licence or permit for the Council in this regard that may be required; and
 - 4.6.3** ensure that all systems and facilities to use the Maintenance Information System are provided to the Council.
- 4.7 Installation:** The Service Provider shall make available the Street Furniture and install Street Furniture in accordance with the Implementation Plan.
- 4.8 Quality and Description:** The quality and description of the Street Furniture shall be as specified in the Implementation Plan, the Specification and this agreement.
- 4.9 Compliance with Laws:** The Service Provider shall comply with all applicable laws, regulations and bylaws concerning the provision of the Services

- 4.10 Advertising:** The Service Provider must Advertise in accordance with the provisions in the Specification, particularly clauses 21, 22, 23 and 24 and the Advertising Code of Practice in each case at no cost to the Council.
- 4.11 Inspection and Testing:** The Service Provider shall not unreasonably refuse any request by the Contract Manager to inspect and test the Street Furniture during its manufacture, processing or storage on the premises of the Service Provider or any third party prior to dispatch and the Service Provider shall provide the Contract Manager with all facilities reasonably required for inspection and testing.
- 4.12 Failure of Testing:** If, as a result of inspection or testing, the Contract Manager is not satisfied that the Street Furniture will comply in all respects with this agreement (including the Specification), and the Contract Manager so notifies the Representative in writing within 14 days of inspection or testing, the Service Provider shall take such steps as are necessary to ensure compliance.
- 4.13 Care:** The Service Provider shall ensure that the Street Furniture is properly packed and secured to ensure that it is delivered and installed in the relevant Service Area in an undamaged condition.
- 4.14 Warranties:** The Service Provider warrants that the Street Furniture:
- 4.14.1 Consistent with Specification:** shall be of the quality and fit for any purpose set out in the Specification or otherwise made known to the Service Provider prior to delivery;
 - 4.14.2 No Defects:** shall be free from defects in design, material and workmanship;
 - 4.14.3 Correspond with Specification:** where appropriate, shall correspond with any relevant specification, prototype or sample (if any has been supplied); and
 - 4.14.4 Comply with Laws:** shall comply with all statutory requirements, regulations, bylaws and any applicable New Zealand standards.
- 4.15 Indemnity:** The Service Provider shall indemnify the Council in full against all liabilities, losses, damages, penalties, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of:
- 4.15.1 Breach of Warranty:** breach of any warranty given by Service Provider in relation to Street Furniture (including the warranties set out in clause 4.14);

4.15.2 Infringement of Intellectual Property Rights: any claim that the Street Furniture infringes, or their importation, use or resale, infringes the Intellectual Property rights of any other person;

4.15.3 Breach of Legislation: breach of any warranty implied under the Sale of Goods Act 1908 or other legislation, regulation or by-law in respect of the Street Furniture or under any other liability arising from a claim brought under such legislation; and

4.15.4 Other Acts or Omissions: any act or omission of the Service Provider or its employees, agents or sub-contractors that is negligent or breaches, in any way whatsoever, any of the following.

(a) The terms and conditions of this agreement or the Specification.

(b) The standards, procedures or processes of the:

(i) New Zealand Standards referred to in clause 3.2.3;

(ii) industry standard building or safety practices; or

(iii) international best practices for the provision of Services;

4.16 Election: The Council may elect to either self insure or maintain appropriate public liability insurance to cover any liability it may incur in connection with this agreement.

4.17 Where public liability insurance held: If the Council has elected to maintain public liability insurance in accordance with the provisions of clause 4.16 then the Service Provider shall pay:

4.17.1 one half of the amount of any increase in the insurance premium payable by the Council on its public liability insurance above the level at the date of this agreement increased as a result of liability it may incur in connection with this agreement; and

4.17.2 one half of the amount of any excess payments in respect of claims under the Council's public liability policy that the Council is required to pay as a result of liability it may incur in connection with this agreement.

- 4.18 Liability:** The Service Provider shall also pay one half of the amount of any liabilities, losses, damages, penalties, costs and expenses (including legal expense) awarded against or incurred or paid by the Council arising from this agreement where such liabilities, losses damages penalties, costs and expenses could not have been insured against.
- 4.19 Obligations additional:** For the avoidance of doubt the parties agree that the obligations of the Service Provider set out in clauses 4.15 to 4.18 (inclusive) are in addition to those set out in the rest of this agreement and do not override any such provisions.

5. MILESTONES

- 5.1 Notice of Achievement:** The Service Provider shall give written notice to the Contract Manager upon achievement of each Milestone set out in the Implementation Plan. Such notice shall attach a report evidencing the achievement of the Milestone.
- 5.2 Enquiry about Achievement:** Upon receipt of a notice under clause 5.1, the Contract Manager shall carry out such enquiries in respect of that Milestone as may be reasonably necessary to determine whether the Milestone has been achieved.
- 5.3 Notice:** Subject to clause 5.5, the Contract Manager shall issue to the Service Provider within five (5) Business Days of receiving notice under clause 5.1:
- 5.3.1 Satisfactory:** a certificate which indicates that the Council is satisfied that the Milestone has been achieved; or
- 5.3.2 Not Satisfactory:** a notice which indicates that the Council is not satisfied that the Milestone has been achieved, setting out the reasons for refusal.
- 5.4 Further Attempt:** If a notice is issued by the Contract Manager under clause 5.3.2, the Service Provider will take such steps as are required to achieve the Milestone. Upon completion of those steps, the Service Provider shall issue a notice to the Council and the procedure set out in clauses 5.1 to 5.4 shall recommence.
- 5.5 No Waiver:** The Service Provider acknowledges that the issue of a notice under clause 5.3 does not waive any rights or remedies the Council may have arising from any act or omission of the Service Provider prior to the date of the certificate.

6. IMPLEMENTATION PLAN AND MAINTENANCE PROGRAM

- 6.1 Approval of Plan:** The Service Provider will submit an Implementation Plan and Maintenance Program for the whole period of the Term (prepared in accordance with the Specification) to the Contract Manager for his approval, within at least one (1) month of the Commencement Date. The Contract Manager will review and agree on the contents of the Implementation Plan and Maintenance Program with the Service Provider within ten (10) days of receipt. If agreement is not reached between the Service Provider and the Contract Manager within that ten (10) day period, the provisions of clause 27 shall apply.
- 6.2 Delay and Compensation:** The Service Provider will not be entitled to compensation of any kind should the Council acting in its regulatory capacity, at any time, or for any reason, delay the Service Provider in performing the Services.
- 6.3 Variation and Approval:** The Service Provider shall notify the Contract Manager of any variations it wishes to make to the Implementation Plan and Maintenance Program from time to time during the Term. The variations to the Implementation Plan and Maintenance Program shall not be implemented before they are first approved by the Contract Manager in writing. Except for the minimum quantity of Street Furniture and the time table for installation of Street Furniture contained in the Implementation Plan, (which shall not be varied without the approval of the Contract Manager first being obtained), where agreement is not reached between the Service Provider and the Contract Manager within 10 Business Days then the provisions of clause 27 shall apply.
- 6.4 Annual Review:** The Maintenance Program will be reviewed annually, on the anniversary of the Commencement Date, by the Contract Manager and appropriate changes may be made to it by agreement with the Service Provider. If the changes are not agreed within ten (10) days of notification of the changes sought by the Contract Manager to the Service Provider, the provision of clause 27 shall apply.
- 6.5 Performance:** The Service Provider shall perform the Services in accordance with the Implementation Plan and the Maintenance Program approved by the Contract Manager and in a manner consistent with the Performance Criteria.

7. CONTRACT MANAGER

- 7.1 Duties of Contract Manager:** The Contract Manager shall, without limitation:

- 7.1.1 Review Performance:** review and monitor the performance of the Service Provider's obligations under this agreement and report thereon to the Council;
- 7.1.2 Identify Sites for Installation:** identify for the Service Provider the sites of the Service Areas where Street Furniture is to be installed and/or Services provided under this agreement in accordance with the Implementation Plan or otherwise;
- 7.1.3 Investigate Improvements:** investigate improvements to efficiency, quality, productivity and safety in relation to the Services; and
- 7.1.4 Perform Other Functions:** carry out such other functions as are set out in this agreement (including the Specification) or agreed to in writing between the parties.
- 7.2 Meetings:** The Contract Manager and the Representative shall meet weekly, or at such times reasonably required by the Contract Manager, at the Council's offices (unless the parties agree otherwise) at a time agreed between the parties.
- 7.3 Performance Assessment:** The Representative shall be suitably qualified and informed in relation to the matters in clauses 3 and 4 and shall provide sufficient information to the Council from time to time to enable the Contract Manager to properly assess the performance of the Service Provider under this agreement.
- 7.4 Substitution for Representative:** The Service Provider may replace its Representative from time to time by nominating a senior manager to take the place of the Representative by notice in writing to the Council. The Council may reject the nominated person if it sees fit.
- 7.5 Replacement of Representative:** The Council, may at its absolute discretion, give notice to the Service Provider requiring it to replace the Representative. The Service Provider shall promptly arrange for the replacement of the Representative with a senior manager acceptable to the Council.

8. OUTLAYS

- 8.1 Payment of Costs:** Except as otherwise provided in this agreement, the Service Provider will pay all costs, charges, expenses, fees, taxes and duties (of any kind) arising out of or in connection with the Services or this agreement, except for:
- 8.1.1 Rubbish Bins:** emptying all rubbish disposal bins;

- 8.1.2 **Recycling Bins:** emptying all recycling bins;
 - 8.1.3 **Street Cleaning:** street cleaning, where the waste or rubbish is not caused or created by the Service Provider; and
 - 8.1.4 **Charges:** the charges associated with the use of gas, phone, power and water supplied to the Service Areas occupied by Licensed Operators.
- 8.2 **Reimbursement of Costs:** Notwithstanding clause 8.1, the Service Provider shall reimburse the Council for any costs, expenses and charges referred to in clause 8.1, or a reasonable estimate thereof, as may be determined by the Council acting reasonably, where they have been incurred by the Council as a result of an act or omission or wilful default of the Service Provider.
- 8.3 **Recover Debt:** Should the Service Provider fail to make any payment as referred to in clauses 8.1 or 8.2, the Council may make the payment and recover that amount from the Service Provider as a debt due and owing.

9. GENERAL OBLIGATIONS OF SERVICE PROVIDER

- 9.1 **General Duties of Service Provider:** Notwithstanding anything in this agreement or the Specification, the Service Provider shall:
- 9.1.1 **Pay Money Due:** pay any monies due under clauses 3.4, 4.15 and 8.2;
 - 9.1.2 **Comply with Policies:** comply at its own cost and expense with all applicable policies of the Council, including policies in relation to fees and charges, all legislation, regulations and by-laws, subject to the Service Providers right to negotiate with the Council where a Council Policy is to be introduced pursuant to the provisions of clause 3.5.3;
 - 9.1.3 **Comply with Specification:** comply at all times with the Specification;
 - 9.1.4 **Make Payments in a Timely Manner:** make all payments as they fall due under clause 12 and in the amounts and at the times prescribed in accordance with the Schedule of Fees and Rates; and
 - 9.1.5 **Pay Liquidated Damages:** pay liquidated damages in lieu of termination in accordance with clause 20.1.6 or 20.2.3.

and the Service Provider shall indemnify the Council from and against all actions, costs, charges, claims and demands arising from or in connection

with a breach of any obligation under this clause 9.1. Any monies payable under this clause 9.1 shall become a debt due and owing by the Service Provider to the Council.

9.2 Inspection of Accounts: The Council (or its nominated representative) shall be entitled to, between the hours of 9.00 am and 5.00 pm on a Business Day and upon two (2) Business Days notice, inspect any books of account or other records of the Service Provider to verify compliance with this agreement. The Service Provider grants the Council (or its nominated representative) access to any premises occupied by the Service Provider for such purpose.

9.3 Conduct and Appearance: The Service Provider shall ensure that:

9.3.1 Courteous and Safe: it renders the Services at all times in a polite and helpful manner and shall provide the Services in a safe manner;

9.3.2 Appearance: all persons engaged by it in the provision of the Services shall be of neat and clean appearance and shall comply with any specific dress and other requirements set out in the Specification; and

9.3.3 Uniform: all persons engaged by it in the provision of the Services shall wear such uniforms and identifying materials (eg name tags/badges) as may reasonably be requested by the Council from time to time.

9.4 No Reimbursement: The Service Provider shall not be entitled to reimbursement of expenses incurred by it in relation to the Services, save as set out in this agreement or save as arise from the Council's negligence.

9.5 No Agreement Without Consent: The Service Provider must not enter into any agreements or arrangements that will be contrary to the interests of the Council arising from or connected with this agreement or the Services, without obtaining the prior written consent of the Council. Such consent may be given or refused by the Council in its absolute and unfettered discretion.

9.6 Advertising: The Service Provider shall use its best endeavours to maximise advertising revenue, notwithstanding the advertising restrictions in clause 23 of the Specification.

10. PERFORMANCE CRITERIA

10.1 Performance Criteria: The Performance Criteria compiled by the Service Provider (and the Performance Period within which each Performance Criterion must be met):

10.1.1 Negotiation and Determination: may, at the request of the Council, be further negotiated between the Service Provider and Contract Manager within two (2) months of the Commencement Date if, in the opinion of the Contract Manager, there is any inconsistency between the Performance Criteria and the Specifications, Implementation Plan and Maintenance Programme. If the Performance Criteria and Performance Periods cannot be agreed within two (2) months of the Commencement Date, then the provisions of clause 27 shall apply in order to determine the Performance Criteria and Performance Periods;

10.1.2 Review During First Six Months: may be reviewed by the Contract Manager at any time during the first six (6) months following the Commencement Date and changes may be agreed with the Service Provider. Should changes to the Performance Criteria or Performance Periods not be agreed within ten (10) days of the written notice of the Contract Manager requesting change, then the provisions of clause 27 shall apply in order to determine the changes that will be made to the Performance Criteria or Performance Periods;

10.1.3 Further Reviews: after the first six (6) months following the Commencement Date, the Performance Criteria or Performance Date will be reviewed by the Contract Manager, no more frequently than once every six (6) months and no less frequently than once every 12 months. Should the Contract Manager consider that changes should be made to the Performance Criteria or Performance Periods following review, the Contract Manager will notify those changes to the Service Provider in writing. If changes to the Performance Criteria or Performance Periods are not agreed with the Service Provider within ten (10) days of receipt of the notice from the Contract Manager, the Performance Criteria or Performance Periods will be determined in accordance with the provisions of clause 27.

10.2 Failure of Performance Criteria: Subject to clause 10.3, if, during any Performance Period, the Service Provider fails to achieve the Performance Criteria (the "Default"), the Council may, by notice in writing, (the "Default Notice"), require the Service Provider to remedy such Default. The Default Notice shall be for the same period of time as required by the Performance Criteria. Each Default Notice must state the notice number it represents in each of the series as described in clause 10.4. Where the Service Provider fails to remedy the Default within the time period prescribed in the Default Notice then the Council may:

10.2.1 Grant of Time: grant the Service Provider additional time to achieve the Performance Criteria;

- 10.2.2 Contract with a Third Party:** buy in services by contracting with a third party to carry out the work and the amount paid to any third party will be a debt due and owing by the Service Provider to the Council;
- 10.2.3 Complete the Work:** have its own personnel carry out the whole or any part of the work and all costs incurred by the Council (including an allowance for overheads) will be determined by the Council and will be a debt due and owing by the Service Provider; or
- 10.2.4 Recover Loss:** recover any loss or damage the Council determines it has incurred as a result of the Service Provider failing to achieve the Performance Criteria which will then be a debt due and owing by the Service Provider.
- 10.3 Public Safety Event:** Where an event occurs that in the opinion of the Council constitutes a Public Safety event then the Council may either direct its own personnel to make safe the Public Safety event at its cost, or wait for the expiry of the time period prescribed in the Performance Criteria and make safe the Public Safety event at the cost of the Service Provider where the Service Provider has so failed to make it safe.
- 10.4 Repeated Performance Criteria Defaults: If:**
- 10.4.1** the Council issues twelve (12) or more Default Notices under clause 10.2 on the Service Provider in any one month;
- 10.4.2** the Council issues four (4) or more Default Notices per month under clause 10.2 on the Service Provider for three (3) consecutive months;
- 10.4.3** the Council issues four (4) or more Default Notices per month under clause 10.2 on the Service Provider for any six (6) months;
- 10.4.4** the Council issues four (4) Default Notices of the failure to achieve Milestones in any period of three (3) consecutive months; or
- 10.4.5** the Service Provider fails to respond to and make safe any Public Safety event within the time period detailed in the Specification on four (4) occasions in any twelve (12) month period;

then the Council may do any one or more of the following.

- 10.4.6 **Contract with a Third Party:** Buy in services by contracting with a third party in accordance with the provisions of clause 10.2.2;
- 10.4.7 **Complete the Work:** Complete work in accordance with the provisions of clause 10.2.3;
- 10.4.8 **Liquidated Damages:** Seek liquidated damages pursuant to the Councils rights under clause 20.1.6; or
- 10.4.9 **Terminate:** Elect to terminate this agreement pursuant to clause 20.1.5. However the Council may not terminate unless it has first notified the Service Provider's Shareholders, upon the giving of the penultimate Default Notice or the occurrence of the penultimate occasion (as the case may be), of its right to terminate upon the issue of the next Default Notice or the occurrence of the next occasion.

11. FEES PAYABLE TO THE SERVICE PROVIDER

- 11.1 **Quarterly Invoices:** Within twenty eight (28) days of the expiry of each three month period during the Term, the Service Provider shall provide to the Contract Manager an invoice for the total fees due in respect of the Services provided during the previous three months calculated in accordance with the Schedule of Fees and Rates. The invoice shall set out all calculations of the fees due, including variations in respect of:
 - 11.1.1 any adjustments for additional services requested by the Council, calculated pursuant to the agreement; and
 - 11.1.2 any adjustment for services not performed and calculated in accordance with the agreement.
- 11.2 **Adjustment of Previous Fees & Rates:** All fees and rates payable in the last month prior to the first and every subsequent anniversary of the Commencement Date shall be adjusted in respect of any variation in CPI calculated as follows:

$$A = \frac{B \times C}{D}$$

where:

- A. is the fees and rates payable during the following year;
- B. is the fees and rates payable during the current year;

- C. is the CPI last published in the quarter prior to the anniversary of the Commencement Date; and
- D. is the CPI for the corresponding year in the quarter immediately preceding the year referred to in C.

11.3 Payment of Invoices: If the Council approves the invoice, the Council will pay the total amount of the invoice within thirty (30) days of receipt of the invoice.

11.4 Disputes over Amounts in Invoices: The Council shall, within fourteen (14) days of receipt of the invoice from the Service Provider, notify the Service Provider if the Council disputes any amounts noted in the invoice and will meet with the Service Provider to resolve any amounts in dispute. If all items in dispute are resolved within thirty (30) days of receipt of the invoice, then the Council will pay the full amount of the invoice, subject to any reduction as agreed. If the dispute cannot be resolved within the thirty (30) day period, then the Council will pay the invoice less any amounts in dispute and such amounts in dispute shall be subject to the dispute resolution procedure outlined in clause 27.

12. FEES PAYABLE TO COUNCIL

12.1 Licence Fee: The Service Provider shall pay to the Council the Licence Fee.

12.2 Calculation of Licence Fee: The Licence Fee payable by the Service Provider during the Term shall be calculated as the sum of:

12.2.1 any one-off lump sum or annual payment (if any) payable to the Council; and

12.2.2 advertising revenue payable to the Council by the Service Provider in any year in accordance with Part 2, PART A Table A and Part 2 PART B Table D of the Specification Forms being the percentage of gross revenue referred to in Table D up to the gross revenue forecast of the Service Provider in Table A, together with the percentage of gross revenue referred to in Table D above the gross revenue forecast of the Service Provider in Table A.

12.3 Payment of Licence Fee: The Service Provider must pay:

12.3.1 Free of Deductions: the Licence Fee to the Council free of any deductions;

12.3.2 Quarterly in Arrears: the Licence Fee throughout the Term, by three monthly instalments ("Instalment Period"). Such payments shall be paid in arrears and four such payments shall together

equal the Licence Fee that the Council was entitled to receive in the year immediately prior to the year in which the payments are being made. Each payment is to be made not later than the twenty-eighth day of the month following each Instalment Period. Within two (2) months of the conclusion of each anniversary of the Commencement Date during the Term a reconciliation of the Licence Fee paid for that year and the Licence Fee that the Council was entitled to receive for that year will be conducted by the Service Provider;

12.3.3 Due Date Not Business Day: where a due date for payment is not a Business Day, an instalment due on such date on the next Business Day succeeding the twenty-eighth day of that month; and

12.3.4 Manner of Payment: the Licence Fee in such manner as may be notified in writing from time to time by the Council.

12.4 Pre-Payment of Licence Fee: If, at the commencement of the Term, the Council requires it, the Service Provider shall pay the Licence Fee in advance for a period of up to six years ("Prepaid Period") in which case the Licence Fee shall be calculated based on a forecast of gross revenues and shall be discounted at a rate of 6.5% per annum. Within two (2) months of the conclusion of the Prepaid Period a reconciliation of the Licence Fee paid for the Prepaid Period that the Council was entitled to receive for that Prepaid Period will be conducted by the Service Provider. After consultation with the Contract Manager, the Service Provider and Contract Manager will agree on an adjusting payment (if any) to be made between the parties so that the Licence Fee paid for the Prepaid Period by the Service Provider equals the Licence Fee that the Council was entitled to receive for such period taking into account the 6.5% per annum discount rate. If agreement cannot be reached the payment will be resolved in accordance with clause 12.5.

12.5 Dispute Over Amount: If either party disputes, in good faith, the whole or any portion of the amount claimed by the Council, the Service Provider shall pay that portion of the amount stated which is not in dispute and shall notify the Council in writing of the reasons for disputing the amount claimed. If the parties are unable to reach agreement within five (5) Business Days of the Service Provider's notice, the dispute shall be determined in accordance with clause 27 of this agreement.

12.6 Agency Commission: If advertising agency commission, which as at the date of this agreement is 20% of gross revenue, either increases or decreases during the Term, the parties agree to adjust the Licence Fee accordingly to ensure that the benefit or burden (after tax) , as the case may be, of such an increase or decrease, is distributed equally between the parties.

13. INTEREST

- 13.1 Interest on Unpaid Money:** Without prejudice to the rights, powers and remedies of the Council under this agreement, the Service Provider must pay to the Council interest calculated on a day to day basis on any monies due but unpaid by the Service Provider to the Council on any amount whatsoever pursuant to this agreement.
- 13.2 Rate of Interest:** Interest is to be at a rate equivalent to two per cent (2%) more than the Westpac Indicator Lending Rate as at the date the monies so due become due and payable to the Council and must be computed from the due date for the payment of the monies in respect of which the interest is chargeable up to and including the day of payment of such monies in full.
- 13.3 Interest Recoverable:** Interest is recoverable (without prejudice to the Council's other remedies in respect of non-payment) in the same manner as the unpaid monies as if such interest is in arrears and it is to be treated for the purposes of this agreement as non-payment of the monies.
- 13.4 Alternative Rate of Interest:** For the purposes of this clause 13, if the Westpac Indicator Lending Rate is discontinued or it ceases to be quoted then the rate of interest must be calculated as provided in this clause 13 based upon such other indicator of bank interest rates which in the opinion of the manager, for the time being, of Westpac Banking Corporation in Auckland (or its successors) has been substituted therefor, or in the absence of such substitute, the maximum overdraft rate per annum being applied by the Bank of New Zealand (or its successor) at its principal office in Wellington.
- 13.5 Certificate for Rate of Interest:** A certificate as to the rate referred to in this clause 13 given to the Council and signed by the manager of the relevant bank shall be final and binding on the parties to this agreement.

14. INTELLECTUAL PROPERTY

- 14.1 Intellectual Property of Council:** The Service Provider acknowledges that the Council is the sole and exclusive proprietor of all Intellectual Property provided to the Service Provider by or on behalf of the Council in the course of this agreement and that such Intellectual Property will only be used by the Service Provider for the purposes of providing Services under this agreement. The Council agrees to grant a licence to the Service Provider for the Intellectual Property that the Service Provider is required to use in order to undertake and complete the Services. This licence will terminate upon the expiry of the Term or termination of this agreement, whichever is the earlier.
- 14.2 Intellectual Property of Service Provider:** Subject to clause 14.3, the Council acknowledges that the Service Provider is the sole and exclusive

proprietor of all the Service Provider's pre-existing Intellectual Property that the Service Provider uses to provide the Services. Furthermore, the Service Provider agrees that it will, (at no cost to the Council), grant to or procure for the Council a licence to use any Intellectual Property (including a manufacturing licence) not owned by the Council so that the Council can, if required, manufacture an additional 25% above the quantity of Street Furniture provided, or that ought to be provided by the Service Provider, in the event of termination of this agreement due to the Service Provider's default.

- 14.3 Ownership of Intellectual Property Rights:** The Service Provider agrees that the Council will be the sole and exclusive owner of all rights and interests in any Intellectual Property developed by the Service Provider, its employees, agents and sub-contractors under this agreement.
- 14.4 Protection and Vestment of Ownership:** The Service Provider agrees to do all things reasonably required by the Council, at no cost to the Council, in order to protect and vest ownership of relevant Intellectual Property in the Council.
- 14.5 No Dispute:** The Service Provider agrees that it shall not dispute or oppose, or assist any party to dispute or oppose, the proprietorship of the Council in the Intellectual Property owned by the Council under this clause 14 or defend or resist, or assist any person to defend or resist, any action commenced by the Council or to which the Council may be a party, concerning infringement of the Intellectual Property.
- 14.6 Protection:** The Service Provider shall do all things necessary and required by the Council for the proper application or protection of the Intellectual Property developed by the Service Provider under this agreement including, but not limited to, execution of all documents or assignments and provision of all necessary information, records or materials to the Council or any other party, provided that the Council shall bear the reasonable costs of such action as may be reasonably incurred by the Service Provider. The Service Provider shall provide, as soon as practicable, written notice to the Council of any claim or action by any third party against either the Service Provider or the Council in respect of the parties' intellectual property rights that are the subject of this agreement.
- 14.7 No Right or Licence:** Except as otherwise expressly provided in this agreement, nothing contained in this agreement shall be deemed, by implication, estoppel or otherwise, to grant to the Service Provider any right or licence in respect of any of the Intellectual Property at any time.
- 14.8 No Infringement:** Where the Service Provider (including its employees, agents and sub-contractors) creates or develops any Intellectual Property or provides Intellectual Property for use by the Council, then the Service Provider warrants that the Intellectual Property, or use of it, will not

infringe upon any patent, trade mark, trade secret, copyright, design or other proprietary right of any third party. The Service Provider will indemnify and hold the Council harmless from and against any and all loss, cost, damage and expense that the Council may suffer or incur as a result of any such infringement.

14.9 Database Property of Council: Any Data or database created or developed by the Service Provider in the course of providing the Services to the Council shall be, and shall remain, the sole and exclusive property of the Council at all times during the Term of, and after the expiry of the Term, or the termination of, this agreement. At any time during the Term and upon request from the Council, the Service Provider shall, (at no cost to the Council), provide a copy of the relevant Data or database on disk in a format compatible with the Council's computer system or any other format requested by the Council, acting reasonably. Upon expiry of the Term, or termination of this agreement, the Service Provider will provide to the Council a copy of all Data and the entire database on the media and in the format reasonably required by the Council and shall delete the Data and the database from its own computer system. The Service Provider acknowledges that the Data and the database constitutes Information for the purposes of clause 22.

15. EMPLOYEES AND SUBCONTRACTORS

15.1 Qualified Personnel: The Service Provider shall engage, employ and maintain qualified, skilled and efficient staff to perform its obligations under this agreement.

15.2 Specified Personnel: The Council, acting reasonably, may nominate personnel of the Service Provider to be Specified Personnel for the purposes of this agreement. The Service Provider shall employ such Specified Personnel to carry out the Services.

15.3 Replacement Specified Personnel: Where Specified Personnel are unable to carry out the Services or cease to be employed or engaged by the Service Provider then the Service Provider shall notify in writing the circumstances to the Council as soon as the Service Provider becomes aware of the same and shall provide replacement personnel of equivalent skill and experience that are acceptable to the Council (which shall act reasonably in granting its approval) at no additional charge as and when necessary to provide Services in accordance with this agreement. A failure by the Service Provider to provide replacement personnel acceptable to the Council shall be deemed to be a breach on the part of the Service Provider for the purposes of clause 20.2.

15.4 Satisfactory Conduct: All persons employed or engaged by the Service Provider for the purposes of this agreement shall exhibit high standards of work performance and conduct. If, in the opinion of the Council, any

person is not performing his or her work satisfactorily or a person's conduct is not satisfactory, the Council may request the Service Provider to remove such person in accordance with clause 15.5.

15.5 Removal of Personnel: The Council may, at its absolute discretion, give notice to the Service Provider requiring it to remove personnel from work in respect of the Services. The Service Provider shall promptly arrange for the removal of such personnel from the work, and their subsequent replacement with personnel acceptable to the Council. The need for the Service Provider to substitute personnel shall not relieve the Service Provider of any of its obligations under this agreement.

15.6 No Approaches to Council Personnel: Save where required in the Specification or where otherwise required by the Council under this agreement, the Service Provider shall not solicit or approach and offer employment to or employ any employees of the Council who are connected in any way with this agreement or the provision of the Services during the Term and for a period of twelve (12) months after the expiry of the Term, or from the date of termination of the agreement.

15.7 Qualifications and Training: Without limiting the generality of the foregoing, the Service Provider shall:

15.7.1 Qualifications and Training: ensure all employees, agents and sub-contractors of the Service Provider involving in providing the Services are fully qualified or trained for the work and satisfactorily complete any training required by the Council from time to time;

15.7.2 Compliance: ensure all employees, agents and sub-contractors of the Service Provider comply with any lawful direction of the Contract Manager in the event such direction is given for the safety of the public (such as in the case of fire);

15.7.3 Responsibility: be fully responsible for the acts and omissions, whether negligent or otherwise, of its employees, agents and sub-contractors and shall ensure that all of them fully comply with the terms of this agreement;

15.7.4 Evaluations: evaluate the performance of all personnel engaged in connection with the provision of the Services from time to time as requested by the Council and at least annually and provide a copy of all such evaluations to the Council within ten (10) Business Days of their completion by the Service Provider; and

15.7.5 Safety: establish (to the extent not established at the date of this agreement) and maintain an effective occupational health and safety system to ensure a safe system of work.

- 15.8 Employment of Sub-Contractors:** The Service Provider shall advise the Council of the changes to, or the details of, any sub-contractors which it wishes to engage to provide Services. No sub-contractor shall be engaged by the Service Provider to provide Services without the prior consent of the Council. The Service Provider shall be fully responsible for the performance of the Services notwithstanding the consent of the Council or that the Service Provider has sub-contracted the performance of any part of the Services. The approved details of the sub-contractor shall be recorded in the schedule attached as Part 10 of the Specification Forms.
- 15.9 Consent:** The Council shall be deemed to have consented to the engagement by the Service Provider of the sub-contractors referred to in Schedule 1 and attached as Part 10 of the Specification Forms, to provide Services.
- 15.10 Suitability:** The Service Provider shall be responsible for ensuring the suitability of any proposed sub-contractor for any specific work envisaged and that all work performed by sub-contractors meets the requirements of this agreement.
- 15.11 Assignment:** The Service Provider shall not assign or sub-contract any of its rights or obligations under this agreement without the prior written consent of the Council, which consent shall not be unreasonably withheld.
- 15.12 Change of Control:** For the purposes of clause 15.11 a change in the control of the Service Provider will be deemed to be an assignment. The Service Provider being "controlled" by another person means that the other person owns beneficially more than 50% of the equity share capital or voting rights of the Service Provider or has the power to appoint and/or remove a majority of the directors of the Service Provider, and "control" and "change in control" will be construed accordingly. A change of control will not include either an internal re-organisation of shareholdings so long as the holding company remains the same or any transfer of shares between the Shareholders of the Service Provider as at the date of this agreement.

16. HEALTH AND SAFETY IN EMPLOYMENT ACT

16.1 Compliance: The Service Provider shall take all practicable steps to ensure that in respect of the provision of Services no act or omission by it or its employees, agents, sub-contractors, invitees, visitors or licensees:

16.1.1 Hazard: causes a hazard, significant harm or serious harm to any employee of the Council or any other persons; or

16.1.2 Act: is in breach of any duty or obligation of the Service Provider under the Health and Safety in Employment Act 1992 ("HSE Act"); or

16.1.3 Notice: does or is likely to give rise to the issue of any improvement or prohibition notice, enforcement proceedings or a prosecution under the HSE Act against the Service Provider.

16.2 Indemnity: The Service Provider shall indemnify and keep indemnified the Council, its employees, consultants and contractors from all costs, damages, fines, penalties, loss and expense incurred or suffered by the Council in respect of any breach of the HSE Act, or any conviction of or proceedings instigated against the Council, as the case may be, pursuant to the HSE Act directly or indirectly related to a breach by the Service Provider of any of the provisions set out in clause 16.1.

16.3 Notification of Breach: If the Service Provider becomes aware that it is or may be in breach, or is likely to be in breach of any of the provisions in clause 16.1, the Service Provider shall immediately notify the Council of such a breach or anticipated breach.

17. ACCOUNTS, FINANCIAL AND OTHER REPORTS

17.1 Maintenance of Financial Records: The Service Provider shall:

17.1.1 Accurate Records: keep and maintain complete and accurate records of all income and expenditure of the Service Provider arising from the management, conduct and performance of the Services and such other records required by the Council during the term of this agreement and for seven (7) years afterwards;

17.1.2 Separate: keep and maintain the records in clause 17.1.1 separately from any other accounts and records maintained by the Service Provider; and

17.1.3 Accordance with Principles: keep and maintain the records and accounts referred to in clause 17.1.1 in accordance with generally accepted New Zealand accounting principles from time to time in force.

17.2 Financial Reports: The Service Provider shall provide to the Council the Financial Reports on the dates and in the format set out in this clause.

17.3 Balance Sheet and Profit and Loss Statement: Without limiting clause 17.2, the Service Provider shall provide to the Council, at the cost of the Service Provider, for each of its financial years which fall in whole or in part within the Term, an audited balance sheet and profit and loss statement for that financial year relating to the provision of Services under this agreement, such reports to be provided within four (4) months of the end of the relevant financial year.

- 17.4 Operational Reports:** The Service Provider shall provide to the Contract Manager the Operational Reports on the dates and in the format set out in clause 20 of the Specification and if no such dates are specified, the Operational Reports are to be provided monthly in arrears on or before the fifth Business Day of each month.
- 17.5 Audit and Inspection:** The accounts and records referred to in clause 17.1 will be open to audit and inspection by the Council or any person authorised by the Contract Manager between the hours of 9.00 am and 5.00 pm on Business Days, and upon two (2) Business Days notice, and will be kept and maintained in a format which will allow convenient auditing and inspection of such accounts. Upon the Council's request from time to time, the Service Provider shall grant the Council, (or its nominated representative), access to any premises occupied by the Service Provider for such purpose. The Service Provider will not destroy any of the accounts and records for a period of seven (7) years from the date of termination of the agreement unless having first obtained prior written consent from the Council. The Service Provider shall keep all records in a safe location.
- 17.6 Defects in Accounts:** If the Council forms the reasonable opinion that:
- 17.6.1 Non-disclosure:** any matter which should be disclosed in such accounts is not in fact so disclosed;
 - 17.6.2 Irregularity:** there is any material defect or irregularity in the accounts referred to in clause 17.1; or
 - 17.6.3 Inaccuracy:** such accounts do not contain a true and fair report of the matters with which they purport to deal:
- the Council may serve a notice under clause 20.2 on the Service Provider.
- 17.7 Separate Records and Accounts:** The Service Provider shall keep separate records and accurate accounts of all Services provided and fees due under this agreement and shall:
- 17.7.1 Provide Copy:** provide a copy of those records and accounts to the Council upon request; and
 - 17.7.2 Permit Inspection:** permit the Council (or its representatives) to inspect those records and accounts and take copies, if requested.
- 17.8 Report by External Auditor:** The Service Provider shall, if requested by the Council, at its expense provide to the Council, for its review, a report from its external auditor as to the accuracy of the information contained in the records referred to in clause 17.7.

17.9 Underpayment or Overpayment: If, following the inspection or review referred to in clauses 17.7 or 17.8, or otherwise, a payment is found to have been incorrectly made, any underpayment or overpayment shall be recoverable from or by the Service Provider, as the case may be and without limiting recourse to other available means, as a debt due and owing.

17.10 Information: All records, accounts and reports referred to in this clause 17 and any other documents created or used in the course of providing the Services shall be deemed to be Information for the purposes of clause 22.

18. WARRANTIES

18.1 Warranties of Service Provider: The Service Provider warrants that at the date of this agreement and at all times during the Term:

18.1.1 Authority to Enter agreement: it has the right and authority to enter into this agreement and to do all things which it is required to do by this agreement;

18.1.2 Binding and Enforceable agreement: all action has been taken by the Service Provider to render the agreement binding upon it and legally enforceable against it in accordance with its terms;

18.1.3 Execution and Performance: the execution of this agreement and its performance in accordance with its terms by the Service Provider:

(a) complies with all necessary consents, registrations, approvals, licences or permits required by statute, regulation, governmental policy or administrative requirement or by any agreement, order or arrangement binding upon the Service Provider; and

(b) does not violate any law, regulation, government order or decree or any consent, registration, approval, licence or permit referred to in subparagraph (a) above or any agreement or arrangement binding upon the Service Provider;

18.1.4 Ability to Perform: the Service Provider is not aware of any matter which may materially affect the Service Provider's ability to perform its obligations under this agreement;

18.1.5 Accurate Information: all information provided by the Service Provider and set out in the Specification Forms or the Correspondence is complete, true and accurate and not misleading in any respect; and

18.1.6 No Encumbrances: all Street Furniture will be owned by the Service Provider and is not subject to any Encumbrance;

18.1.7 No Material Information Omitted: to the best of the Service Provider's knowledge and belief there is no material information that it has failed to disclose in discussions with the Council that if disclosed would be likely to lead the Council to reassess the ability of the Service Provider to provide the Service,

and a breach of any of the warranties in this clause 18.1 shall entitle the Council to give notice to the Service Provider under clause 20.2.

18.2 Indemnity: The Service Provider shall indemnify, and shall at all times keep indemnified, the Council, its Contract Manager and employees from and against any breach by the Service Provider of any of the warranties contained in clause 18.1 including all damages, expenses (including legal costs on a solicitor/client basis) and other liabilities arising in relation thereto.

18.3 No Warranty by Council: The Service Provider acknowledges that all information provided by the Council was provided for the assistance of the Service Provider and that no representation or warranty has been made by or on behalf of the Council concerning that information. Further, the Service Provider acknowledges that in entering into this agreement, it has relied entirely on its own knowledge and enquiries and has not relied on any warranties or representations made to it by the Council and that the Council shall not be responsible for the omission of any relevant information.

19. INDEMNITY AND LIABILITY

19.1 Indemnity Against Claim or Proceeding: The Service Provider shall indemnify, and shall at all times keep indemnified, the Council, the Contract Manager, and the Council's employees, agents and other service providers (and their employees and agents) from and against any loss, damage, expense (including legal costs on a solicitor/client basis) and other liability which they may incur or sustain arising from any claim, demand, action, suit or proceeding that may be made or brought by any person against the Council, its Contract Managers, employees and other service providers for, or as a consequence of, any negligence or any act or omission by the Service Provider, its employees, agents or sub-contractors where such act or omission breaches, in any way whatsoever, the terms and conditions of this agreement, the Specification or the standards, procedures or processes of the New Zealand Standards referred to in clause 3.2.3, the industry standard building or safety practices or international best practices for the provision of Services and including all loss, damage or injury to persons or property caused or contributed to by the Service Provider, its employees, agents or sub-contractors and including any personal injury to or the death of any person.

19.2 Risk: The use by the Service Provider of the Service Areas shall be at the sole risk of the Service Provider and it hereby releases to the full extent permitted by law the Council, the Contract Manager, the Council's employees, agents and other service providers (and their employees and agents), in the absence of any negligent act or omission or wilful default on the Council's part, from all claims and demands of every kind (including prosecution or claims brought by any authority of any nature) resulting from any accident, damage, death or injury. The Service Provider agrees that in the absence of any such negligent act or omission or wilful default the Council will have no responsibility or liability for any loss of or damage to Street Furniture, furniture, fixtures, equipment and property of the Service Provider.

19.3 Negligence or Default by Council: The Service Provider's liability to indemnify the Council shall be reduced proportionally to the extent that any negligent act or omission or wilful default by the Council or its employees or agents may have contributed to any loss, damage, death or injury referred to in clauses 19.1 and 19.2.

19.4 Insurance Policies: The Service Provider shall maintain insurance policies as follows:

19.4.1 a public liability policy with coverage of not less than \$10,000,000 (or such other amount as the Council may require from time to time in accordance with the advice of the Council's appropriate consultant following a regular review) for each occurrence;

19.4.2 a professional indemnity insurance policy with coverage in the sum of \$10,000,000 (or such other amount as the Council may require from time to time in accordance with the advice of the Council's appropriate consultant following a regular review); and

19.4.3 such other insurances that the Council may reasonably require the Service Provider to take out from time to time.

19.5 Provisions of Policies: Each insurance policy referred to in clauses 19.4.1 and 19.4.2 shall be in the joint names of the Council and the Service Provider. All insurance policies in clause 19.4 shall contain a provision or endorsement that no cancellation or material change in coverage shall be made without giving the Council sixty (60) days prior written notice thereof. Each such insurance policy shall have a notation showing the rights and interests of the Council. The Service Provider shall provide certificates of currency in respect of the insurances in clause 19.4 and upon request by the Council the Service Provider will provide complete copies of such policies to the Council. Such insurance policy procured in accordance with clause 19.4 shall provide that the insurer waives, where applicable, any

and all rights of subrogation against the Council, its Contract Manager, employees, agents and other service providers and any excess or deductible payable under such policy shall be paid by the Service Provider.

19.6 Respectable Insurer and Date of Commencement: Insurance required under this agreement shall be taken out with reputable insurers approved by the Council so that all of such insurances commence at a date no later than 4.00pm on the day prior to the Commencement Date.

19.7 Additional Premiums: The Service Provider shall reimburse the Council for any additional premium payable under policies of insurance of the Council arising directly or indirectly from acts, omission or negligence of the Service Provider, its agents, employees and other service providers (and their employees and agents).

20. TERMINATION AND LIABILITY FOR INSOLVENCY AND DEFAULT

20.1 Termination: In addition to the Council's rights to seek damages or terminate this agreement pursuant to the provisions of clause 10.4.8 and clause 10.4.9 respectively, in the event of the Service Provider:

20.1.1 Insolvent: becoming insolvent;

20.1.2 Arrangement with Creditors: making an assignment of its estate for the benefit of its creditors or any arrangement, compromise or composition with its creditors;

20.1.3 Liquidation or Winding Up: being a company and;

(a) an application is made to a Court for an order and an order is duly made appointing a liquidator, provisional liquidator, interim liquidator, receiver, manager, receiver and manager, administrator, administrator receiver, trustee in administration, statutory manager or similar officer in respect of the company or one of them is appointed;

(b) the members of the company pass a special resolution or the board of the company resolves to appoint a liquidator or formal notice of a proposed resolution to do so is given or any other steps are taken evidencing an intention to do so;

(c) the company stops or threatens to stop payment of creditors generally or is deemed to be unable to pay its debts as they fall due, has a compromise proposed in respect of it, commences negotiations with any one or more of its creditors with a view to the general re-

adjustment or re-scheduling of its indebtedness, makes a general assignment for the benefit of or composition with its creditors or proposes a re-organisation, moratorium or other administration involving them;

- (d) the company ceases or threatens to cease to conduct all or a substantial part of its business or disposes of or threatens or agrees to dispose of (either by a single transaction or series of transactions whether related or not and whether voluntary or involuntary) all or a substantial part of its assets;
- (e) if a statutory demand is served on the company for an amount exceeding 1% of its gross assets as shown in the accounts of the company for the most recently completed financial year of the company and expires unremedied unless such statutory demand relates to an amount which is the subject of a bona fide dispute by the company; or
- (f) a creditor of the company, which creditor's rights are intended to be subordinate to the obligations of the company under this agreement, attempts to exercise any rights in respect of, or to gain any specific rights to that company's interests, in the company's assets;

other than where, in the case of any of the events referred to in subclauses (a) to (f) above, such event takes place for the purposes of and is followed by a reconstruction, amalgamation or reorganisation (not involving or arising out of insolvency) approved in writing by the Council; or

20.1.4 Judgment Against: having a judgment entered against it which remains unsatisfied or unappealed for a period of ten (10) Business Days;

then the Council shall be entitled by notice in writing to either:

20.1.5 Immediate Termination: immediately terminate this agreement in which case the provisions of clause 21 shall apply; or

20.1.6 Damages: require the Service Provider to pay to the Council damages against all actions, costs, charges, claims and demands by way of liquidated damages in accordance with the table attached as Schedule Four to this agreement and where Schedule Four is silent as to the amount the Service Provider is required to pay then as shall be determined by the Council, in its absolute and unfettered discretion, and shall become a debt due and owing by the Service Provider. If the Service Provider disputes, in good

faith, the whole or any portion of the amount claimed by the Council, the Service Provider shall pay that portion of the amount stated which is not in dispute and shall notify the Council in writing of the reasons for disputing the amount claimed. If the parties are unable to reach agreement within five (5) Business Days of the Service Provider's notice, the dispute shall be determined in accordance with clause 27 of this agreement.

20.2 Additional Rights of the Council: In the event of the Service Provider committing any act or omission constituting a breach of any obligation required on its part to be performed or observed under this agreement then the Council may serve notice in writing to the Service Provider giving the Service Provider not less than ten (10) Business Days to remedy the breach. If the breach is not remedied to the satisfaction of the Council within such period then the Council, subject to clause 20.3, may elect to do any one or more of the following:

20.2.1 Complete the Work: remedy the breach in accordance with the provisions of clause 10.2.3;

20.2.2 Contract with a Third Party: buy in services by contracting with a third party in accordance with the provisions of clause 10.2.2;

20.2.3 Liquidated Damages: seek liquidated damages pursuant to the Council's rights under clause 20.1.6; or

20.2.4 Terminate: give ten (10) Business Days notice to the Service Provider's Shareholders of the Council's intention to terminate this agreement and where such notice to the Shareholders has been given and the Service Provider has failed to remedy the default prior to the expiry of the notice period then the Council may terminate this agreement (in which case the provisions of clause 21 shall apply).

20.3 Remedial Program: Where the Service Provider does not remedy the breach referred to in clause 20.2 prior to the expiry of the notice period but:

20.3.1 Program: the Service Provider can demonstrate, to the reasonable satisfaction of the Council, that it has implemented a remedial program that is acceptable to the Council; and

20.3.2 Progress: the Service Provider, in the opinion of the Council, has made reasonable progress towards remedying the breach

then, notwithstanding the Council's rights to seek liquidated damages pursuant to clause 20.2.3, the Service Provider shall be permitted to continue to rectify the breach in a manner consistent with the performance

milestones in the remedial program. In the event that the milestones in the remedial program are not met to the satisfaction of the Council, then the Council may give notice to the Service Provider's Shareholders pursuant to clause 20.2.4.

- 20.4 Notice of Breach:** The Service Provider shall give written notice to the Council within two (2) Business Days of the occurrence of any act or omission which constitutes a breach of any obligation on its part to be performed or observed under this agreement.

21. CONSEQUENCES OF TERMINATION

- 21.1 Retention of Persons on Termination:** Upon termination of this agreement, the Council may employ or retain other persons and pay those persons to provide the Services and the Council and/or those other persons may:

21.1.1 Purchase Materials: purchase any of the materials and Street Furniture from the Service Provider used in connection with the provision of the Services (including any interest of the Service Provider in Street Furniture installed, manufactured or in the course of manufacture in accordance with this agreement) at the purchase price determined under clause 21.2 and do anything else necessary to perform the Services; and

21.1.2 Retain Sub-Contractors: retain the services of sub-contractors to perform the Services.

- 21.2 Deduction from Sum Due:** Upon termination of this agreement, payments made under clause 21.1 for the purchase of materials or Street Furniture or provision of Services may be deducted by the Council from any sum due to the Service Provider or, where those payments exceed the amount due to the Service Provider, recovered by the Council from the Service Provider as a debt due and owing. The purchase price payable by the Council for materials and Street Furniture in clause 21.1 shall be determined in accordance with clause 27.2 of the Specification.

- 21.3 Election by the Council:** Upon the expiry, or termination in accordance with the provisions of clause 20, of this agreement, the Council may elect to either:

21.3.1 Purchase: purchase the Street Furniture at the market value calculated in accordance with clause 27.2 of the Specification, less the cost of reinstatement of the sites. Such purchase price is to be paid by the Council to the Service Provider within twenty (20) Business Days of determining the price; or

21.3.2 Require Removal: require the removal of the Street Furniture from the Service Area in accordance with clause 21.5 of this agreement.

21.4 Purchase: Where the Council makes an election under clause 21.3.1, notwithstanding that the Council may not yet have paid the purchase price (less the cost of reinstatement) to the Service Provider, title in the Street Furniture shall be deemed to have transferred absolutely to the Council at the point in time when either this agreement expired or any of the events in clauses 20.1 or 20.2 occurred (whichever is the earlier).

21.5 Removal: Where the Council makes an election under clause 21.3.2, the Service Provider must, when directed by the Contract Manager in writing (but not before), remove from the Services Areas the Street Furniture that it has been notified by the Council to remove; any of its materials; any Advertising material and all other goods of the Service Provider, or any part thereof, in accordance with the provisions of the Specification. If the Service Provider fails to comply with a direction under this clause 21.5 within ten (10) Business Days of the date of the direction, then the Council may:

21.5.1 Remove or Sell: remove or sell any such property of the Service Provider (without being responsible for any loss or damage); and

21.5.2 Retain Proceeds of Sale: retain to the credit of the Service Provider the proceeds of sale less reinstatement and all other reasonable costs incurred.

21.6 Other Rights and Remedies: Termination of this agreement shall not affect the other rights and remedies of either party arising prior to the date of termination. The parties agree that the obligations contained in clauses 4.6, 4.15, 8, 9, 12, 13, 14, 17, 18, 19, 21, 22, 26, 27, 28 and 31.13 shall survive termination of this agreement.

21.7 Receipt of Notice of Termination: Upon the receipt of a notice of termination, the Service Provider shall:

21.7.1 Cease Work: cease work with effect from the end of the period specified in the notice; and

21.7.2 Minimise Loss: take all available steps to minimise loss resulting from termination.

22. CONFIDENTIALITY

22.1 Receipt of Information: The Service Provider acknowledges that in the course of performing the Services or as a result of this agreement it may receive or be exposed to certain information which is confidential to the

Council, including trade secrets, confidential information and commercially sensitive information such as information concerning costs and the Council's requirements, internal documents and proposals (the "Information").

22.2 Maintain Confidentiality: The Service Provider hereby undertakes to the Council and agrees to treat the Information as secret and confidential and that, subject to this clause 22, the Service Provider shall not disclose it directly or indirectly to any other party and shall take all reasonable steps to prevent Information coming into the possession of any other person which steps shall be at least as stringent as any internal procedures of the Service Provider to maintain the confidentiality of its own confidential information. The Service Provider acknowledges that it shall not obtain any rights to the Information other than use for the purposes of providing Services under this agreement.

22.3 No Obligation in Certain Circumstances: The obligations contained in this clause 22 shall not apply to any part of the Information which:

22.3.1 In Public Domain: is in the public domain;

22.3.2 Comes into Public Domain: hereinafter comes into the public domain otherwise than as a result of any unauthorised act or omission of the Service Provider;

22.3.3 Service Provider's Possession: was already in the possession of the Service Provider at the time of disclosure and is not subject to obligations of confidentiality and was not obtained from the Council; or

22.3.4 Law: is required to be disclosed by law.

22.4 Written Undertaking: The Council may, at any time, require the Service Provider to give a written undertaking, in a form prescribed by the Council, relating to the non-disclosure of the Information, and to promptly arrange such written undertakings to be given by its employees or sub-contractors engaged in the performance of the Services.

22.5 Unauthorised Disclosure of Information: The Service Provider must:

22.5.1 Notify Disclosure: notify the Council immediately upon the discovery of any apparent unauthorised use or disclosure of any Information and take all reasonable steps to enforce the confidentiality obligation imposed or required to be imposed by this clause 22, including diligently prosecuting at its cost any breach or threatened breach of any such confidentiality obligations by any person to whom it has disclosed to or allowed access to the Information or at the Council's option making all

reasonable efforts to assist the Council to help regain possession of the Information and prevent any further unauthorised disclosure or use;

22.5.2 Deliver Information: deliver to the Council or, at the Council's option, destroy forthwith on demand all physical or written records containing or relating to or concerning the Information (but only to the extent that it contains such Information), including any copies then in existence, regardless of who prepared the records or documentation;

22.5.3 Delete Electronic Database: delete forthwith, if requested by the Council, the Information from any electronic or computer database retained by or on behalf of the Service Provider; and

22.5.4 Certify Compliance: certify in writing to the Council that it has complied with its obligations under clauses 22.5.2 and 22.5.3 immediately after doing so.

22.6 No Destruction without Consent: The Service Provider shall not destroy all physical or written records containing or relating to or concerning the Information (but only to the extent it contains such Information), whether during or after the Term without the prior written consent of the Council. The Service Provider shall notify the Contract Manager of any intention to destroy any such Information.

22.7 Media Disclosure: The Service Provider shall not make any comments relating to the Council, its relationship with the Council, or the terms or existence of this agreement to the public, the media or any person without the prior approval of the Contract Manager.

22.8 Enquiries: Subject to the Council's statutory obligations under the Local Government Official Information and Meetings Act 1987, should any enquiry be made by any third party on any matter arising from or connected with the Services, the Council will (as between itself and the Service Provider) deal with the enquiry and the Service Provider will, as soon as practicable, provide all information that the Council may reasonably request to answer that enquiry (if the Council decides to do so), at no cost to the Council. The Council shall notify the Service Provider within five (5) Business days of any such request having been received.

23. REMOVAL OR RELOCATION OF STREET FURNITURE

23.1 Removal or Relocation: At any time, and from time to time during this agreement the Council may remove or relocate or require the Service Provider to remove or relocate any Street Furniture by giving notice in writing to the Service Provider. Such removal or relocation will be undertaken in accordance with the Specification.

- 23.2 Compensation:** Upon receipt of a notice by the Service Provider from the Council under clause 23.1, the compensation payable to the Service Provider will be determined in accordance with the formula in clauses 11 and 27.2 of the Specification.

24. VARIATIONS

- 24.1 Permitted Variations:** Subject to the rights of either party to use the dispute resolution procedure in clause 27, the Contract Manager may direct the Service Provider to do any one or more of the following:

24.1.1 Increase: increase any part of the Services under this agreement;

24.1.2 Change Character: change the character or quality of any material or Services or of anything described in this agreement;

24.1.3 Change Design: change the design including the levels, lines, positions or dimensions of anything described in this agreement after approval in accordance with this agreement; and

24.1.4 Additional Services: include additional Services.

- 24.2 No Variation:** For the avoidance of doubt, variations do not include changes to the sequence, timing or programming of the Services under this agreement.

- 24.3 Notice of Request for Variation:** The Service Provider may request to the Contract Manager that the Services under this agreement be varied. The Contract Manager's direction or approval for a variation shall be sought at least 10 Business Days prior to the need for undertaking the variation of Services by notice in writing detailing:

24.3.1 Reasons: the reason for the variation;

24.3.2 Cost: the cost of the variation (if any);

24.3.3 Effect: the effect of the variation on the Implementation Program; and

24.3.4 Milestones: the achievement of Milestones.

- 24.4 No Variation without Approval:** The Service Provider shall not vary the Services under this agreement except as directed or approved by the Contract Manager in writing pursuant to this clause 24. For a direction or approval to be valid as a direction or approval to undertake a variation, that direction or approval must approve the agreed cost (if any) of the variation or state that the variation will be valued in accordance with clause 24.13.

24.5 Variation in Accordance with Specification: The Service Provider is only bound to execute a variation which is within the general scope of the Specification.

24.6 Milestones: Except where otherwise provided in this agreement, the Contract Manager shall not direct a variation to the Services after the date of the Milestone for that part of the Services.

24.7 Variation without Approval: If the Service Provider is of the opinion it has been required to carry out a variation but the Contract Manager has not given a written direction or approval for a variation the Service Provider must give written notice to the Contract Manager of:

24.7.1 Direction: its opinion that it has received a direction or approval for a variation; and,

24.7.2 Effect: the effect which the Service Provider anticipates that the variation will have on the:

- (a) Implementation Plan;
- (b) time for Milestones; and
- (c) costs (if any).

24.8 Variation without Notice: If the Service Provider does not give the notice referred to in clause 24.7 prior to commencing Services affected by the variation, and in any event within two (2) days of receiving the relevant instruction from the Contract Manager or the Service Provider does not obtain a direction or approval in accordance with clause 24.3, notwithstanding clause 24.10, the Service Provider will not be entitled to have the valuation of the variation determined under clause 24.13 or to make any claim whether for money or otherwise in respect of the variation.

24.9 Variation which can be Effected: Upon receipt of a notice in writing from the Contract Manager notifying the Service Provider of a proposed variation under clause 24.1, the Service Provider shall notify the Contract Manager whether the proposed variation can be effected. If the variation can be effected, the Service Provider shall:

24.9.1 Notification: notify the Contract Manager of the effect which the Service Provider anticipates that the variation will have on the Implementation Program and the time for Milestones; and

24.9.2 Estimate: provide an estimate of the cost of the proposed variation.

- 24.10 Price of Variation:** Unless the Contract Manager and the Service Provider agree upon the price for a variation, the variation directed or approved by the Contract Manager pursuant to clause 24.3 shall be valued under clause 24.13.
- 24.11 Quotation:** The Contract Manager may direct the Service Provider to provide a detailed quotation for the Services of a variation supported by measurements or other evidence of cost.
- 24.12 Conditions:** Variations that are for the convenience of the Service Provider will be subject to the following conditions.
- 24.12.1 Conditional Approval:** If the Service Provider requests the Contract Manager to approve a variation for the convenience of the Service Provider, the Contract Manager may do so in writing. The approval may be conditional.
- 24.12.2 Valuation Approval:** Unless the Contract Manager otherwise directs in the notice approving the valuation, the Service Provider shall not be entitled to:
- (a) an extension of time for Milestone; or
 - (b) extra payment.
- in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.
- 24.12.3 No Obligation:** The Contract Manager shall not be obliged to approve a variation for the convenience of the Service Provider.
- 24.13 Valuation of Variation:** With respect to the valuation of variations, the Council shall pay or allow the Service Provider, or the Service Provider shall pay or allow the Council, as the case may be, an amount ascertained by the Contract Manager in accordance with the Specification, as follows.
- 24.13.1 Specific Rates and Prices:** If this agreement prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used.
- 24.13.2 Council to Determine:** If clause 24.13.1 does not apply, then the rates or prices shall be determined by the Council, acting reasonably and will be used to the extent that it is reasonable to use them.
- 24.13.3 Reasonableness:** To the extent that neither clause 24.13.1 nor 24.13.2 applies, reasonable rates or prices shall be used.

24.13.4 Dispute Procedure: To the extent that neither clause 24.13.1, 24.13.2 nor 24.13.3 applies, the matter will be resolved in accordance with clause 27.

24.13.5 Actual: If the valuation is of an increase or decrease in a fee or charge or is a new fee or charge with respect to a legislative requirement, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit.

25. RELATIONSHIP OF PARTIES

25.1 Relationship: The relationship of the Council to the Service Provider is that of principal and independent service provider and the Service Provider shall perform the Services and all acts and agreements related thereto, whether or not requested by the Council, in accordance with its own methods.

25.2 Employees of Council: Any person employed by the Council shall be the employee of the Council and no such person shall be or be construed to be the employee of the Service Provider by virtue of this agreement. Nothing herein shall cause a relationship between the Service Provider and any such person to be or be construed as one of employment.

25.3 No Authority: The Service Provider shall not have the authority to, and shall not, bind the Council to any agreement or otherwise hold itself out as being authorised to deal as an agent of the Council except as authorised by this agreement and the Service Provider shall indemnify the Council in respect of all representations, promises or agreements made in breach of this clause by any representative and/or agent of the Service Provider.

26. BANKER'S UNDERTAKING AND PERFORMANCE GUARANTEE

26.1 Banker's Undertaking: The Service Provider must provide a banker's undertaking in accordance with the terms of this agreement. The amount of such banker's undertaking shall be equivalent to the total annual maintenance cost under this agreement so as to ensure that the Service Provider installs the Street Furniture and faithfully performs all of its obligations as required under the terms and conditions of this agreement.

26.2 Contents of Undertaking: The Service Provider will, within five (5) Business Days of the Commencement Date, deposit with the Council an unconditional banker's undertaking whereby the bank undertakes to the Council that the Service Provider will promptly perform and observe and keep the obligations, conditions and stipulations on the part of the Service Provider expressed or implied by this agreement and will also pay all sums and payments agreed to be paid by the Service Provider when they become due and owing (if any) and whereby the bank covenants with the Council

that the bank will upon demand by the Council pay and make good to the Council all losses, costs and expenses sustained by the Council by reason of the default of the Service Provider or any failure to promptly perform and observe and keep the obligations, conditions and stipulations on the part of the Service Provider contained or implied by this agreement.

26.3 Details of Banker's Undertaking: The banker's undertaking shall:

26.3.1 Form: be by a bank and in a form acceptable to the Council;

26.3.2 Amount: provide for payment of the amount specified in clause 26.1 of this agreement, however, the Council shall release seventy five percent of the amount upon the installation programme for the Street Furniture being successfully completed, in all respects, to the satisfaction of the Council. The balance of the amount shall remain on deposit for the term of this agreement and may be applied to meet any costs incurred by the Council in meeting any obligation of the Service Provider which it has not performed in accordance with the terms of this agreement or for the payment of liquidated damages:

26.3.3 No Discharge: continue in full force and effect notwithstanding any neglect or forbearance on the part of the Council in endeavouring to obtain any payments due under this agreement or any part of them as and when they become due or notwithstanding any delay on the part of the Council to take steps to enforce the performance or observance of the obligations, conditions and stipulations on the part of the Service Provider contained in or implied by this agreement and any time which may be given by the Council to the Service Provider shall not release, lessen or affect the liability of the bank under the banker's undertaking;

26.3.4 Continuing: be a continuing banker's undertaking and shall continue during the Term and thereafter until all the obligations of the Service Provider have been fully satisfied and discharged;

26.3.5 Security: be security for every default, breach or failure of the Service Provider under the terms of this agreement and so often as and every occasion upon which any such default, breach or failure shall occur;

26.3.6 No Limitation: not operate to relieve the Service Provider from any of its obligations contained in or implied by this agreement nor shall the banker's undertaking limit the right of the Council to recover from the Service Provider in full all monies payable to the Council under any other clause of this agreement; and

26.3.7 Value Same as Specification: at all times be for a value of not less than that detailed in the Specification despite the fact that it may from time to time be called upon in part or in whole. Should the amount available to the Council under all banker's undertakings fall below the value detailed in the Specification, the Service Provider will provide additional banker's undertakings to make the amount available to the Council equal to or in excess of the value detailed in the Specification.

26.4 No Notice: The Council shall not be required to provide any notice to the Service Provider that it intends to call on the banker's undertaking.

26.5 Deed of Guarantee: If requested by the Council, the Service Provider shall lodge with the Council, substantially in the form attached to this agreement as Schedule 2 and by a guarantor approved in writing by the Council, a properly executed Deed of Guarantee for the performance of the obligations and the discharge of the liabilities of the Service Provider under this agreement.

27. DISPUTE RESOLUTION

27.1 Notice of Dispute: If a dispute or difference ("Dispute") arises between the parties out of, or in connection with, or related to, this agreement and either party requires it to be resolved, then that party shall promptly give to the other a written notice (the "Notice") adequately identifying and detailing the Dispute and the relief sought.

27.2 Meeting: Within five (5) Business Days of a party issuing a Notice under clause 27.1, the parties shall, without prejudice to any other right or entitlement, ensure that the Contract Manager and the Representative meet and attempt to resolve the Dispute. The Contract Manager and the Representative may meet more than once within such period in an attempt to resolve the Dispute.

27.3 Chief Executive Officer: If, within ten (10) Business Days of the expiry of the period referred to in clause 27.2, the Contract Manager and the Representative have not resolved the Dispute, then, if the parties agree, the Dispute shall be referred to the Chief Executive Officer of each party. If that shall occur the parties shall ensure that their respective Chief Executive Officers meet so often as shall be reasonably necessary to attempt to reach agreement on the matter. If the parties do not agree to refer the Dispute to the Chief Executive Officers then, if the parties agree, the matter shall be referred to an expert. If the parties do not agree to refer the matter to an expert then the matter shall be referred to mediation.

27.4 Experts: If, within ten (10) Business Days of the Dispute being referred to the Chief Executive Officers and the Dispute has not been resolved then,

where the parties agree, the Dispute is to be referred to an expert and the following provisions shall apply.

27.4.1 Expert: The expert shall be of not less than five year's standing in the expert's profession, and:

- (a) **Law:** in the case of a matter of law shall be a practising barrister or solicitor who failing agreement shall be appointed by the then President of the Wellington District Law Society;
- (b) **Financial:** in the case of a financial or accountancy matter shall be a practising chartered accountant who failing agreement shall be appointed by the then President of the New Zealand Society of Accountants;
- (c) **Design:** in a case concerning design and all associated matters shall be a practising registered engineer or registered architect who failing agreement shall be appointed by the chairperson of the Institute of Professional Engineers or Architects of New Zealand;
- (d) **Value:** in the case of a question of value shall be a qualified valuer who failing agreement shall be appointed by the New Zealand Institute of Valuers;
- (e) **Cost:** in the case concerning a question of cost shall be a qualified quantity surveyor who failing agreement shall be appointed by the New Zealand Institute of Quantity Surveyors;
- (f) **Others:** in any other case shall be a qualified person who failing agreement shall be appointed by the senior officer for the time being of the appropriate association, institute, society or board; or
- (g) **Panel:** if appropriate shall be a panel of experts representing more than one of such appropriate skills.

27.4.2 Agreement: The parties shall reach agreement on the appointment of the expert within two (2) Business Days of the parties electing to use an expert and failing agreement the expert shall be appointed by the President (or person holding similar office) in the professional body, society, or institute that the relevant expert is required to belong to in accordance with clause 27.4.1, or would be a member. Where the parties are unable to agree on the type of expert or on whether a panel is necessary,

then the expert or panel as the case may be, shall be appointed by the President of the Wellington District Law Society.

27.4.3 Determination: In each reference to an expert, the expert shall be directed and instructed to make a determination in writing for the parties no later than five (5) Business Days (or such longer or shorter period of time as the parties may agree) after the date of reference of the dispute or difference to the expert.

27.4.4 Costs: The costs of the expert and the costs of the parties will be borne in the proportion determined by the expert.

27.4.5 Findings binding: Where the parties agree to refer a matter or dispute to an expert for a binding determination the findings of the expert shall, in the absence of manifest error, be binding upon the parties.

27.5 Mediation:

27.5.1 Referral: If:

- (a) **Negotiation:** the parties have been unable to reach agreement pursuant to the provisions of clause 27.2;
- (b) **Chief Executive Officer:** no agreement has been reached between the Chief Executive Officer of each party within ten (10) Business Days of the Dispute being referred pursuant to the provisions of clause 27.3; or
- (c) **Expert:** the parties have agreed upon reference in a non binding manner to an expert and a party disputes the expert's findings by notice in writing to the other parties given within ten (10) Business Days of the expert's determination;

then, any party may give written notice to the other party of its intention to refer such Dispute to mediation. If such notice is given, the parties shall endeavour to agree on a mediator and shall submit the Dispute to the mediator. The mediator shall discuss the matter with the parties (separately or jointly in the discretion of the mediator) and endeavour to resolve it by their agreement. All discussion in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce any settlement concluded by mediation, be referred to in any later proceedings. The parties shall bear their own costs in the mediation and shall pay the costs of the mediator in equal shares.

- 27.6 Arbitration:** If the parties have been unable to resolve the Dispute by mediation then within ten (10) Business Days of the conclusion of mediation the Dispute shall be referred to arbitration under the Arbitration Act 1996 upon the service of a notice of intention to commence arbitration. The arbitration shall be governed by the Arbitration Act 1996 except to the extent modified by this clause 27.6.
- 27.6.1 Single arbitrator:** The arbitration shall be by a single arbitrator. If the parties cannot agree on a single arbitrator within ten (10) Business Days of service of the notice of intention to commence arbitration, either party may request the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a sole arbitrator.
- 27.6.2 Expert:** Where the Dispute relates to issues referred to in clause 12.3 of the Specification, the arbitrator shall, if he or she thinks fit, seek assistance from an expert such expert to be appointed having regard to the expert's knowledge and understanding of supply and demand in the advertising industry and the financial principles underlying the Service Provider's installation of Street Furniture funded by advertising. The appointment of the expert will be at the arbitrator's sole discretion.
- 27.6.3 Expedition:** The arbitrator shall be obliged to proceed with expedition to deliver an award as soon as reasonably practicable and the parties agree to cooperate to achieve that end.
- 27.6.4 Costs:** The costs of the parties, the costs of any expert and the costs of the arbitrator shall be borne in such proportion as the arbitrator determines.
- 27.6.5 Award final and binding:** The parties agree that the award of the arbitrator shall be final and binding as between them.
- 27.7 Carry out obligations:** In the event of a Dispute or the referral of that Dispute for resolution under any of the methods allowed in this section 27, the parties shall continue to perform all of their respective obligations under this agreement except for the obligation the subject of Dispute which shall be performed to no less a standard as existed prior to the Dispute arising and as if that Dispute had not occurred pending the outcome of the dispute resolution process. Where the Dispute relates to an obligation to pay money then the undisputed amount shall be paid to the other party forthwith and the disputed amount, if deemed payable upon resolution of the Dispute shall be paid to the other party plus interest calculated in accordance with the provisions of clause 13.

28. WHOLE AGREEMENT

This agreement constitutes the entire agreement between the parties concerning this agreement's subject matter and supercedes all prior agreements, understandings and communications, whether oral or written between the parties.

29. PRECEDENCE

29.1 Parts of agreement: The Specification (including all annexures, schedules, appendices, tables and charts) form a part of this agreement and the agreement and Specification are to be taken as mutually explanatory of each other. If either party discovers any ambiguity or discrepancy in either document, then that party shall notify the Contract Manager of the ambiguity or discrepancy. In the event of any ambiguity or discrepancy being discovered and brought to the attention of the Contract Manager or discovered by the Contract Manager, and the parties cannot agree on its true and accurate meaning then the provisions of clause 27 shall apply.

29.2 No Compensation: Any consequences arising from or connected with the Contract Manager's direction shall not entitle the Service Provider to any compensation of any kind.

30. FORCE MAJEURE

30.1 Force Majeure: The term "Force Majeure" means any act or event beyond the reasonable control of either party including but not limited to acts of God, landslides, lightning, mass vandalism, earthquakes, floods, storms, washouts, fires, volcanic eruptions, epidemics, acts of the Queen's enemies, wars, sabotage, terrorism, blockades, riots, insurrections, civil war, public disorders, restraints of rulers, strikes, lockouts, go slows, work to rule or other industrial disturbances, transportation failures or delays, shortage of materials, breakdowns in computer facilities, telecommunication delays or malfunctions, delay or non supply of electricity or the acts, rules, regulations orders or directives of any governmental body (including any agent or subdivision of it) whether or not valid or any other cause beyond the reasonable control of either party. For the purposes of this clause the solvency of a party will be deemed to be within that party's reasonable control.

30.2 Delay or Failure to Perform: Notwithstanding this agreement's other provisions a party will be relieved from liability under this agreement but only so far as the performance of any of this agreement's terms or conditions is prevented or delayed due to Force Majeure.

30.3 Notice: The party claiming Force Majeure will as soon as is reasonably practicable, but no later than five (5) Business Days after the occurrence of the event or circumstances claimed to be Force Majeure, give written notice to the other party of the occurrence of the event or circumstances. The

notice will provide full particulars of the event or circumstances causing its failure to perform its obligations under this agreement. The notice will also give an estimate of the period of time required to remedy the failure (if the remedy is deemed practicable). Failure to give notice will prevent the party from claiming that the event or circumstances are Force Majeure.

- 30.4 Disputes:** The party receiving the above notice will, within five (5) Business Days of receiving the notice, notify the other party in writing whether it accepts that a situation of Force Majeure exists or whether it wishes to dispute the claim. If a party wishes to dispute the claim then the dispute will be resolved in accordance with clause 27 of this agreement. Failure to so notify will be deemed acceptance that Force Majeure exists.
- 30.5 Suspension of Performance Limited:** Any suspension of a party's performance under this section will be limited to the period and the extent of Services affected during which the Force Majeure exists.
- 30.6 Prior Obligations:** No Force Majeure will relieve a party of any duty or obligation under this agreement which had arisen or been incurred before the Force Majeure.
- 30.7 Remedy:** If a party is affected by Force Majeure then the affected party will use all possible diligence and take all reasonable steps necessary to remedy or rectify the Force Majeure as quickly as possible and minimise any damage caused by it.
- 30.8 Termination:** Where Force Majeure prevents a party from carrying out any obligations under this agreement for a continuous period of one hundred and twenty (120) days then this agreement may be terminated by the other party giving twenty (20) Business Days written notice to the party affected by the Force Majeure and the provisions of clause 21 will apply.

31. GENERAL

- 31.1 Best Endeavours:** At all times during the Term the parties shall co-operate with each other and use their best endeavours to resolve by mutual agreement any difference between them and all other difficulties which may arise from time to time concerning their respective obligations under this agreement.
- 31.2 Form of Notice:** All notices or other communications required to be given under this agreement, except for notices relating to clauses 10, 20, 21, 23 and 24 which shall only be sent by registered post or facsimile, must be in legible writing, addressed to the recipient at the postal address or facsimile number in this clause (as applicable) or to such other postal address or facsimile number as a party may notify to the other parties by like notice. Notices must be sent to the recipient by hand, registered post (airmail if

outside New Zealand) or facsimile and signed by a person duly authorised by the sender:

31.2.1 The Council: if to the Council, to:

For: Traffic Asset Manager
Facsimile: (04) 569 1625
Address: Private Bag 31 912
Lower Hutt

31.2.1 The Service Provider: if to the Service Provider, to:

For: Len van der Harst
Facsimile: (09) 300 3110
Address: PO Box 90 145
Auckland 1030

31.2 Time of Receipt: Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice will be deemed to have been duly received:

31.2.1 Personal Delivery: if sent by hand, when left with an apparently responsible person at the recipient's address; or

31.2.1 Facsimile: if sent by facsimile, on receipt by the sender of an acknowledgement or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number;

except that if a notice is served by hand or facsimile not on a Business Day, or after 5.00pm on any Business Day, that notice will be deemed to have been duly received by the recipient at 9.00am on the first Business Day after that day.

31.3 Applicable Laws: This agreement shall be governed by and construed in accordance with the laws of New Zealand.

31.4 No Waiver, Variation or Discharge: None of the conditions of this agreement shall be waived, varied, discharged or released either at law or in equity, unless both parties agree in writing.

31.5 No Waiver of Subsequent Breaches: A waiver by the Council in respect of any breach of a condition or provision of this agreement by the Service Provider shall not be deemed to be a waiver of any other or of any subsequent breach. The failure of the Council to enforce at any time any of the provisions of this agreement shall in no way be interpreted as a waiver of such provision.

- 31.7 Reasonableness:** The Council and the Service Provider consider the covenants, obligations and restrictions herein contained to be reasonable in all circumstances.
- 31.8 Covenants Severable:** Each and every covenant, obligation and restriction and each and every part thereof shall be deemed to be severable and an independent covenant, obligation or restriction unless it would defeat the purpose of this agreement.
- 31.9 Right of Occupation Only:** Subject to the interest of any Licensed Operators, the Service Provider only has a personal right of occupation in the Service Areas on the terms specified in this agreement and has no interest in the land on which the Service Areas are situated. The legal right to possession and control over the Service Areas remains vested in the Council throughout the Term. The Service Provider acknowledges that the Council, its employees, sub-contractors and agents shall have an unfettered right to enter and remain in the Service Areas at all times for whatever purpose the Council considers reasonable during the Term, provided the Council shall not unreasonably interfere with the Service Provider's use of the Service Areas.
- 31.10 Stamp Duty:** The Service Provider shall be liable for all stamp duty (if any) assessed on this agreement or any transaction contemplated by this agreement.
- 31.11 Council Discretion:** The Council may, where it is required to give its approval or consent, give it conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement provides otherwise.
- 31.12 No Restriction:** The Service Provider acknowledges that nothing in this agreement, either express or implied, restricts, limits or modifies in any way the Council's functions, actions or discretions (of any kind) where it is acting in accordance with any statute or law as a regulator. When the Council is exercising such functions, actions and directions, the Council will be deemed to be a third party to this agreement.
- 31.13 Deduction of Recoverable Debt:** Any debt, damages, costs and expenses recoverable by a party from the other party (the "Default Party") in consequence of the Defaulting Party's breach of this agreement may be deducted from money then due to the Defaulting Party under this agreement and, if that money is insufficient, from the Bankers Undertaking and the balance remaining unpaid shall be a debt due by the Defaulting Party to the other party and may be:
- 31.13.1 Set-Off:** set-off against any other money due to the Defaulting Party by the other party under this agreement; or

- 31.13.2 Recovery:** recovered from the Defaulting Party by the other party in any Court of competent jurisdiction.
- 31.14 All Things Necessary:** The parties will do all things reasonably necessary or desirable to evidence satisfaction of their obligations under this agreement or to give effect to this agreement including the execution of additional documents.
- 31.15 Termination of Existing Agreement:** Any agreement relating to the provision of bus shelters, between the Council and the Service Provider, that is in force at the date of execution of this agreement, shall be deemed to be terminated upon the execution by the parties of this agreement and the parties respective rights and obligations pursuant to the provisions of the earlier agreement shall be replaced with the rights and obligations of this agreement. The Service Provider's right to increase the size of the advertising panels on the bus shelters, (the subject of the earlier agreement), to the size permitted under the terms of this agreement shall be subject to the Service Provider first refitting the existing bus shelters to include extending the roof, installing a third side and replacing the seat to ensure that the retro-fitted bus shelters are upgraded to no less a standard than the bus shelters comprised in the Street Furniture the subject of this agreement. For the avoidance of doubt, upon termination of the existing agreement pursuant to this clause 31.15 the existing bus shelters shall be deemed to be Street Furniture for the purposes of this agreement. The plan, agreed to by the parties, of the retro-fit proposal is attached to this agreement as Schedule 6.
- 31.16 Notification of Complaints:** Each party agrees to notify the other party upon receipt of any complaint relating to the Services. The Service Provider agrees that it shall not, and that the Council shall have the exclusive right to, reply to any such complaint. The Service Provider agrees to assist the Council, and to take such steps as the Contract Manager may require, including drafting any response, in responding to the complaint.

In witness of which this agreement has been executed.

- Copy for filing in file 2

Withheld under section 7(2)(b)(ii)

- original sent on Workflows
Journes 26/10/10
le

**VARIATION AGREEMENT
(STREET FURNITURE SERVICE PROVIDER CONTRACT)**

between
Hutt City Council
and

Withheld under section 7(2)(b)(ii)

Released under the Local Government Official Information and Meetings Act



Variation Agreement

Date: 28th May

2009

Parties

1. **Hutt City Council** ("Council")

Withheld under section 7(2)(b)(ii)

Background

- A. The Council and the Service Provider entered into a 'Street Furniture Service Provider Contract' dated 1 November 2000 ("Contract").
- B. By a "Performance Guarantee" dated 1 November 2000 (and attached to the Contract as Schedule 2) ("Guarantee"), the Guarantor agreed to guarantee the due and punctual performance of the obligations of the Service Provider under the Contract, and gave the Council certain indemnities in relation thereto.
- C. Despite the best intentions of all parties, and the Service Provider being willing and able to comply with all of its obligations under the Contract, the parties agreed from time-to-time that certain matters provided for by the Contract would not be implemented, or would be varied, and now the parties enter into this agreement to record those variations to the Contract.

The Parties Agree:

1. Interpretation

- 1.1 In the construction of this agreement, unless the context otherwise requires:
 - a. words and expressions defined in the Contract shall have the same meanings in this agreement;
 - b. headings are for ease of reference only and do not affect the meaning of this agreement;
 - c. the singular includes the plural and vice versa, and words importing a gender include other genders;
 - d. other grammatical forms of defined words or expressions have corresponding meanings;
 - e. a reference to a party includes that party's successors, administrators and permitted assignees; and
 - f. words and expressions importing natural persons include partnerships, companies and other bodies corporate, associations, trusts, governments and governmental and territorial authorities and agencies, and vice versa.

2. Variations of Contract

- 2.1 In terms of clause 26 (on Contract pages 45 to 47) the parties agree that:
 - a. the banker's undertaking (bond) will continue to be provided by the Bank of New Zealand; and
 - b. Withheld under section 7(2)(b)(ii)

Withheld under section 7(2)(b)(ii)

- 2.6 All other applicable provisions of the Contract are deemed varied as necessary to give full effect to the above variations.
3. **Consent**
- 3.1 The Guarantor consents to the terms of this agreement, and confirms that its Guarantee remains in full force and effect in respect of the Contract as varied.
4. **General**
- 4.1 **Contract remains in force:** The Contract remains in full force and effect, as varied by:
- a. the terms of this agreement; and
 - b. any other express agreements reached between the parties and recorded in writing since the Contract was entered into.
- 4.2 **Further assurances:** The parties will do all things, and will enter into and execute any additional documents, reasonably necessary or desirable to give effect to the provisions and intentions of this agreement.
- 4.3 **Costs:** The parties shall pay their own legal and other costs relating to the negotiation, preparation and execution of this agreement.
- 4.4 **Disputes:** Any disputes or differences arising between the parties under this agreement shall be resolved in any manner provided by the Contract.

SIGNED as an agreement

HUTT CITY COUNCIL
21 OCT 2010

Withheld under section 7(2)(b)(ii)

Lyle Earl- Traffic Supervisor, Utility Services
Hutt City Council
Private Bag 31912
Lower Hutt

Date: 15 October 2010

Dear Lyle,

Re: Variation Agreement

Please find attached a copy of variation agreement that has now been executed by two directors from **Withheld under section 7(2)(b)(ii)**

Thank you for your positive response to the variation proposal and your patience while **Withheld under section 7(2)(b)(ii)** has been undertaking the process of getting this matter finalized.

If I can be of any further assistance, please feel free to contact me directly on **Withheld under section 7(2)(a)**

Withheld under section 7(2)(b)(ii)

Withheld under section 7(2)(b)(ii)

Released under the Official Information and Meetings Act

Withheld under section 7(2)(b)(ii)

DOC/10/74115



Withheld under
section 7(2)(b)(ii)

Bus Shelter Advertising

Sh. #	Address	Type	Suburb	AssetType
630001	Withheld under section 7(2)(b)(ii)	Superlite	Stokes Valley	Illuminated Shelter
630002	Withheld under section 7(2)(b)(ii)	Superlite	Taita	Illuminated Shelter
630003	Withheld under section 7(2)(b)(ii)	Superlite	Hutt Central	Illuminated Shelter
630004	Withheld under section 7(2)(b)(ii)	Superlite	Seaview	Illuminated Shelter
630005	Withheld under section 7(2)(b)(ii)	Superlite	Seaview	Illuminated Shelter
630006	Withheld under section 7(2)(b)(ii)	Superlite	Avalon	Illuminated Shelter
630007	Withheld under section 7(2)(b)(ii)	Superlite	Taita	Illuminated Shelter
630008	Withheld under section 7(2)(b)(ii)	Superlite	Taita	Illuminated Shelter
630009	Withheld under section 7(2)(b)(ii)	Superlite	Petone	Illuminated Shelter
630010	Withheld under section 7(2)(b)(ii)	Superlite	Avalon	Illuminated Shelter
630011	Withheld under section 7(2)(b)(ii)	Superlite	Avalon	Illuminated Shelter
630012	Withheld under section 7(2)(b)(ii)	Superlite	Avalon	Illuminated Shelter
630013	Withheld under section 7(2)(b)(ii)	Superlite	Moera	Illuminated Shelter
630014	Withheld under section 7(2)(b)(ii)	Superlite	Seaview	Illuminated Shelter
630015	Withheld under section 7(2)(b)(ii)	Superlite	Naenae	Illuminated Shelter
630016	Withheld under section 7(2)(b)(ii)	Superlite	Moera	Illuminated Shelter
630017	Withheld under section 7(2)(b)(ii)	Superlite	Petone	Illuminated Shelter
630018	Withheld under section 7(2)(b)(ii)	Superlite	Alicetown	Illuminated Shelter
630019	Withheld under section 7(2)(b)(ii)	Superlite	Seaview	Illuminated Shelter
630020	Withheld under section 7(2)(b)(ii)	Superlite	Taita	Illuminated Shelter
630021	Withheld under section 7(2)(b)(ii)	Superlite	Hutt Central	FSU
630022	Withheld under section 7(2)(b)(ii)	Superlite	Taita	Illuminated Shelter
630023	Withheld under section 7(2)(b)(ii)	Superlite	Taita	Illuminated Shelter
630024	Withheld under section 7(2)(b)(ii)	Superlite	Moera	Illuminated Shelter
630025	Withheld under section 7(2)(b)(ii)	Superlite	Hutt Central	Illuminated Shelter
630026	Withheld under section 7(2)(b)(ii)	Superlite	Boulcott	Illuminated Shelter
630027	Withheld under section 7(2)(b)(ii)	Superlite	Petone	Illuminated Shelter
630028	Withheld under section 7(2)(b)(ii)	Superlite	Petone	Illuminated Shelter
630029	Withheld under section 7(2)(b)(ii)	Superlite	Avalon	Illuminated Shelter

Withheld under section 7(2)(b)(ii)

630030		Superlite	Avalon	Illuminated Shelter
630031		Superlite	Stokes Valley	Illuminated Shelter
630032		Superlite	Woburn	Illuminated Shelter
630033		Superlite	Woburn	Illuminated Shelter
630034		Superlite	Hutt CBD	FSU
630035		Superlite	Hutt CBD	FSU
630036		Superlite	Hutt CBD	FSU
630037				
630038		Superlite	CBD	Illuminated Shelter
630039		Superlite	CBD	Illuminated Shelter
630040		Superlite	CBD	Illuminated Shelter
630041		Superlite	CBD	Illuminated Shelter

Released under the Local Government Official Information and Access Act 1987

Susan Sales

From: Withheld under section 7(2)(b)(ii)
Sent: Wednesday, 8 February 2017 6:04 pm
To: Lyle Earl; Zackary Moodie
Subject: s 7(2)(b)(ii) Digital Deployment Pack - Hutt City Council
Attachments: Attachment B - Site List.pdf; Attachment C - Pedestrian Specification.pdf; Attachment D - Digital Screen 75" Specification.pdf; Attachment E - TDG report.pdf; s 7(2)(b)(ii) Digital Deployment Agreement Letter - Hutt City Council 8 Feb 2017.pdf; s 7(2)(b)(ii) Landowner Project Information Pack Digital Application - Hutt City Council 7 Feb 2017.pdf; Attachment A - Letter from s 7(2)(b)(ii) pdf; Attachment D - Digital Screen 75" Drawing.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Lyle and Zachary

After much planning with our operations team and consultants, plus input from yourselves at various stages, and from Tim in your planning department, I am pleased to attach s 7(2)(b)(ii) Digital Project Information pack and agreement letter for your consideration.

The attached documents include:

1. Agreement letter to Council noting our intention and clarifying the proposed terms for digital deployment in the territory – this letter seeks Council's approval in relation to our contractual agreement
2. Landowner Project Information Pack and accompanying attachments – this pack essentially provides Council with all the required information to approve s 7(2)(b)(ii) deployment of digital in the territory as landowner of the road reserve including a bespoke traffic report undertaken by independent traffic consultant the Traffic Design Group

I also note that, as agreed with Tim s 7(2)(b)(ii) will apply for resource consent for both the deployment of new and existing pedestrian shelters with digital screens s 7(2)(b)(ii) is currently working with s 7(2)(b)(ii) to finalise this application and will submit to Council imminently.

As Council progresses the attached information, we will continue with our planning for digital deployment in the territory to achieve the goal of a live launch in May.

With this submission, I would like to take the opportunity to thank both of you for your input to date and helping with the site selection – especially new locations - and look forward to switching the digital screens on later in the year.

Zachary, I will call you at the end of the week just ensure your understand of the information provided and to field any initial questions.

Many thanks
 Mark

s 7(2)(b)(ii)

s7(2)(b)(ii)

25 November 2016

Hutt City Council
Via Email

Attention: Tim Johnstone, Lyle Earl

Dear Tim, Lyle,

RE: Hutt City Council - provisions for shelters and signs in road reserve

Statement of Position

s7(2)(b)(ii) advise s7(2)(b)(ii) in respect of the resource management requirements for their bus and pedestrian shelters and integrated advertising panels nation-wide. s7(2)(b)(ii) currently engaging with Hutt City Council officers with regards to the opportunities for the establishment of 'digital advertising panels' within particular existing and new bus shelters located within the Council-owned road reserve.

We have undertaken a review of the relevant statutory documents that apply in the Hutt City Council jurisdiction, as they relate to pedestrian and bus shelters, and associated digital signage ('digital advertising panels'), located in the road reserve. The purpose of this analysis is to confirm our the interpretation of the relevant Hutt City Council provisions that relate to structures (bus and pedestrian shelters) and advertising signs in the road reserve, and to seek the agreement of Hutt City Council of the same. The statutory documents and the related approval processes are in addition to any commercial land-owner approval that is required to undertake such activities on Council-owned land.

As discussed in the following analysis, the documents that are considered to be relevant to the erection and use of shelters and digital advertising panels are the Hutt City District Plan and the 'Public Places Bylaw 2016'.

Hutt City District Plan

Status of Activities in the Road Reserve

In respect of activities that occur within the road reserve, Clause 14A(a) of the Hutt City District Plan ("District Plan") states that the provisions of the adjacent 'Activity Area' (zone) where the road reserve is located shall apply, and that where two different activity areas are located either side of the road reserve, the centreline of the road will be the boundary between the two Activity Areas. Therefore, activities, structures and signs in the road reserve are subject to the provisions of the Activity Area of the adjoining land.

s7(2)(b)(ii)

Chapter 14 of the District Plan is subject to Plan Change 39. Plan Change 39 was notified to the public on 4 October 2016. Submissions closed on 4 November 2016. The purpose of the plan change is to update the transport chapter (Chapter 14A) of the District Plan to give effect to changes in the Regional Policy Statement, and to update particular standards and controls which unduly restrict development.

Plan Change 39 has no particular effect on the analysis below, other than to clarify the status/zoning of roads in the district.

The notified version of Plan Change 39 seeks to introduce the following statement in Appendix Transport 1, Standard 1(a):

Roads overlay zones, as shown in the Planning maps. When a road is stopped under a Local Government Act or Public Works Act process, the underlying zone is revealed.

Signs

The District Plan manages the erection of signage throughout the district, and defines „sign“ as follows:

any word, letter, model, sign, banner, placard, board, hoarding, billboard, poster, symbol, emblem, notice, name, image, character, outline, spectacle, display, delineation, announcement, device or representation, or any other means of a similar advertising nature intended to principally attract attention whether a specially constructed device, structure or apparatus, whether painted, printed, written, carved, inscribed, endorsed or projected onto a place or otherwise fixed or attached to any wall, roof, fence, rock, stone, structure, canvas or stationary vehicle. Aerial signs (for example, blimps) and free standing signs are included.

Sign does not include any advertising matter placed on or within a display window of a shop, business (excluding home occupation) or industrial premises and does not include traffic signs.

Onsite Sign: a sign which is located on the site to which it relates.

Offsite Sign: a sign which advertises products, goods or services not available on the site on which the sign is located.

Face Area: the total area of a sign facing any one direction.

Where the lettering or design is on an existing surface, the face area of a sign is calculated by measuring the area which encloses all symbols, emblems, words and letters which make up the sign, together with any material or colour forming an integral part of the display or used to differentiate such a sign from the background against which it is placed.

Temporary Sign: a sign advertising an event not held frequently or regularly. A temporary sign shall only be visible for a short period of time.

The design, content, location and scale of signs are managed by Chapter 14B of the District Plan. Clause 14B 2.1 sets out that signs in all Activity Areas are a permitted activity, subject to compliance with the relevant „conditions“. These conditions are specific to the Activity Area within which a sign is located.

With regards to the city centre and inner-city commercial locations, Clause 14B 2.1.5 sets out the relevant „conditions“ for permitted signs in the Commercial and Business activity areas (excluding the Petone Commercial Activity Area 1). These conditions are appended to this letter as **Attachment 1**, for completeness. The pertinent conditions for digital advertising panels are as follows:

b) Maximum Height:

- (i) The maximum height of any sign attached to a building may not project above the highest point of the highest building on the site by more than 20%.*

...

c) Maximum Face Area:

- (i) Where any sign is painted on or attached in any way to the exterior of a building, the maximum face area of all signs visible in any one direction shall not exceed 30% of the area of that wall.*

...

e) Movement

- (i) No sign shall have any parts which are moving. This shall not preclude however any sign with a variable message, suspended signs or flags.*

With regards to 14B 2.1.5(b)(i), the height of the proposed digital advertising panels that are attached to a bus or pedestrian shelter will be no higher than the height of the shelter, and therefore will comply with this condition.

With regards to 14B 2.1.5(c)(i), the digital advertising panel sign is technically attached to the wall of the bus shelter, and will comprise more than 30% of the area of the wall on which it is attached.

With regards to 14B 2.1.5(e)(i), „variable message“ signage (digital advertising) is specifically provided for, and therefore will comply this condition.

Pursuant to Rule 14B 2.3(c), any sign which does not comply with the permitted activity „conditions“ requires a resource consent as a restricted discretionary activity.

Notwithstanding the permitted activity „conditions“ for signs in the Commercial and Business activity areas, pursuant to Rule 14B 2.2(a)(i), any sign on a site that is adjacent to a Residential, Recreation, Rural Activity Area or Community Iwi Activity Area 1 requires a resource consent as a controlled activity.

New Panels

With regards to the signage provisions of the District Plan set out above, a new digital advertising panel would technically exceed more than 30% of the area of the wall to which it is „attached“, and would therefore trigger Rule 14B 2.1.5(c)(i). In this respect, any new digital advertising panel on a new „site“ will require a resource consent as a restricted discretionary activity, pursuant to Rule 14B 2.3(c).

In all other respects, a new digital advertising panel will comply with the permitted activity conditions for signage in the Commercial and Business activity areas.

Existing Panels

Notwithstanding the signage provisions of the District Plan set out above, the „swap-out“ of an existing static advertising panel with a digital panel might benefit from existing use rights, having regard to the nature, scale and intensity of effects associated with a „static“ and a „digital“ advertising panel.

The existing s7(2)(b)(ii) shelters and advertising panels were established in Lower Hutt in accordance with a commercial contract between Hutt City Council and s7(2)(b)(ii) in 2001. It is unclear as to the status of the relevant planning provisions at this time, and therefore for completeness a resource consent will be sought for the „swap out“ of an existing static advertising panel with a digital advertising panel as a restricted discretionary activity, pursuant to Rule 14B 2.3(c) (consistent with the requirements for a new site).

Shelters

Chapter 13 of the District Plan relates to „network utilities“. Rule 13.3.1.37 of the District Plan provides for „bus stops and shelters“ as a permitted activity, subject to compliance with Condition 13.3.2.5 (earthworks). A copy of Condition 13.3.2.5 is appended to this letter as **Attachment 2**, for completeness.

With regards to the nature and scope of works involved in establishing a shelter within the road reserve, it is considered that Condition 13.3.2.5 can be readily complied with, and that no resource consent is required to establish a new bus or pedestrian shelter within the road reserve.

Hutt City Council Public Places Bylaw 2016

On 20 September 2016, Hutt City Council adopted the Public Places Bylaw 2016 (the “Bylaw”). The Bylaw does not have a stated purpose or set of objectives. The Bylaw seeks to manage activities (including structures and advertising) in public areas, but does not include a definition for „public area“. It is considered that the council-owned road reserve constitutes a public area, and that therefore the Bylaw is relevant to the proposal to provide shelters and advertising panels in the road reserve.

Advertising

Section 13 of the Bylaw relates to “display and advertising in public places”. Clause 13.1.c states that no person may “display or carry a placard, board, flag, screen, or frame, by way of advertisement upon or over a carriageway or footpath of a public place” without the prior written permission of the Council. The digital advertising panels that are proposed by s7(2)(b)(ii) are considered to be subject to Clause 13.1.c of the Bylaw. The erection of a digital advertising panel will require the written permission of Council pursuant to Clause 13.1.c.

The Bylaw does not set out what constitutes the written permission of Council, or the process for obtaining such permission, other than to state that a form may be required. It is understood from discussions with Hutt City Council officers that obtaining a resource consent for digital advertising panels in the road reserve (as discussed above) will constitute Council’s written permission, and satisfy the requirements of the Bylaw with respect to advertising in public places.

Shelters

Section 17 of the Bylaw relates to buildings on public places. Clause 17.1.a states that no person may “construct or place any part of a building or structure under, upon, over, or across a public place” without the prior written permission of the Council.

The Bylaw does not set out what constitutes the written permission of Council, or the process for obtaining such permission. Therefore, confirmation is required from Council as to what is required for this process to authorise the erection of new shelters in public places.

Summary

The establishment of shelters and digital advertising panels in the road reserve within the Hutt City Council jurisdiction is subject to the provisions of the District Plan and the Public Places Bylaw 2016.

There is an overlap between the District Plan and the Bylaw in terms of how shelters and advertising panels in the road reserve are to be „authorised“. The District Plan „zones“ the road reserve consistent with the adjacent private land.

The swap-out of an existing „static“ panel with a digital advertising panel, and the erection of a new digital advertising panel at a new „site“, requires a resource consent under the District Plan as a restricted discretionary.

The written permission of Council is required for any new shelter and advertising panel in the road reserve pursuant to the Public Places Bylaw 2016.

s7(2)(b)(ii)

Confirmation is sought that the above analysis is agreed with, to enable s7(2)(b)(ii) to proceed with a sufficient level of comfort to progress the necessary applications for resource consent and/or Council's written permission to erect shelters and digital advertising panels.

Yours faithfully,

s7(2)(b)(ii)

s7(2)(b)(ii)

Released under the Local Government Official Information and Meetings Act

I4B 2.1.5 Permitted Activities - Conditions In all Commercial Activity Areas, Business Activity Areas, and Community Iwi Activity Area 3 - Kokiri Centres, excluding the Petone Commercial Activity Area 1

- a) **Location:**
- (i) No sign shall be painted onto the roof of any building.
- b) **Maximum Height:**
- (i) The maximum height of any sign attached to a building may not project above the highest point of the highest building on the site by more than 20%.
 - (ii) The maximum height of free standing signs shall be 8m.
- c) **Maximum Face Area:**
- (i) Where any sign is painted on or attached in any way to the exterior of a building, the maximum face area of all signs visible in any one direction shall not exceed 30% of the area of that wall.
 - (ii) Where a sign is erected within the Avalon Business Activity Area the maximum face area of all signs erected at the main entrance to the site shall not exceed 3m².
 - (iii) The maximum face area of free standing signs shall be 20m².
- d) **Illumination:**
- (i) If a sign is to be lit, they shall be lit by constant illumination, and shall not flash. Such signs may be lit by directional illumination or lit from within.
 - (ii) Artificial light shall not result in added illuminance in excess of 8 lux measured at the window of any dwelling house within a residential, recreation or rural activity area, Community Iwi Activity Area 1 - Marae, or Community Health Activity Area.
 - (iii) All measures shall be taken to ensure there is no unreasonable light spill beyond the boundary of the site.
- e) **Movement:**
- (i) No sign shall have any parts which are moving. This shall not preclude however any sign with a variable message, suspended signs or flags.
 - (ii) No sign shall be inflated by any means.
- f) **Temporary Signs:**
- (i) Electioneering signs shall not be displayed more than 42 days before the election, or 2 days after the election.
 - (ii) Any other temporary sign shall not be displayed more than 3 months prior to the purpose or event, and shall be removed within 2 days of the completion of the purpose or event for which the sign was erected.

13.3.2.5 Earthworks

13.3.2.5.1 Sediment and Erosion Control

Erosion and sediment control measures shall be installed and maintained for all network utility activities, in accordance with the "Erosion and Sediment Control Guidelines for the Wellington Region – September 2002" – reprinted 2006.

13.3.2.5.2 Slope, Height, Depth and Area of Earthworks

The following shall apply to all network utility activities, except to earthworks within 2.0 metres of the exterior walls of any network utility structure or the outer edge of a network utility structure without walls measured in plan view, trenching in the road reserve or rail corridor, and to piling associated with the installation of a network utility.

- i) Slope - No earthworks shall be carried out on a slope greater than 45 degrees.
- ii) Height, Depth - Earthworks shall not exceed 1.5 metres in height or depth.
- iii) Recession Plane - Any earthworks that involve the raising of the height of land above existing ground level shall not exceed a height recession plane measured at an angle of 45 degrees from any neighbouring boundary.
- iv) Area:
 - Riparian Areas - 25m²
 - All Recreation and Residential Activity Areas - 100m²
 - All Rural Activity Areas - 1000m²
 - All Other Activity Areas - 500m²
 - Rail corridor and state highway - 1,000m²

ATTACHMENT B

Submission	#	Site Number	Placing for Digital Screen - Inside/Outside/Other	s7(2)(b)(ii)	Suburb	s7(2)(b)(ii)	Priority List A or B
1st	1	630040	Inside		LOWER HUTT		A
1st	2	630038 (outside)	Outside		LOWER HUTT		A
1st	3	New Site	Facing intersection		LOWER HUTT		A
1st	8	New Site	Facing intersection		LOWER HUTT		A
1st	4	630028	Inside		PETONE		A
1st	5	New Site	Option for either Inside or Outside		PETONE		A
1st	6	630041 (outside)	Outside		LOWER HUTT		B
1st	7	630039	Inside		LOWER HUTT		B
1st	9	New Site	Facing intersection		LOWER HUTT		B

NOTES:
 Inside - facing oncoming traffic
 Outside - facing direction of traffic
 Other - as described

8 February 2017

Lyle Earl
Traffic Assets Manager
Hutt City Council
30 Laings Road
Lower Hutt 5040

Dear Lyle

Deployment of Advertising LCD Digital Display Units **in Council's Territory**.
Agreement between Hutt City Council and s7(2)(b)(ii)

Further to recent discussions with Council and pursuant to our Agreement, s7(2)(b)(ii) seeking Council's approval to deploy LCD digital displays within bus and pedestrian shelters at locations agreed with Council.

The introduction of roadside digital displays in Council's territory builds on s7(2)(b)(ii) national strategy that has seen 150 screens deployed in Auckland, Wellington and Christchurch since July 2015.

s7(2)(b)(ii) proposed digital investment has both infrastructure and income benefits to Hutt City Council, including:

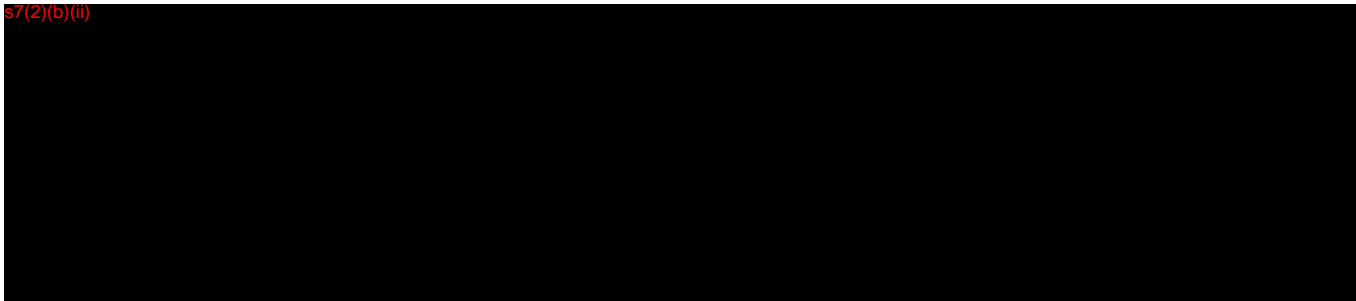
- Fully funded pedestrian shelters deployed at new locations where Council has voiced a need for infrastructure
- The replacement of pedestrian shelters with new at existing s7(2)(b)(ii) sites marked for digital conversion
- Increased revenue to Council from higher advertising sales generated by the digital displays
- Council to join a growing list of international cities that have seen the modernisation of street furniture advertising through the deployment of a premium digital network

Landowner and Resource Consent

As a means to obtain Council's approval as landowner to deploy digital LCD screens roadside in the territory, s7(2)(b)(ii) has created a *Project Information* pack for Council's review and execution.

This document includes:

- Detailed information on the regulatory context and framework agreed with Hutt City Council;



- An overview of the project including proposed sites, digital screen specification, the installation process and operating principles; and
- A bespoke traffic safety report by independent consultants the Traffic Design Group (TDG) which evaluates each proposed digital location against safety criteria developed by TDG, NZTA's traffic safety guidelines on advertising signage and Council's District Plan.

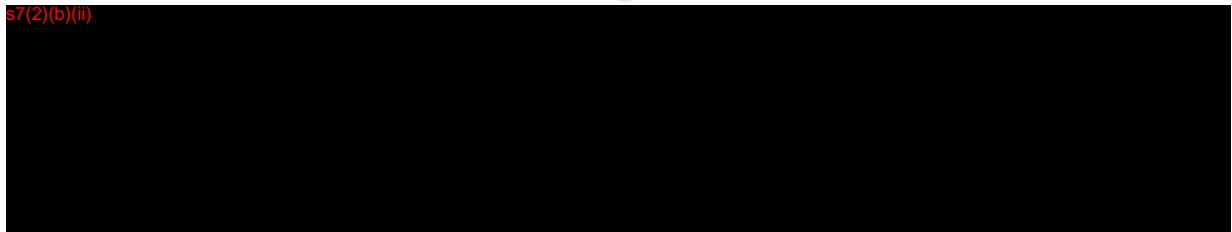
Upon review and execution of the *Project Information* pack dated 31 January 2017, Council will deem to have provided s7(2)(b)(ii) landowner consent for the deployment of digital infrastructure as outlined in the document.

We note that in addition to landowner consent s7(2)(b)(ii) will be required to obtain resource consent for both new and existing locations marked for digital s7(2)(b)(ii) will progress the resource consent application in tandem to agreeing landowner consent with Council.

Contractual / Commercial Consideration

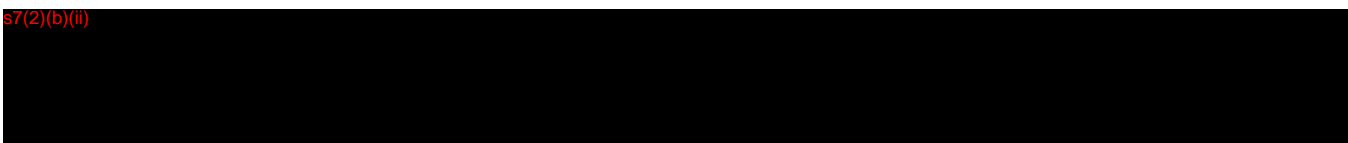
The execution of the *Project Information* pack and successful resolution of the resource consent application covers the regulatory requirements for deploying digital in the territory.

In relation to s7(2)(b)(ii) contractual agreement with Council, the project requires consideration to certain aspects with s7(2)(b)(ii) addressing and clarifying the following:



- All other aspects will be dealt with in accordance with the Agreement.

s7(2)(b)(ii) provides Council with this letter to amend the Agreement and permit the introduction, installation and operation of LCD digital display at locations specified in *Project Information* pack.



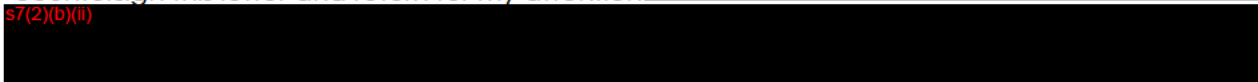
s7(2)(b)(ii)



Please could you arrange for the officer of Council with the appropriate authority to countersign this letter and return for my attention

s7(2)(b)(ii)

s7(2)(b)(ii)



Should you require additional information or have any questions, then please do not hesitate to contact me on

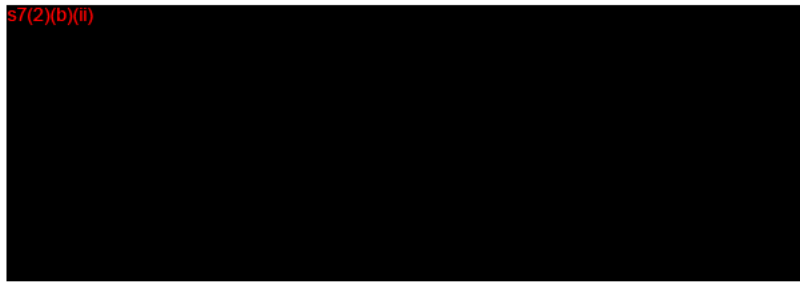
s7(2)(b)(ii)

s7(2)(b)(ii) looks forward to working with Council on the future of

s7(2)(b)(ii)

Kind regards

s7(2)(b)(ii)



Accepted and agreed

Hutt City Council agrees to amend the written Agreement s7(2)(b)(ii) dated 1 November 2000 to permit the installation of LCD digital displays at the locations specified in the Project Information pack dated 31 January 2017, and otherwise in the manner set out in this letter, with effect from the date specified below, and subject to obtaining applicable resource consents.

Signed for
Hutt City council:

Name:

Title:

Date:

s7(2)(b)(ii)



Susan Sales

From: [REDACTED]
Sent: Wednesday, 15 February 2017 5:19 pm
To: Lyle Earl; Zackary Moodie
Cc: Tim Johnstone; [REDACTED]
Subject: [REDACTED] Digital Deployment Pack - Hutt City Council
Attachments: Attachment 1 Hutt CC Existing Site List.pdf; Attachment 2 Existing Site Photographs.pdf; Attachment 3 Aerial photos.pdf; Attachment 4 digital display panel specs.pdf; Attachment 5 Traffic Engineering Report.pdf; Cover Letter RC Application [REDACTED] Existing Sites.pdf; Final RC application Lower Hutt existing sites.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Lyle and Zachary,

Following my email of last week regarding the landowner information pack and contractual proposal for [REDACTED] digital roll-out, we have just submitted today the resource consent applications for both existing shelters to be upgraded to digital and new sites, as advised by Tim during the planning sessions late last year.

For your information I have attached a copy of the covering letter, application and attachments for the existing sites, and will provide the same for new sites in a separate email given the size of files. NB. A number of the attachments have been provided previously in the Project Information Pack.

Lyle – appreciate that you are back from leave on Monday, so will give you some time to get an update from Zachary on both [REDACTED] and no doubt a few other projects!

In the meantime, please let me know if you have any immediate questions.

Many thanks

From: [REDACTED]
Sent: Wednesday, 8 February 2017 6:04 PM
To: Lyle Earl <Lyle.Earl@huttcity.govt.nz>; Zackary Moodie (Zackary.Moodie@huttcity.govt.nz) <Zackary.Moodie@huttcity.govt.nz>
Subject: [REDACTED] Digital Deployment Pack - Hutt City Council

Hi Lyle and Zachary

After much planning with our operations team and consultants, plus input from yourselves at various stages, and from Tim in your planning department, I am pleased to attach [REDACTED] Digital Project Information pack and agreement letter for your consideration.

The attached documents include:

1. Agreement letter to Council noting our intention and clarifying the proposed terms for digital deployment in the territory – this letter seeks Council's approval in relation to our contractual agreement
2. Landowner Project Information Pack and accompanying attachments – this pack essentially provides Council with all the required information to approve [REDACTED] deployment of digital in the territory as landowner of the road reserve including a bespoke traffic report undertaken by independent traffic consultant the Traffic Design Group

I also note that, as agreed with Tim, [REDACTED] will apply for resource consent for both the deployment of new and existing pedestrian shelters with digital screens. [REDACTED] is currently working with [REDACTED] to finalise this application and will submit to Council imminently.

As Council progresses the attached information, we will continue with our planning for digital deployment in the territory to achieve the goal of a live launch in May.

With this submission, I would like to take the opportunity to thank both of you for your input to date and helping with the site selection – especially new locations - and look forward to switching the digital screens on later in the year.

Zachary, I will call you at the end of the week just ensure your understand of the information provided and to field any initial questions.

Many thanks

Mark

[REDACTED]

Site Number	Placing for Digital Screen - Inside/Outside/Other	s7(2)(b)(ii)	Suburb	s7(2)(b)(ii)	Current Infrastructure	Proposed Infrastructure with Digital Display	Zone (District Plan)
630040	Inside		LOWER HUTT		Evo Premium Pedestrian Shelter	Retrofit digital display	Central Commercial
630038 (outside)	Outside		LOWER HUTT		Evo Premium Pedestrian Shelter	Retrofit digital display	Central Commercial
630028	Inside		PETONE		Evo Premium Bus Shelter	Retrofit digital display	Petone Commercial 2
630041 (outside)	Outside		LOWER HUTT		Evo Premium Pedestrian Shelter	Retrofit digital display	Central Commercial
630039	Inside		LOWER HUTT		Evo Premium Pedestrian Shelter	Retrofit digital display	Central Commercial

NOTES:
 Inside - facing oncoming traffic
 Outside - facing direction of traffic
 Other - as described

Released under the Local Government Official Information and Privacy Act 2002

s7(2)(b)(ii)

15 February 2017

Hutt City Council
Private Bag 31-912
Lower Hutt 5040

Attention: Tim Johnstone

Dear Tim,

RE: Application for Resource Consent by s7(2)(b)(ii) to replace existing static advertising panels with digital advertising panels

Further to our recent discussions, please find enclosed an application by s7(2)(b)(ii) s7(2)(b)(ii) to replace existing static advertising panels on existing bus and pedestrian shelters in the Council-owned road reserve with digital and static advertising panels. The application relates to five different shelter locations within the road reserve.

In particular, please find enclosed:

- A completed application form (ECR-FORM-249F);
- An Assessment of Environmental Effects; and
- The associated attachments to the AEE.

s7(2)(b)(ii) is corresponding with Lyle Earl from Hutt City Council with respect to the technical details of this proposal, and in respect of the application for Council's approval under the Public Places Bylaw 2016.

Please do not hesitate to contact me should you require any further information or would like to discuss the application.

Yours faithfully,

s7(2)(b)(ii)

APPLICATION FOR RESOURCE CONSENT

&

ASSESSMENT OF THE PROPOSAL

TO

**REPLACE EXISTING STATIC ADVERTISING PANELS ON
PEDESTRIAN AND BUS SHELTERS WITH DIGITAL
ADVERTISING PANELS**

AT

**VARIOUS LOCATIONS
WITHIN THE ROAD RESERVE**

HUTT CITY

PREPARED BY

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- Attachment 1:** Proposed Site List
- Attachment 2:** Photographs of Sites
- Attachment 3:** Aerial Photographs of Sites
- Attachment 4:** Specifications and Drawings of Digital Advertising Panels
- Attachment 5:** Traffic Engineering Report s7(2)(b)(ii)

Released under the Local Government Official Information and Meetings Act

Form 9

**APPLICATION FOR RESOURCE CONSENT
UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991**

TO: **Hutt City Council
Private Bag 31-912
Lower Hutt 5040**

1. [REDACTED] at the address for service listed below, applies for the following type of resource consent:

- Land use consent.

2. The activity to which the application relates is a proposal to replace existing „static“ advertising panels on existing bus and pedestrian shelters with new digital advertising displays at various locations within the road reserve.

Without limitation, the proposal has been assessed to require consent for the following reasons:

Lower Hutt District Plan:

- The proposal involves the installation of „signs“ which exceed 30% of the area of the wall to which they are attached (Rule 14B 2.1.5(c)(i)). [REDACTED]

[REDACTED]

[REDACTED] This is a Restricted Discretionary activity pursuant to Rule 14B 2.3(c).

3. **The site at which the proposed activity is to occur is as follows:**

(a) Address: Road reserve

Legal Description: N/A

(b) The natural and physical characteristics of the site are described in the Assessment of Environmental Effects.

4. **The name of the owner and occupier (other than the applicant) of land to which the application relates are as follows:**

Lower Hutt City Council

5. **Other activities**

There are no other activities that are part of the proposal to which this application relates.

6. **Additional resource consents**

Pursuant to the Hutt City Public Places Bylaw 2016, the approval of Hutt City Council is required to locate structures and advertising in public places (including the road reserve).

This approval is sought by [REDACTED] in a separate application that has been prepared by [REDACTED]

7. Effects on the Environment

I attach an assessment of the effects of the proposal on the environment that-

- (a) includes the information required by clause 6 of Schedule 4 of the Resource Management Act 1991; and
- (b) addresses the matters specified in clause 7 of Schedule 4 of the Resource Management Act 1991; and
- (c) includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.

8. I attach an assessment of the proposed activity against the matters set out in Part 2 of the Resource Management Act 1991.

9. I attach an assessment of the proposed activity against any relevant provisions of a document referred to in section 104(1)(b) of the Resource Management Act 1991, including the information required by clause 2(2) of Schedule 4 of that Act.

10. Other information

No other information is required to be included in this application.

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ASSESSMENT OF ENVIRONMENTAL EFFECTS

Released under the Local Government Official Information and Meetings Act

INTRODUCTION

- 1 s7(2)(b)(ii) is a provider of commercial outdoor advertising on bus and pedestrian shelters throughout New Zealand, including in Lower Hutt City. s7(2)(b)(ii) is responsible for the design, construction and installation of the bus and pedestrian shelters, together with their maintenance, repair and cleaning at no charge to the Council or to ratepayers.
2. Following international trends for digital s7(2)(b)(ii) advertising units, s7(2)(b)(ii) is undertaking a comprehensive upgrade of its network of street furniture and integrated advertising units, and in doing so replacing existing „static“ advertising panels with digital (changeable message) advertising panels where it is appropriate to do so.
3. To date, s7(2)(b)(ii) has implemented digital advertising panels on 36 bus shelter units in Auckland (in July 2015), and 114 bus and pedestrian shelter units in Auckland, Wellington and Christchurch (in July 2016).



DESCRIPTION OF THE PROPOSAL

4. s7(2)(b)(ii) proposes to improve the network of bus and pedestrian shelters within Lower Hutt and Petone. This involves upgrading existing shelters and developing new shelters. Associated with these improvements, the shelters will incorporate digital display advertising panels where it is appropriate to do so.
5. This application relates to the proposal to replace five existing static advertising panels on existing bus and pedestrian shelters with new digital and static advertising panels s7(2)(b)(ii) has engaged in consultation with Hutt City Council in respect of the site list, and has received preliminary support from Council for the locations identified for the installation of replacement digital and static advertising panels.
6. A list of the proposed sites is set out in **Attachment 1**, and in Table 1 below.

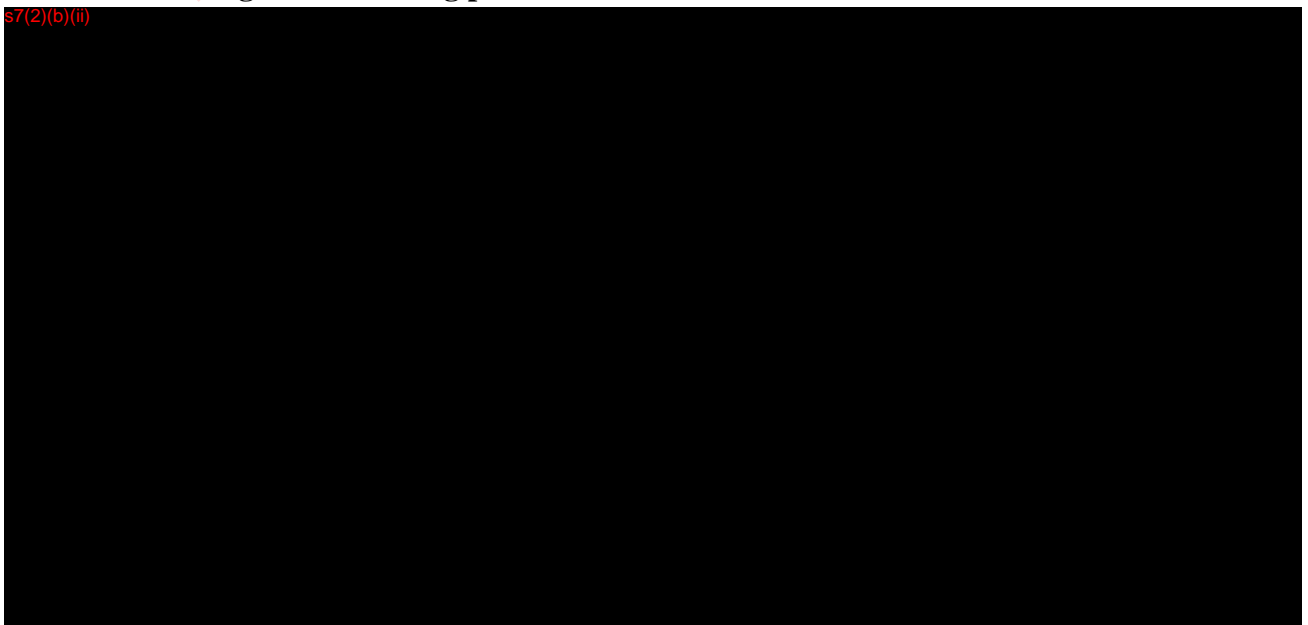
Site number	Location	Orientation of digital display panel
630040	s7(2)(b)(ii)	Facing oncoming traffic

	s7(2)(b)(ii)	(north-east facing)
630038		Facing direction of traffic (south-west facing)
630028		Facing oncoming traffic (west facing)
630041		Facing direction of traffic (north-east facing)
630039		Facing oncoming traffic (south-west facing)

Details of the shelters

- The bus and pedestrian shelter structures at each of the existing sites will not be replaced. The existing shelters incorporate a double-sided static advertising panel, contained within the support columns. The advertising panels will be removed and replaced with s7(2)(b)(ii)


- The existing structures are shown in the photographs appended as **Attachment 2**, and in the aerial photographs appended as **Attachment 3**.

Details of the digital advertising panels



s7(2)(b)(ii)

14. The content displayed is managed directly by s7(2)(b)(ii) to ensure compliance with the standards of the Advertising Standards Authority. s7(2)(b)(ii)

s7(2)(b)(ii)

Complaints regarding the content of the messages displayed may either be directed to s7(2)(b)(ii) to address or to the Advertising Standards Authority.

REASONS FOR THE APPLICATION

Lower Hutt District Plan

15. Clause 14A(a) of the Hutt City District Plan (“District Plan”) states that the provisions of the adjacent „Activity Area“ (zone) where the road reserve is located shall apply, and that where two different activity areas are located either side of the road reserve, the centreline of the road will be the boundary between the two Activity Areas. Therefore, activities, structures and signs in the road reserve are subject to the provisions of the Activity Area of the adjoining land.

16. The sites to which this application relates to are located within the following Activity Areas:

- (a) Central Commercial (4 sites); and
- (b) Petone Commercial – Area 2 (1 site);

s7(2)(b)(ii)

17. The provisions for „signs“ are set out in Chapter 14B of the District Plan. In respect of signs in the Central Commercial and Petone Commercial – Area 2 Activity Areas, Rule 14B 2.1.5 provides the relevant „conditions“ (rules) which apply to the location, design and nature of the sign.
18. The reasons for consent are set out in the „application“ document.
19. Overall, consent is required for the proposal as a **restricted discretionary** activity.

EFFECTS ON THE ENVIRONMENT

20. As a restricted discretionary activity, Council is limited in its discretion as to which matters it may have regard to when assessing an application for consent. The matters for which Council has restricted its discretion in this regard are set out in Clause 14B.2.3.1(c). In respect of the proposed replacement of existing signs on bus and pedestrian shelters with digital and static advertising panels, the matters are restricted to traffic effects¹. The relevant matter of discretion is as follows:

Traffic Effects:

The extent to which the proposed sign will affect adversely traffic safety and the efficient functioning of the State Highway. Signs should not distract motorists or obstruct the State Highway, cycle and pedestrian ways.

Consideration should be had to the nature of illumination, location on the site, height, face area and movement.

21. The traffic safety effects of the proposed digital advertising panels have been comprehensively assessed in the appended Traffic Engineering Report (**Attachment 5**)

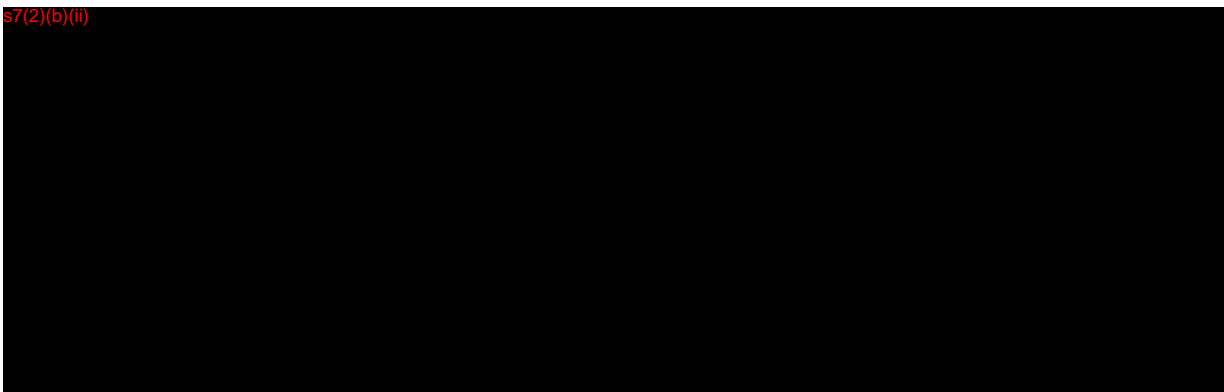
s7(2)(b)(ii)

22. The s7(2)(b)(ii) adopts a methodology that has been utilised by s7(2)(b)(ii) in applications for replacement and new digital advertising panels in bus and pedestrian shelters in the road reserve in other territorial jurisdictions, including in Auckland, Wellington and Christchurch. The methodology has been endorsed by those territorial authorities as an appropriate means of assessing any proposal for the incorporation of digital advertising on bus and pedestrian shelters.

¹ It is noted that the matters of discretion for signage in the Commercial and Business zones include visual amenity effects only where a proposal involves a sign on a site with frontage to particular roads. The proposed sites are not located on any of the roads identified.

23. The methodology involves considering the locational and functional characteristics of various road environments, and grouping common characteristics to determine site „typologies“. The characteristics of the proposed sites which are the subject of this application are considered and each site is classified within a typology. One site is then chosen as a representative of each typology, such that the assessment of traffic safety effects can then be undertaken of those representative sites (as opposed to each site being individually assessed).
24. Applying this methodology, [s7(2)(b)(ii)] confirms that the sites that are subject to this application fall within two of the typologies, and has identified two representative sites for assessment, being:
- a. Typology 1: Bus shelter, outside central area, midblock – Site 630028 Jackson Street, [s7(2)(b)(ii)] and
 - b. Typology 2: Pedestrian shelter, within central area, at intersection – Site 630040 High Street [s7(2)(b)(ii)].
25. With regards to the „generic“ traffic safety considerations that apply to all sites, the [s7(2)(b)(iii)] Report confirms that:
- a. With reference to international research, the nature of variable messaging does not inherently attract drivers“ attention at a level that could be considered to be a safety concern;
 - b. The content of the advertising (for pragmatic reasons) typically comprises of limited text and simple graphics that can communicate a message in a short period of time, such that drivers“ attention is not diverted from the driving task (and in this respect all content displayed is subject to approval by [s7(2)(b)(ii)] ensure that it is suitable); and
 - c. With respect to the manner in which the variable messages are displayed (in accordance with the „standards“ described above), the digital advertising panels are similar to traditional static panels in terms of their potential to cause distraction.
26. [s7(2)(b)(iii)] has assessed the NZTA“s crash record database, and confirmed that there have been no crashes in Hutt City that were related to the presence of signage or advertising, and that this is consistent with findings in other regions where the presence of signage and digital advertising is an established component.
27. The implementation of digital advertising by [s7(2)(b)(ii)] to date has been undertaken in accordance with a suite of „standards“ (discussed above), which [s7(2)(b)(ii)] has developed in

association with other territorial local authorities. The implementation of digital advertising in accordance with these standards has proven that no adverse traffic effects are generated by this form of signage. These standards are set out above and the proposal is for the panels to operate in accordance with these, consistent with other lawfully established digital bus and pedestrian shelter panels in Auckland, Wellington and Christchurch. The applicant proposes conditions of consent to this effect.

28. s7(2)(b)(ii) 

29. In respect of the representative sites assessed, the s7(2)(b)(ii) confirms that, with regard to the size, location, and orientation of the digital advertising panels, sites within these two typologies do not have characteristics that would generate any discernible adverse traffic safety effects.

30. Additionally (for completeness), the s7(2)(b)(ii) confirms that the proposed digital advertising display complies or will be operated in a manner which complies with all of the requirements of Part 3 of the NZTA's Traffic Control Devices Manual ("TCD Manual").

31. Overall, having regard to the conclusions reached by s7(2)(b)(ii) the potential traffic safety effects generated by the proposed replacement digital advertising panels are considered to be minimal.

NOTIFICATION ASSESSMENT

Public Notification Assessment (s95A and s95D)

32 Regarding whether to publicly notify an application, section 95A of the Act states:

95A Public notification of consent application at consent authority's discretion

(1) *A consent authority may, in its discretion, decide whether to publicly notify an application for a resource consent for an activity.*

(2) *Despite subsection (1), a consent authority must publicly notify the application if—*

(a) it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor; or

(b) the applicant requests public notification of the application; or
(c) a rule or national environmental standard requires public notification of the application.

(3) Despite subsections (1) and (2)(a), a consent authority must not publicly notify the application if—

(a) a rule or national environmental standard precludes public notification of the application; and

(b) subsection (2)(b) does not apply.

(4) Despite subsection (3), a consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application

33. The applicant does not request public notification of the application.

34. Rule 17.2.2(a) of the Operative District Plan specifies that public notification of an application for a Restricted Discretionary activity “need not be required”.. No other provision in the Operative District Plan requires public notification or the assessment of the proposal against the notification tests of section 95D of the Act

35. Having regard to the preceding analysis, it is considered that the adverse effects generated by the proposal on any person will be less than minor, and the Council is therefore not required to publicly notify the application.

36. That said, pursuant to section 95A(4) of the Act, the Council may decide to publicly notify an application if it considers that special circumstances exist in relation to the application. „Special circumstances“ are those that are unusual or exceptional, but they may be less than extraordinary or unique. Circumstances which are „special“ will be those which make notification desirable, notwithstanding the general provisions excluding the need for notification. In determining what may amount to special circumstances it is necessary to consider the matters relevant to the merits of the application as a whole, not merely those considerations stipulated in the tests for notification and service.

37. The proposal replaces existing static illuminated advertising panels in existing bus and pedestrian shelters with digital advertising panels of a similar size and orientation. Road-side advertising panels are a common element within urban environments, including within Lower Hutt, and there is nothing unusual or special about the circumstances of the sites (or the scope of the proposal).

38. The proposal does not give rise to any special circumstances under section 95A(4) of the Act, such that they would justify notification of the application.

39. Accordingly, it is considered appropriate that the proposal proceed without being publicly notified.

Limited Notification Assessment (s95B and s95E)

40. Regarding limited notification of an application, section 95B of the Act states:

95B Limited notification of consent applications

- (1) *If a consent authority does not publicly notify an application for a resource consent for an activity, it must decide (under sections 95E and 95F) if there are any affected persons or affected order holders in relation to the activity.*
- (2) *The consent authority must give limited notification of the application to any affected person unless a rule or national environmental standard precludes limited notification of the application.*
- (3) *The consent authority must give limited notification of the application to any affected order holder even if a rule or national environmental standard precludes limited notification of the application.*

41. There are no affected order holders in relation to the proposed activity.

42. Rule 17.2.2(b) of the Operative District Plan specifies that limited notification of an application for a Restricted Discretionary activity “need not be required”. No other provision of the Operative District Plan requires limited notification or the assessment of the proposal against the tests of section 95E of the Act.

43. Having regard to the preceding analysis, it is considered that the adverse effects of the proposal on any person will be less than minor. Therefore no persons are considered to be adversely affected by the proposal so as to warrant limited notification.

44. The application can be accordingly considered without limited notification.

Section 95A-E Conclusion

45. It is appropriate for the application to proceed without public or limited notification.

SECTION 104 ASSESSMENT

46. Subject to Part 2 of the Act, when considering an application for resource consent the Council must, in accordance with section 104(1) of the Act, have regard to:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provision of -*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan; and

- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

47. The provisions of section 104(1) are considered below.

Any actual or potential effects on the environment of allowing the activity (s104(1)(a))

48. An assessment of effects has been undertaken above, which concluded that the proposal will have less than minor adverse effects on the environment in terms of traffic safety (being the only relevant matter to which Council's discretion is restricted to).

49. The proposal will also result in positive effects. In this regard (across all sites) the proposal to install digital advertising as part of a bus or pedestrian shelter has beneficial effects, including:

- a. the ability for s7(2)(b)(ii) to generate revenue, which in turn facilitates the maintenance, and refurbishment of the bus and pedestrian shelters, and the development of new bus and pedestrian shelters to the benefit of the Lower Hutt public;
- b. the use of developing technology in a manner that keeps pace with the evolving digital age; and
- c. reducing „wastage“ relative to the manufacturing and production of static images which have a limited lifespan.

Relevant National Environmental Standards, Other Regulations, Policy Statements, Plans or Proposed Plans (s104(1)(b))

50. Section 104(1)(b) of the Act requires that when considering an application for resource consent, the Council shall have regard to any relevant provisions of any National Environmental Standards, other regulations, Policy Statements, Plans or Proposed Plans.

51. There are no National Environmental Standards, Other Regulations, National Policy Statements, New Zealand Coastal Policy Statements, or Regional Policy Statements that are relevant to the consideration of this application for resource consent.

A Plan or Proposed Plan (s104(1)(b)(vi))

Lower Hutt District Plan

52. The relevant objectives and policies of the Operative District Plan are set out in Chapter 14B Signs, and relate to amenity values and traffic safety matters.

53. Objective 14B 1.1 seeks to provide for appropriate signs, while avoiding, remedying or mitigating any significant adverse effects on visual amenity values of the area. The corresponding Policies seek to achieve this objective by allowing for signs in Commercial and Business Activity Areas, while restricting the size, location and frequency of signs in activity areas where visual amenity values are sensitive, and controlling the illumination of signs to ensure the containment of light spill and glare.
54. As set out in the preceding analysis of effects, the Operative District Plan restricts the Council's discretion for the assessment of restricted discretionary activities (for signs) to traffic effects, and to visual amenity effects only where such signs are located adjacent to particular roads within the district, and (in those locations) where they are adjacent to or opposite the Residential, Recreation or Community Activity Areas. The sites for which the proposed replacement advertising panels are proposed are not located on the roads identified.
55. Notwithstanding the limited „scope“ for considering visual amenity effects (pursuant to the matters of discretion), the proposal is assessed against the objectives and policies of the Operative District Plan which relate to visual amenity for completeness. The proposal relates to the replacement of existing static illuminated advertising panels with digital advertising panels on existing bus and pedestrian shelters, which does not inherently introduce new effects on visual amenity. The existing and proposed panels are located in established urban environments within which signage and advertising are intrinsic components. With respect to the manner in which the variable messages are operated (image duration, transition, illumination), the proposal will appropriately avoid, remedy and mitigate any potential adverse effects generated by the digital advertising panels on visual amenity. Therefore, the proposal is considered to be consistent with the Objective and Policies of 14B 1.1.
56. In respect of traffic safety, Objective 14B 1.2 seeks to ensure that signs do not interfere with the safe and efficient use of all roads, cycle ways and pedestrian ways. The corresponding policies seek to achieve this outcome by discouraging signs being located where they will obstruct a roadway, pedestrian or cycle way, or obstruct the vision of an intersection or driveway, and to manage the illumination of signs to ensure they do not cause a distraction.
57. With regards to the preceding analysis regarding the potential traffic safety effects, and the analysis prepared §7(2)(b)(ii) (**Attachment 5**), the proposed replacement of existing static advertising panels with digital advertising panels is consistent with the outcomes anticipated by the objective and policies of 14B 1.2.

58. Overall, the proposal is considered to be consistent with the objectives and policies of the Operative District Plan.

Any Other Relevant Matters (s104(1)(c))

59. The Public Places Bylaw 2016 requires that the written permission of Council be obtained to display advertising material on a public place. s7(2)(b)(ii) has applied for the written permission of Council in respect of the Public Places Bylaw 2016 by way of a separate application. No further assessment of the Bylaw is necessary in relation to this application.

60. There are no other matters that are relevant to the consideration of the proposal.

Part 2 Matters

61. The purpose of the Act is to promote the sustainable management of natural and physical resources. The definition of sustainable management in section 5 supports the use and development of resources to enable people and communities to provide for their wellbeing. This approach is, however, tempered by the requirements of sections 5(2)(a), (b), and (c) to sustain the potential of natural and physical resources for future generations, safeguard the capacity of resources, and avoid, remedy or mitigate adverse effects on the environment.

62. The proposal represents a sustainable use of the land resource, providing a benefit to pedestrians in providing revenue to s7(2)(b)(ii) to provide, maintain and upgrade bus and pedestrian shelters. The proposal also has other waste minimisation benefits in terms of the digital display replacing the static „skin“ display. In this regard, the digital panels negate the need to iteratively swap out the static skins, which involves the production and disposal of skins.

63. It has been demonstrated in the above assessment that there will be less than minor adverse effects generated by the proposal on the environment. Overall, the proposal is consistent with the purpose of the Act as expressed in Section 5.

64. There are no matters of national importance (Section 6) and no Treaty of Waitangi matters (Section 8) affecting this proposal. From the list of other matters contained in Section 7, it is considered that the proposal will make effective and efficient use of the resources represented by the sites, will maintain the visual amenity of the respective areas, and will not detract from the quality of the surrounding environment.

65. For these reasons it is considered that this proposal is fully in accord with the purpose and principles of the Act.

RECOMMENDATION

66. That for the reasons stated in this report it is appropriate that this application be granted resource consent.

RECOMMENDED CONDITIONS OF CONSENT

67. As set out in the preceding analysis, s7(2)(b)(ii) has developed a set of standards and operating parameters for the management of the digital advertising panels which ensure that the potential effects generated by the displays are appropriately avoided, remedied and mitigated. The effectiveness of these standards has been confirmed in practice by the implementation and use of digital advertising panels in Auckland, Wellington and Christchurch. In this regard, it is appropriate that conditions are imposed on the consent sought to ensure that the displays are managed in accordance with the „standards“ set out in paragraph 12.

68. In addition, to ensure that the illumination of the static display panel during night hours is limited to a level which is consistent with typical lighting parameters for static signage, a condition of consent is proposed to this effect, as follows:

s7(2)(b)(ii)

CONCLUSION

69. The applicant seeks resource consent to replace existing static advertising panels on existing bus and pedestrian shelters in the road reserve with digital advertising panels, at various locations as set out in **Attachment 1**.

70. As detailed in the above assessment, the adverse effects of the proposal will be less than minor having regard to the context of the respective environments, and the operating characteristics for the digital advertising panels.

71. The proposal is consistent with the relevant objectives and policies of the Operative District Plan, as well as the purpose of the Act.

72. It is therefore considered appropriate that Council grant consent to the proposed replacement digital advertising panels as sought on a non-notified basis.

Prepared by

s7(2)(b)(ii)

Susan Sales

From: s7(2)(b)(ii)
Sent: Wednesday, 15 February 2017 5:27 pm
To: Lyle Earl; Zackary Moodie
Cc: Tim Johnstone; s7(2)(a)
Subject: s7(2)(b)(ii) Digital Deployment Pack - Hutt City Council
Attachments: Attachment 1 Hutt CC New Site List.pdf; Attachment 2 Aerial photos.pdf; Attachment 3 Evo Pedestrian Shelter drawings.pdf; Attachment 4 digital display panel specs.pdf; Attachment 5 Traffic Engineering Report.pdf; Cover Letter RC Application s7(2)(b)(ii) New Sites.pdf; Final RC application Lower Hutt new sites.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

As per my note below and for your reference, copies of the covering letter, application and attachments for the new sites.

Many thanks

s7(2)(b)(ii)

From: s7(2)(b)(ii)
Sent: Wednesday, 15 February 2017 5:19 PM
To: Lyle Earl <Lyle.Earl@huttcity.govt.nz>; Zackary Moodie (Zackary.Moodie@huttcity.govt.nz) <Zackary.Moodie@huttcity.govt.nz>
Cc: Tim Johnstone <Tim.Johnstone@huttcity.govt.nz>; s7(2)(a)
Subject: s7(2)(b)(ii) Digital Deployment Pack - Hutt City Council

Hi Lyle and Zachary,

Following my email of last week regarding the landowner information pack and contractual proposal for s7(2)(b)(ii) digital roll-out, we have just submitted today the resource consent applications for both existing shelters to be upgraded to digital and new sites, as advised by Tim during the planning sessions late last year.

For your information I have attached a copy of the covering letter, application and attachments for the existing sites, and will provide the same for new sites in a separate email given the size of files. NB. A number of the attachments have been provided previously in the Project Information Pack.

Lyle – appreciate that you are back from leave on Monday, so will give you some time to get an update from Zachary on both s7(2)(b)(ii) and no doubt a few other projects!

In the meantime, please let me know if you have any immediate questions.

Many thanks

s7(2)(b)(ii)

From: s7(2)(b)(ii)
Sent: Wednesday, 8 February 2017 6:04 PM
To: Lyle Earl <Lyle.Earl@huttcity.govt.nz>; Zackary Moodie (Zackary.Moodie@huttcity.govt.nz) <Zackary.Moodie@huttcity.govt.nz>
Subject: s7(2)(b)(ii) Digital Deployment Pack - Hutt City Council

Hi Lyle and Zachary

After much planning with our operations team and consultants, plus input from yourselves at various stages, and from Tim in your planning department, I am pleased to attach [REDACTED] Digital Project Information pack and agreement letter for your consideration.

The attached documents include:

1. Agreement letter to Council noting our intention and clarifying the proposed terms for digital deployment in the territory – this letter seeks Council's approval in relation to our contractual agreement
2. Landowner Project Information Pack and accompanying attachments – this pack essentially provides Council with all the required information to approve [REDACTED] deployment of digital in the territory as landowner of the road reserve including a bespoke traffic report undertaken by independent traffic consultant the [REDACTED]

I also note that, as agreed with Tim [REDACTED] will apply for resource consent for both the deployment of new and existing pedestrian shelters with digital screens. [REDACTED] is currently working with [REDACTED] to finalise this application and will submit to Council imminently.

As Council progresses the attached information, we will continue with our planning for digital deployment in the territory to achieve the goal of a live launch in May.

With this submission, I would like to take the opportunity to thank both of you for your input to date and helping with the site selection – especially new locations - and look forward to switching the digital screens on later in the year.

Zachary, I will call you at the end of the week just ensure your understand of the information provided and to field any initial questions.

Many thanks

[REDACTED]

Site Number	Placing for Digital Screen - Inside/Outside/Other	Location	Suburb	Longitude	Latitude	Current Infrastructure	Proposed Infrastructure with Digital Display	Zone (District Plan)
New Site 1	Facing intersection	s7(2)(b)(ii)	LOWER HUTT	s7(2)(b)(ii)		N/a	Evo Premium Pedestrian Shelter - 1655	Central Commercial
New Site 2	Facing intersection		LOWER HUTT			N/a	Evo Premium Pedestrian Shelter - 1655	General Recreation
New Site 3	Option for either Inside or Outside		PETONE			N/a	Evo Premium Pedestrian Shelter - 1655	General Business
New Site 4	Facing intersection		LOWER HUTT			N/a	Evo Premium Pedestrian Shelter - 1655	Central Commercial

NOTES:

Inside - facing oncoming traffic

Outside - facing direction of traffic

Other - as described

Released under the Local Government Official Information and Meetings Act

s7(2)(b)(ii)

15 February 2017

**Hutt City Council
Private Bag 31-912
Lower Hutt 5040**

Attention: Tim Johnstone

Dear Tim,

RE: Application for Resource Consent by [REDACTED] to erect new digital and static advertising panels on new pedestrian shelters

Further to our recent discussions, please find enclosed an application by [REDACTED] [REDACTED] to erect new digital and static advertising panels on new pedestrian shelters within the Council-owned road reserve and at [REDACTED]. The application relates to four different locations.

In particular, please find enclosed:

- A completed application form (ECR-FORM-249F);
- An Assessment of Environmental Effects; and
- The associated attachments to the AEE.

[REDACTED] is corresponding with Lyle Earl from Hutt City Council with respect to the technical details of this proposal, and in respect of the application for Council's approval under the Public Places Bylaw 2016.

Please do not hesitate to contact me should you require any further information or would like to discuss the application.

Yours faithfully,

[REDACTED]
s7(2)(b)(ii)



APPLICATION FOR RESOURCE CONSENT
&
ASSESSMENT OF THE PROPOSAL
TO
ESTABLISH NEW PEDESTRIAN SHELTERS
INCORPORATING DIGITAL AND STATIC ADVERTISING
PANELS
AT
VARIOUS LOCATIONS
WITHIN THE ROAD RESERVE
HUTT CITY
PREPARED BY



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- Attachment 1:** Site List
- Attachment 2:** Aerial Photographs
- Attachment 3:** Specifications of Proposed Pedestrian Shelters
- Attachment 4:** Specifications of Proposed Digital Advertising Panels
- Attachment 5:** Traffic Engineering Report s7(2)(b)(ii)

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Form 9

APPLICATION FOR RESOURCE CONSENT
UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

TO: **Hutt City Council**
Private Bag 31-912
Lower Hutt 5040

1. [REDACTED] at the address for service listed below, applies for the following type of resource consent:

- Land use consent.

2. The activity to which the application relates is a proposal to establish new pedestrian shelters incorporating digital advertising panels at three locations within the road reserve and one location within land zoned General Recreation.

Without limitation, the proposal has been assessed to require consent for the following reasons:

Lower Hutt District Plan:

New Sites 1, 3 and 4

- The proposal involves the establishment of „signs“ which exceed 30% of the area of the wall to which they are attached in the Central Commercial, Petone Commercial – Area 2, and General Business Activity Areas (Rule 14B 2.1.5(c)(i)). [REDACTED]
[REDACTED]
[REDACTED]. This is a Restricted Discretionary activity pursuant to Rule 14B 2.3(c);

New Site 2

- The proposal involves the construction of a pedestrian shelter within the General Recreation Activity Area, which is not otherwise provided for as a permitted or restricted discretionary activity. This is a Discretionary activity pursuant to Rule 7A 2.3(b);
- The proposal involves an activity within the Lower Hutt Civic Centre Historic Area (listed in Appendix Heritage 1). This is a Discretionary activity pursuant to Rule 14F 2.3(a); and
- The proposal involves the establishment of a „sign“ which incorporates variable messages in the General Recreation Activity Area (Rule 14B 2.1.2(f)(i)). This is a Discretionary activity pursuant to Rule 14B 2.4(a)(i).

3. **The sites at which the proposed activity is to occur is as follows:**

(a) Address

New Sites 1, 3 and 4: Road reserve

New Site 2: [REDACTED]

(b) The natural and physical characteristics of the site are described in the Assessment of Environmental Effects.

4. The name of the owner and occupier (other than the applicant) of land to which the application relates are as follows:

Lower Hutt City Council

5. Other activities

There are no other activities that are part of the proposal to which this application relates.

6. Additional consents

Pursuant to the Hutt City Public Places Bylaw 2016, the approval of Hutt City Council is required to locate structures and advertising in public places (including the road reserve). This approval is sought by s7(2)(b)(ii) in a separate application that has been prepared by s7(2)(a) for s7(2)(b)(ii)

7. Effects on the Environment

I attach an assessment of the effects of the proposal on the environment that-

- (a) includes the information required by clause 6 of Schedule 4 of the Resource Management Act 1991; and
- (b) addresses the matters specified in clause 7 of Schedule 4 of the Resource Management Act 1991; and
- (c) includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.

8. I attach an assessment of the proposed activity against the matters set out in Part 2 of the Resource Management Act 1991.

9. I attach an assessment of the proposed activity against any relevant provisions of a document referred to in section 104(1)(b) of the Resource Management Act 1991, including the information required by clause 2(2) of Schedule 4 of that Act.

10. Other information

No other information is required to be included in this application.

Released under the Local Government Information and Meetings Act

ASSESSMENT OF ENVIRONMENTAL EFFECTS

Released under the Local Government Official Information and Meetings Act

INTRODUCTION

1. [§7(2)(b)(ii)] is a provider of commercial outdoor advertising on bus and pedestrian shelters throughout New Zealand, including in Lower Hutt City. [§7(2)(b)(ii)] is responsible for the design, construction and installation of the bus and pedestrian shelters, together with their maintenance, repair and cleaning at no charge to the Council or to ratepayers.
2. Following international trends for digital [§7(2)(b)(ii)] advertising units, [§7(2)(b)(ii)] is undertaking a comprehensive upgrade of its network of street furniture and integrated advertising units, and in doing so replacing existing static advertising panels with digital (changeable message) advertising panels where it is appropriate to do so.
3. To date, [§7(2)(b)(ii)] has implemented digital advertising panels on 36 bus shelter units in Auckland (in July 2015), and 114 units in Auckland, Wellington and Christchurch in (July 2016).

DESCRIPTION OF THE PROPOSAL

4. [§7(2)(b)(ii)] proposes to improve the network of pedestrian shelters within Lower Hutt and Petone. This involves upgrading existing shelters and developing new shelters. Associated with these improvements, the shelters will incorporate digital display advertising panels where appropriate to do so.
5. This application relates to the proposal to establish four new pedestrian shelters, which are to incorporate digital and static „poster“ advertising panels. [§7(2)(b)(ii)] has engaged in consultation with Hutt City Council in respect of the site list, and has received preliminary support from Council for the locations identified for the installation of digital signage.
6. A list of the four proposed sites is set out in **Attachment 1** for information, and in Table 1 below.

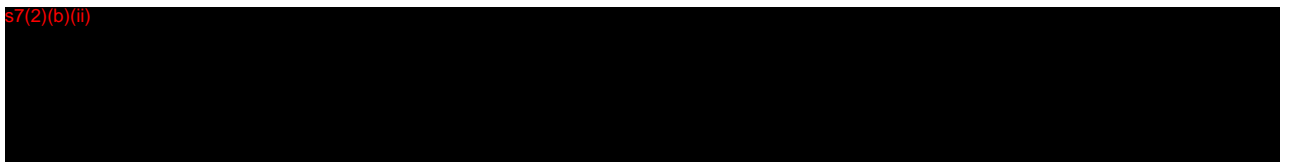
Site number	Location	Orientation of digital display panel
New Site 1	[§7(2)(b)(ii)]	Facing intersection (west

	s7(2)(b)(ii)	facing)
New Site 2	s7(2)(b)(ii)	Facing intersection (north facing)
New Site 3		Either east or west facing
New Site 4		Facing intersection (south facing)

- Aerial photographs of each of the proposed shelter locations are appended as **Attachment 2** to this application. The final position of each shelter will be determined relative to infrastructure/servicing requirements, and confirmed with Hutt City Council.
- As set out in the appended aerial photographs, New Sites 1, 3 and 4 are located within the Council-owned road reserve. New Site 2 is located on the footpath adjacent to s7(2)(b)(ii) and is technically located within the site of s7(2)(b)(ii) and is therefore not within the road reserve.

Details of the shelters

- The shelter specifications are appended as **Attachment 3** to this application, and illustrated in **Figure 1** below. s7(2)(b)(ii)



15. The content displayed is managed directly by s7(2)(b)(ii) to ensure compliance with the standards of the Advertising Standards Authority. s7(2)(b)(ii)

Complaints regarding the content of the messages displayed may either be directed to s7(2)(b)(ii) to address or to the Advertising Standards Authority.

REASONS FOR THE APPLICATION

Lower Hutt District Plan

Framework of the Operative District Plan

16. As discussed above, the proposal involves the construction and installation of new pedestrian shelters which are to incorporate both digital and static display panels in locations within the legal road reserve (New Sites 1, 3 and 4) and within the Council-owned s7(2)(b)(ii) (New Site 2).

17. In respect of the sites proposed to be located within the road reserve, Clause 14A(a) of the Hutt City District Plan (“Operative District Plan”) states that the provisions of the adjacent „Activity Area“ (zone) where the road reserve is located shall apply, and that where two different activity areas are located either side of the road reserve, the centreline of the road will be the boundary between the two Activity Areas. Therefore, activities, structures and signs in the road reserve are subject to the provisions of the Activity Area of the adjoining land.

18. The four „sites“ which this application relates to are located within the following Activity Areas (zones):

- a. Central Commercial (New Sites 1 and 4);

- b. General Recreation (New Site 2); and
- c. General Business (New Site 3).

New Sites 1, 3 and 4

19. Chapter 14B of the Operative District Plan sets out the provisions that relate to signage throughout the district.
20. In respect of the proposed shelters in the road reserve, Chapter 13 and more specifically Rule 13.3.1.37 provides for the installation of “traffic control signals and devices, light and decorative poles and associated structures and fittings, post boxes, landscaped gardens, artworks and sculptures, bus stops and shelters, phone boxes, public toilets and road furniture located within the road reserve and the rail corridor” as a permitted activity, subject to achieving compliance with standards related to earthworks¹.

New Site 2

21. New Site 2 is located within s7(2)(b)(ii) site. Chapter 7A of the Operative District Plan contains the provisions for buildings and structures within the General Recreation zone, which provides for „landscape furniture“ as a permitted activity. Landscape furniture is defined as “picnic tables, seating, rubbish bins, lights, and tree protector guards”, and does not include pedestrian shelters.
22. s7(2)(b)(ii) is also subject to a „Heritage Area“ overlay, as shown in Figure 2 below, which is identified as the Lower Hutt Civic Centre Historic Area. Chapter 14F contains the provisions that relate to activities and building works within the spatial extent of a Heritage Area.

Reasons for Consent

23. With regards to the framework of the Operative District Plan set out above, the reasons for which resource consent is required for the proposed sites that are the subject of this application are summarised below.

New Sites 1, 3 and 4

- The proposed shelter is a permitted activity pursuant to Rule 13.3.1.37;

¹ The standards for earthworks associated with bus and pedestrian shelters in the road reserve require sediment and erosion controls to be installed and maintained (Rule 13.3.2.5.1), and establishes limits to the slope (45 degrees), height/depth (1.5m), recession plane (45 degrees from any neighbouring boundary) and area (500m²) of earthworks.

- Signs (being the proposed static and digital display panels) in the Commercial and General Business Activity Areas which exceed 30% of the area of the wall to which they are attached are a Restricted Discretionary activity pursuant to Rule 14B 2.3(c).

New Site 2

- The construction of a structure (pedestrian shelter) in the General Recreation zone which is not otherwise provided for as a Permitted or Restricted Discretionary activity, is a Discretionary activity pursuant to Rule 7A 2.3(b);
- Any activity within a building or structure listed in Appendix Heritage 1 (Lower Hutt Civic Centre Heritage Area) is a Discretionary activity pursuant to Rule 14F 2.3 (a);
- Signs in the General Recreation Activity Area which incorporate variable messages are a Discretionary activity pursuant to Rule 14B 2.4(a)(i); and
- Signs which are static are a permitted activity pursuant to Rule 14B 2.1.2.

24. Overall, resource consent is required as a **Restricted Discretionary** activity (for New Sites 1, 3 and 4) and as a **Discretionary** activity (for New Site 2).

EFFECTS ON THE ENVIRONMENT

25. With regards to the differing reasons for which resource consent is required and the corresponding activity status for the different „sites“; the following assessment addresses the effects of the proposed advertising panels and shelters (as applicable) at each site, as required by the Operative District Plan.

New Sites 1, 3 and 4

26. As a Restricted Discretionary activity, the matters to which the Council may have regard in the assessment of effects for Sites 1, 3 and 4 are set out in Clause 14B 2.3.1(c). In respect of the proposed new digital advertising panels, these are limited to traffic effects². The relevant matter of discretion is as follows:

Traffic Effects:

The extent to which the proposed sign will affect adversely traffic safety and the efficient functioning of the State Highway. Signs should not distract motorists or obstruct the State Highway, cycle and pedestrian ways.

² It is noted that the matters of discretion for signage in the Commercial and Business zones include visual amenity effects only where a proposal involves a sign on a site with frontage to particular roads. The proposed sites are not located on any of the roads identified in Clause 14B 2.3.1(c).

Consideration should be had to the nature of illumination, location on the site, height, face area and movement.

27. The traffic safety effects of the proposed digital advertising panels have been comprehensively assessed in the appended Traffic Engineering Report (**Attachment 5**)

§7(2)(b)(ii)

28. The §7(2)(b)(ii) adopts a methodology that has been utilised by §7(2)(b)(ii) in applications for replacement and new digital advertising panels in bus and pedestrian shelters in the road reserve, in other territorial jurisdictions, including in Auckland, Wellington and Christchurch. The methodology has been endorsed by those territorial authorities as an appropriate means of assessing any proposal for the incorporation of digital advertising on bus and pedestrian shelters.

29. The methodology involves considering the locational and functional characteristics of various road environments, and grouping common characteristics to determine site „typologies“. The characteristics of the proposed sites which are the subject of this application are considered and each site is classified within a typology. One site is then chosen as a representative of each typology, such that the assessment of traffic safety effects can then be undertaken of those representative sites (as opposed to each site being individually assessed).

30. Applying this methodology, §7(2)(b)(ii) confirms that the new sites all fall within one of the typologies, being „Typology 3: Pedestrian shelter, outside central area, at intersection“. The §7(2)(b)(ii) has selected „New Site 3 Hutt Road §7(2)(b)(ii)“ as the representative site for this assessment.

31. With regards to the traffic safety considerations which apply to all sites, the §7(2)(b)(ii) confirms that:

- a. With reference to international research, the nature of variable messaging does not inherently attract drivers“ attention at a level that could be considered to be a safety concern;
- b. The content of the advertising typically (for pragmatic reasons) comprises of limited text and simple graphics that can communicate a message in a short period of time, such that drivers“ attention is not diverted from the driving task (and in this respect all content displayed is subject to approval by §7(2)(b)(ii) to ensure that it is suitable); and

c. With respect to the manner in which the variable messages are managed (in accordance with the „standards“ described above), the digital advertising panels are similar to traditional static panels in terms of their potential to cause distraction.

32. §7(2)(b)(ii) has assessed the NZTA’s crash record database, and confirmed that there have been no crashes in Hutt City that were related to the presence of signage or advertising, and that this is consistent with findings in other regions where the presence of signage and digital advertising is an established component in similar situations within the road network.

33. The implementation of digital advertising by §7(2)(b)(ii) to date has been undertaken in accordance with a suite of „standards“ (discussed above), which §7(2)(b)(ii) has developed in association with other territorial local authorities. The implementation of digital advertising in accordance with these standards has proven that no adverse traffic effects are generated by this form of signage. These standards are set out above and the proposal is for the panels to operate in accordance with these, consistent with other lawfully established digital panels in bus and pedestrian shelters in Auckland, Wellington and Christchurch. The applicant proposes conditions of consent to this effect.

§7(2)(b)(ii)

35. In respect of the representative site at Hutt Road (New Site 3), the §7(2)(b)(ii) confirms that, with regard to the size, location, and orientation of the digital advertising panels, there are no characteristics inherent to the site or the typology that would generate any discernible adverse traffic safety effects. This site is located adjacent to the §7(2)(b)(ii) §7(2)(b)(ii) which is being upgraded in conjunction with the redevelopment of the site at §7(2)(b)(ii). The §7(2)(b)(ii) confirms that, irrespective of which direction the digital advertising panel will be orientated, the panel will not visually conflict with or obscure any traffic signal or controlling device, including the new traffic lanterns.

36. New Sites 1, 2 and 4 are located on various corners §7(2)(b)(ii) §7(2)(b)(ii) which will incorporate digital panels which will be orientated towards the intersection, as shown in **Attachment 2**. The §7(2)(b)(ii) also considers the potential for cumulative traffic safety effects as a result of the three new digital panels located at the

§7(2)(b)(ii)

intersection, and the potential for driver distraction caused by multiple digital displays. The [s7(2)(b)(ii)] considers that, with respect to the particular orientation of each display, the proposed operating parameters and the commercial context of the displays, the cumulative effects on traffic safety of multiple displays will be “negligible”.

37. Additionally (for completeness), [s7(2)(b)(ii)] confirms that the proposed digital advertising displays comply or will be operated in a manner which complies with all of the requirements of Part 3 of the NZTA’s Traffic Control Devices Manual (“**TCD Manual**”).

38. Overall, having regard to the conclusions reached by [s7(2)(b)(ii)] the potential traffic safety effects generated by the proposed shelter and the replacement digital and static advertising panels are considered to be appropriate.

New Site 2

39. As a Discretionary activity, Council is not limited in its discretion as to which matters it may have regard to when assessing an application for consent. That being said, having regard to the nature of the proposed shelter and digital advertising panel at this site, and the reasons for which resource consent is required, the potential effects that require consideration relate to the following matters:

- Traffic effects, including effects of illumination and cumulative effects; and
- Visual amenity, including effects on heritage.

40. These matters are widely accepted as being the only effects related to digital and static advertising (and shelters) in the road reserve. These matters are discussed below.

Traffic effects

41. As discussed above for New Sites 1, 3 and 4, the traffic safety effects have been assessed by [s7(2)(b)(ii)] in respect of digital advertising, including effects on traffic safety (with reference to crash statistics), and any site-specific characteristics. [s7(2)(b)(ii)] concludes that with regards to the scale, design, location and operating parameters of the digital advertising panels, the proposal “can be accepted without compromising traffic safety, traffic operations, or traffic amenity; and that any resultant traffic engineering effects will be negligible.”³

42. With regards to the analysis prepared by [s7(2)(b)(ii)] and the manner in which the digital advertising panels will be managed (by proposed conditions of consent, discussed below),

³ [s7(2)(b)(ii)] (Attachment 5)

the potential traffic effects of the proposed shelter and digital advertising panel at New Site 2 are acceptable.

Visual Amenity

43. New Site 2 is located within the boundaries of the s7(2)(b)(ii) site, however the positioning of the shelter is within the footpath adjoining the road carriageway, such that it appears as a component of the road reserve.

44. As shown in **Figure 3** below, the site is located at the northern pedestrian entrance to the s7(2)(b)(ii) which is visually defined by mature trees and hard landscaping features. The opposite sides of the intersection are defined by one to three-storey development and retail/commercial activity. In this context, the site is defined primarily by the significant vegetation backdrop within the s7(2)(b)(ii), the transport environment (which in this location comprises of a wide signalised traffic intersection and multiple traffic lanes in all directions), and by commercial development.

Released under the Local Government Official Information and Meetings Act

45. By way of context, the General Recreation Activity Area provides for „landscape furniture“ as a permitted activity. By definition, landscape furniture does not specifically include pedestrian shelters of the nature proposed. Notwithstanding this, the design and function of the proposed pedestrian shelter relates to the pedestrian use and weather protection of the footpath (which is located within s7(2)(b)(ii)). While the proposed location does not appear as being located within the reserve itself, the proposed pedestrian shelter is similar in nature and appearance to the type of public amenity furniture („landscape furniture“) that is permitted in the General Recreation zone, and which could be reasonably anticipated within the reserve environment.

46. The design and appearance of the pedestrian shelter is simple and recessive, and will not inherently detract from the visual amenity values of the s7(2)(b)(i). With respect to the available outward outlook from the s7(2)(b)(i) the site is back-dropped by the commercial and retail development on the three opposite corners of the intersection, such that the shelter will be readily accommodated and absorbed by this context.

47. With regard to the LED technology of digital advertising panels, the potential visual effects relate to the appropriateness of the display medium (changeable images) relative to the characteristics of the surrounding environment, together with the internal method of illumination of the display. Related to this is the capacity of the environment to absorb such visual effects, and the sensitivity of the 'receptors' of those visual effects, such as passengers in a car, pedestrians on the footpath or occupiers of buildings which have outlook towards the billboard display. For example, an arterial road through a commercial environment typically has a high level of movement and activity, and is able to absorb the changing images of a digital billboard display, compared with a more static and sensitive residential environment where such outcomes may be anomalous to the appreciable.

48. The operating characteristics of the digital advertising panel have been developed (and tested in Auckland, Wellington and Christchurch) to ensure that the frequency and method of the

s7(2)(b)(i)



49. As discussed above, the environment is characterised by the transport environment, commercial and retail development on three corners of the intersection, and by the significant vegetation of the s7(2)(b)(i) on the southern corner of the intersection. When viewed from outside the s7(2)(b)(i) (ie from the north), the location of the panel relative to the road carriageway is such that the digital advertising panel will be viewed in the context of the adjoining intersection, and is consistent with the visual characteristics of this environment. The significant vegetation at the pedestrian entrance to the s7(2)(b)(i) will continue to

visually dominate the landscape, and the scale and operation of the images displayed will ensure that the proposed display will be visually subservient to those trees.

50. The digital advertising panel is proposed to face the intersection, such that when viewed from within the s7(2)(b)(ii) the advertising panel will incorporate a static „poster“ panel. Consistent with the effects generated by the pedestrian structure itself (discussed above), the static advertising image will be readily absorbed by the commercial backdrop beyond the intersection.
51. The proposed structure and digital and static advertising panels are located within the scheduled Lower Hutt Civic Centre Historic Area. The Historic Area applies to the whole of the property occupied by s7(2)(b)(ii). The proposed structure will be located some s7(2)(b)(ii). When viewed from within the „catchment“ for the digital advertising panel (being traffic and pedestrians to the north of the intersection), the structure s7(2)(b)(ii) are separated by vegetation, such that the structure is not viewed in the context of s7(2)(b)(ii). Any fleeting views of the structure with s7(2)(b)(ii) are brief, and the manner in which the digital advertising panel is to be managed will ensure that the variable messaging will not dominate the heritage values of s7(2)(b)(ii).
52. Overall, with regard to the characteristics of the environment and the operating characteristics of the proposed digital advertising panel, the proposed panels can be readily absorbed by the environment.
53. The advertising panels are not viewed from any Residential or Community Activity Area, and are not visible from any residential dwelling.

NOTIFICATION ASSESSMENT

Public Notification Assessment (s95A and s95D)

54. Regarding whether to publicly notify an application, section 95A of the Act states:

95A Public notification of consent application at consent authority's discretion

- (1) *A consent authority may, in its discretion, decide whether to publicly notify an application for a resource consent for an activity.*
- (2) *Despite subsection (1), a consent authority must publicly notify the application if—*
 - (a) *it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor; or*
 - (b) *the applicant requests public notification of the application; or*

- (c) a rule or national environmental standard requires public notification of the application.
- (3) Despite subsections (1) and (2)(a), a consent authority must not publicly notify the application if—
- (a) a rule or national environmental standard precludes public notification of the application; and
- (b) subsection (2)(b) does not apply.
- (4) Despite subsection (3), a consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application

55. The applicant does not request public notification of the application.

56. Pursuant to section 95A(4) of the Act, the Council may decide to publicly notify an application if it considers that special circumstances exist in relation to the application. „Special circumstances“ are those that are unusual or exceptional, but they may be less than extraordinary or unique. Circumstances which are „special“ will be those which make notification desirable, notwithstanding the general provisions excluding the need for notification. In determining what may amount to special circumstances it is necessary to consider the matters relevant to the merits of the application as a whole, not merely those considerations stipulated in the tests for notification and service.

57. For the purposes of deciding whether or not an activity will have, or is likely to have, adverse effects on the environment that are more than minor, section 95D of the Act states:

95D Consent authority decides if adverse effects likely to be more than minor

A consent authority that is deciding, for the purpose of section 95A(2)(a), whether an activity will have or is likely to have adverse effects on the environment that are more than minor—

(a) must disregard any effects on persons who own or occupy—

- (i) the land in, on, or over which the activity will occur; or*
- (ii) any land adjacent to that land; and*

(b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and

(c) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and

(d) must disregard trade competition and the effects of trade competition; and

(e) must disregard any effect on a person who has given written approval to the relevant application.

58. Rule 17.2.2(a) of the Operative District Plan specifies that public notification of an application for a Restricted Discretionary activity “need not be required”. No other provision

in the Operative District Plan requires public notification or the assessment of a proposal as a Restricted Discretionary activity against the notification tests of section 95D of the Act.

59. There is no provision in the Operative District Plan that requires or precludes public notification of a resource consent application for a Discretionary activity.

60. Having regard to the preceding analysis, it is considered that the adverse effects generated by the proposal on any person will be less than minor, and the Council is therefore not required to publicly notify the application.

61. In respect of section 95A(4) of the Act, the proposal seeks to erect new pedestrian shelters with integrated digital advertising panels. Road-side shelters and advertising panels are an established component with Lower Hutt, and there is nothing unusual or special about the circumstances of the sites (or the scope and nature of the proposal). Therefore, the proposal does not give rise to special circumstances under section 95A(4) of the Act, such that they would justify public notification of the application.

62. Accordingly, it is considered appropriate that the proposal proceed without being publicly notified.

Limited Notification Assessment (s95B and s95E)

63. Regarding limited notification of an application, section 95B of the Act states:

95B Limited notification of consent applications

- (1) *If a consent authority does not publicly notify an application for a resource consent for an activity, it must decide (under sections 95E and 95F) if there are any affected persons of affected order holders in relation to the activity.*
- (2) *The consent authority must give limited notification of the application to any affected person unless a rule or national environmental standard precludes limited notification of the application.*
- (3) *The consent authority must give limited notification of the application to any affected order holder even if a rule or national environmental standard precludes limited notification of the application.*

64. There are no affected order holders in relation to the proposed activity.

65. In terms of deciding whether there are any affected persons in relation to an activity, section 95E states:

95E Consent authority decides if person is affected person

- (1) *A consent authority must decide that a person is an affected person, in relation to an activity, if the activity's adverse effects on the person are minor or more than minor (but are not less than minor).*
- (2) *The consent authority, in making its decision,—*

- (a) may disregard an adverse effect of the activity on the person if a rule or national environmental standard permits an activity with that effect; and*
 - (b) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity on the person that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and*
 - (c) must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.*
- (3) Despite anything else in this section, the consent authority must decide that a person is not an affected person if—*
 - (a) the person has given written approval to the activity and has not withdrawn the approval in a written notice received by the authority before the authority has decided whether there are any affected persons; or*
 - (b) it is unreasonable in the circumstances to seek the person's written approval.*

66. Rule 17.2.2(b) of the Operative District Plan specifies that limited notification of an application for a Restricted Discretionary activity “need not be required”. No other provision of the Operative District Plan precludes limited notification or the assessment of the proposal against the tests of section 95E of the Act.

67. There is no provision in the Operative District Plan that precludes limited notification of a resource consent application for a Discretionary activity.

68. Having regard to the preceding analysis, it is considered that the adverse effects of the proposal on any person will be less than minor. Therefore no persons are considered to be adversely affected by the proposal so as to warrant limited notification.

69. In respect of New Site 2, the proposed shelter and advertising panels are located on land that is owned by the Lower Hutt City Council, and the proposal will not proceed without landowner approval (which is sought by s7(2)(b)(ii) separately).

70. The application can be accordingly considered without limited notification.

Section 95A-E Conclusion

71. It is appropriate for the application for all sites to proceed without public or limited notification.

SECTION 104 ASSESSMENT

72. Subject to Part 2 of the Act, when considering an application for resource consent the Council must, in accordance with section 104(1) of the Act, have regard to:

- (a) any actual and potential effects on the environment of allowing the activity; and
- (b) any relevant provision of -
 - (i) a national environmental standard;
 - (ii) other regulations;
 - (iii) a national policy statement;
 - (iv) a New Zealand coastal policy statement;
 - (v) a regional policy statement or proposed regional policy statement;
 - (vi) a plan or proposed plan; and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

73. The provisions of section 104(1) are considered below.

Any actual or potential effects on the environment of allowing the activity (s104(1)(a))

74. An assessment of effects has been undertaken above, where it was concluded the proposal will have less than minor adverse effects on the environment in terms of traffic safety and visual amenity.

75. The proposal will also result in positive effects. In this regard (across all sites) the proposal to install advertising as part of a pedestrian shelter has beneficial effects, including:

- a. the ability for s7(2)(b)(ii) to generate revenue, which in turn facilitates the maintenance, and refurbishment of the pedestrian shelters, and the development of new bus and pedestrian shelters to the benefit of the Lower Hutt public;
- b. the use of developing technology in a manner that keeps pace with the evolving digital age; and
- c. reducing „wastage“ relative to the manufacturing and production of static images which have a limited lifespan.

Relevant National Environmental Standards, Other Regulations, Policy Statements, Plans or Proposed Plans (s104(1)(b))

76. Section 104(1)(b) of the Act requires that when considering an application for resource consent, the Council shall have regard to any relevant provisions of any National Environmental Standards, other regulations, Policy Statements, Plans or Proposed Plans.

77. There are no National Environmental Standards, Other Regulations, National Policy Statements, New Zealand Coastal Policy Statements, or Regional Policy Statements that are relevant to the consideration of this application for resource consent.

A Plan or Proposed Plan (s104(1)(b)(vi))

Lower Hutt District Plan

78. The relevant objectives and policies of the Operative District Plan are set out in Chapter 14B Signs (in respect of all New Sites), and Chapter 7A General Recreation Activity Area (in respect of new Site 2).

Chapter 14B Signs

79. Objective 14B 1.1 seeks to provide for appropriate signs, while avoiding, remedying or mitigating any significant adverse effects on visual amenity values of the area. The corresponding Policies seek to achieve this objective by allowing for signs in Commercial and Business Activity Areas, while restricting the size, location and frequency of signs in activity areas where visual amenity values are sensitive, and controlling the illumination of signs to ensure the containment of light spill and glare.

80. The proposal relates to new pedestrian shelters and integrated advertising panels which will be located in established urban environments, within which signage and advertising are intrinsic components. With respect to the manner in which the variable messages are operated (image duration, transition, illumination) as set out in the preceding analysis, the proposal will appropriately avoid, remedy and mitigate any potential adverse effects generated by the digital advertising panels on visual amenity. Therefore, the proposal is consistent with the Objective and Policies of 14B 1.1.

81. In respect of traffic safety, Objective 14B 1.2 seeks to ensure that signs do not interfere with the safe and efficient use of all roads, cycle ways and pedestrian ways. The corresponding policies seek to achieve this outcome by discouraging signs being located where they will obstruct a roadway, pedestrian or cycle way, or obstruct the vision of an intersection or driveway, and to manage the illumination of signs to ensure they do not cause a distraction.

82. With regards to the preceding analysis regarding the potential traffic safety effects, and the analysis prepared by ^{s7(2)(b)} (iii) (Attachment 5), the proposed new digital advertising panels are consistent with the outcomes anticipated by the Objective and Policies of 14B 1.2.

Chapter 7A General Recreation Activity Area

83. In respect of New Site 2, the relevant objectives of the Operative District Plan for the General Recreation Activity Area seek to ensure that the effects generated by non-recreational activities are no more than minor (Objective 7A 1.1.4), and to control the size, scale, location and external appearance of buildings and structures (Objective 7A 1.1.5). The relevant Policies seek to achieve these outcomes by restricting the range and nature of non-recreational

activities to those which will not adversely affect the open space character and amenity values of recreational areas (Policy 7A 1.1.4), and by ensuring that new structures maintain and enhance amenity values of recreation and open space areas, and that the effects of structures on the functioning of other activities are no more than minor (Policy 7A 1.1.5).

84. As discussed in the preceding analysis, the proposed pedestrian shelter and integrated advertising panels will be located within the road reserve, and will not generate effects on the s7(2)(b)(ii) site that are more than minor. The size and scale of the structure and advertising panels are appropriate to the characteristics of the environment, and the location and external appearance (including the manner in which the advertising images are displayed) will not visually dominate or adversely affect amenity values.
85. Overall, the proposal is considered to be consistent with the objectives and policies of the Operative District Plan.

Any Other Relevant Matters (s104(1)(c))

86. The Public Places Bylaw 2016 requires that the written permission of Council be obtained to display advertising material on a public place and to erect a structure in a public place. Adshel has applied for the written permission of Council in respect of the Public Places Bylaw 2016 by way of a separate application. No further assessment of the Bylaw is necessary in relation to this application
87. There are no other matters that are relevant to the consideration of the proposal.

Part 2 Matters

88. The purpose of the Act is to promote the sustainable management of natural and physical resources. The definition of sustainable management in section 5 supports the use and development of resources to enable people and communities to provide for their wellbeing. This approach is, however, tempered by the requirements of sections 5(2)(a), (b), and (c) to sustain the potential of natural and physical resources for future generations, safeguard the capacity of resources, and avoid, remedy or mitigate adverse effects on the environment.
89. The proposal represents a sustainable use of the land resource, providing a benefit to pedestrians in providing revenue to s7(2)(b)(ii) to provide, maintain and upgrade pedestrian (and bus) shelters. The proposal also has other waste minimisation benefits in terms of a digital display being installed on one side rather than a typical static „skin“ display. In this regard, the digital panels negate the need to iteratively swap out the static skins, which involves the production and disposal of skins.

90. It has been demonstrated in the above assessment that there will be less than minor adverse effects generated by the proposal on the environment. Overall, the proposal is consistent with the purpose of the Act as expressed in Section 5.

91. There are no matters of national importance (Section 6) and no Treaty of Waitangi matters (Section 8) affecting this proposal. From the list of other matters contained in Section 7, it is considered that the proposal will make effective and efficient use of the resources represented by the sites, will maintain the visual amenity of the respective areas, and will not detract from the quality of the surrounding environment.

92. For these reasons it is considered that this proposal is fully in accord with the purpose and principles of the Act.

RECOMMENDATION

93. That for the reasons stated in this report it is appropriate that this application be granted resource consent.

RECOMMENDED CONDITIONS OF CONSENT

94. As set out in the preceding analysis, s7(2)(b)(i) has developed a set of standards and operating parameters for the management of the digital advertising panels which ensure that the potential effects generated by the displays are appropriately avoided, remedied and mitigated. The effectiveness of these standards has been confirmed in practice by the implementation and use of digital advertising panels in Auckland, Wellington and Christchurch. In this regard, it is appropriate that conditions are imposed on the consent sought to ensure that the displays are managed in accordance with the „standards“ set out in paragraph 13.

95. In addition, to ensure that the illumination of the static display panel during night hours is limited to a level which is consistent with typical lighting parameters for static signage, a condition of consent is proposed to this effect, as follows:

s7(2)(b)(ii)

CONCLUSION

96. The applicant seeks resource consent to construct new pedestrian shelters with integrated digital and static advertising panels in the road reserve and adjacent s7(2)(b)(i), as set out in **Attachment 1**.

97. As detailed in the above assessment, the adverse effects of the proposal will be less than minor having regard to the context of the respective environments, the design of the proposed shelters and the operating characteristics of the advertising panels.
98. The proposal is consistent with the relevant objectives and policies of the Operative District Plan, as well as the purpose of the Act.
99. It is therefore considered appropriate that Council grant consent to the proposed shelters and integrated advertising panels as sought on a non-notified basis.

Prepared by

§7(2)(a)

§7(2)(b)(ii)

February 2017

Released under the Local Government Official Information and Meetings Act

[REDACTED]

29 March 2017

Lyle Earl
Traffic Assets Manager
Hutt City Council
30 Laings Road
Lower Hutt 5040

Dear Lyle

**Deployment of Advertising LCD Digital Display Units in Council's Territory.
Agreement between Hutt City Council and [REDACTED] dated 1 November 2000.**

Further to recent discussions with Council and pursuant to our Agreement, [REDACTED] is seeking Council's approval to deploy LCD digital displays within bus and pedestrian shelters at locations agreed with Council.

The introduction of roadside digital displays in Council's territory builds on [REDACTED] national strategy that has seen 150 screens deployed in Auckland, Wellington and Christchurch since July 2015.

[REDACTED] proposed digital investment has both infrastructure and income benefits to Hutt City Council, including:

- Fully funded pedestrian shelters deployed at new locations where Council has voiced a need for infrastructure
- The replacement of pedestrian shelters with new at existing Adshel sites marked for digital conversion
- Increased revenue to Council from higher advertising sales generated by the digital displays, and increased revenue generating inventory
- Council to join a growing list of international cities that have seen the modernisation of street furniture advertising through the deployment of a premium digital network

Landowner and Resource Consent

As a means to obtain Council's approval as landowner to deploy digital LCD screens roadside in the territory [REDACTED] has created a *Project Information* pack for Council's review and execution.

This document includes:

- Detailed information on the regulatory context and framework agreed with Hutt City Council;
- [REDACTED]

- An overview of the project including proposed sites, digital screen specification, the installation process and operating principles; and
- A bespoke traffic safety report by independent consultants the [redacted] which evaluates each proposed digital location against safety criteria developed by [redacted] NZTA's traffic safety guidelines on advertising signage and Council's District Plan.

Upon review and execution of the *Project Information* pack dated 31 January 2017, Council will deem to have provided [redacted] landowner consent for the deployment of digital infrastructure as outlined in the document.

We note that in addition to landowner consent [redacted] was required to obtain resource consent for both new and existing locations marked for digital. This process has been completed, and I can confirm that Council granted resource consent on the following dates:

- RM 170027 – Upgrade Existing Infrastructure to Digital – granted 14 March 2017
- RM 170028 – New Locations for Infrastructure and Digital – granted 22 March 2017

Contractual / Commercial Consideration

The execution of the *Project Information* pack and successful resolution of the resource consent application covers the regulatory requirements for deploying digital in the territory.

In relation to [redacted] contractual agreement with Council, the project requires consideration to certain aspects with [redacted] addressing and clarifying the following:

- [redacted] intention is to deploy up to six LCD digital displays in the territory – the actual number deployed will be at [redacted] sole discretion, but cannot be more than six without seeking Council's prior agreement;
- The deployment of new infrastructure and digital screens, as outline in the *Project Information* pack, is to be fully funded by [redacted]
- At contract expiry, new shelter infrastructure will be dealt with under the current provisions of the agreement – the LCD digital displays will either be dealt with in accordance with the agreement or [redacted] may opt, at its sole discretion, to remove the LCD digital displays and reinstate poster panels;
- All other aspects will be dealt with in accordance with the Agreement.

[redacted] provides Council with this letter to amend the Agreement and permit the introduction, installation and operation of LCD digital display at locations specified in *Project Information* pack.

s7(2)(b)(ii)

Please could you arrange for the officer of Council with the appropriate authority to countersign this letter and return for my attention: s7(2)(b)(ii) and/or scan to my email address s7(2)(b)(ii) and the Agreement will be deemed amended accordingly.

Should you require additional information or have any questions, then please do not hesitate to contact me s7(2)(b)(ii)

s7(2)(b)(ii) looks forward to working with Council on the future of s7(2)(b)(ii)


Kind regards

s7(2)(b)(ii)

Accepted and agreed

Hutt City Council agrees to amend the written Agreement with s7(2)(b)(ii) dated 1 November 2000 to permit the installation of LCD digital displays at the locations specified in the Project Information pack dated 31 January 2017, and otherwise in the manner set out in this letter, with effect from the date specified below, and subject to obtaining applicable resource consents.

Signed for
Hutt City council:


JOHN GLOAG

Name:

Title:

DIVISIONAL MANAGER ROADS & TRAFFIC

Date:

30 March 2017

s7(2)(b)(ii)

s7(2)(b)(ii)

DIGITAL ADVERTISING ON BUS AND PEDESTRIAN SHELTERS

PROJECT INFORMATION

HUTT CITY DEPLOYMENT

Official Information and Meetings Act

s7(2)(b)(ii)



31 JANUARY 2017

Released under

Bylaw or policy	Title of Authoriser	Name of Authoriser	Signature of Authoriser	Date signed
Public Places Bylaw 2016	DM Road Traffic	John Gilroy		30.3.17

Released under the Local Government Official Information and Meetings Act

s7(2)(b)(ii)

NEW ZEALAND LIMITED - DIGITAL ADVERTISING DEPLOYMENT -PROJECT INFORMATION

1. INTRODUCTION

- 1.1 s7(2)(b)(ii) is a provider of commercial outdoor advertising on bus shelters throughout the Hutt City Council area under an existing contract with the Hutt City Council ("HCC").
- 1.2 s7(2)(b)(ii) proposes to install up to six digital advertising panels on both existing and new bus and pedestrian shelters at locations around the Lower Hutt and Petone area, including on High Street, Queens Drive and Hutt Road ("the Project").
- 1.3 The Project follows the successful roll-out of digital advertising panels on 36 bus shelters in Auckland in July 2015, and the deployment of 114 digital advertising panels in Auckland, Wellington and Christchurch in July 2016.

Purpose and scope of document

- 1.4 The purpose of this document is to describe the Project and provide information in respect of the operation of the digital advertising panels. It includes the following:
- (a) Section 2 - Context s7(2)(b)(ii) and the Hutt City Council contract.
 - (b) Section 3 - Regulatory context.
 - (c) Section 4 - Proposed digital advertising panels and details of sites.
 - (d) Section 5 - Effects of advertising signage and operating principles.

2. CONTEXT - s7(2)(b)(ii) AND THE HUTT CITY COUNCIL CONTRACT

s7(2)(b)(ii)

- 2.1 s7(2)(b)(ii) core business is the provision of commercial outdoor advertising solutions via a network of street furniture assets. The model is self-funded through the selling of advertising space on the national network of street furniture. s7(2)(b)(ii) underpins its commercial activity through the provision of high quality street furniture supported by an operational function, including thorough maintenance and cleaning regimes.
- 2.2 Having commenced in the United Kingdom via its previous 50% shareholding in Clear Channel International more than 40 years ago, s7(2)(b)(ii) is now the global leader in street furniture advertising through Clear Channel, operating in over 400 cities in over 23 countries worldwide. s7(2)(b)(ii) commenced operations in New Zealand in 1999.
- 2.3 s7(2)(b)(ii) has a portfolio of over 15,000 advertising panels on street, rail and shopping centre locations in Australia and over 3,300 in New Zealand. Adshel is the leading supplier of street furniture in New Zealand with over 2,000

advertising structures throughout the country of which 150 contain digital advertising panels.

- 2.4 The [§7(2)(b)(i)] market is currently experiencing transformational change with the deployment of digital screens across all formats within the sector. [§7(2)(b)(i)] has led the industry with the launch of New Zealand's first national digital roadside network, and is required to continue to invest and innovate to maintain its market leadership position.
- 2.5 [§7(2)(b)(i)] has invested in excess of \$50 million in infrastructure throughout New Zealand, and additionally \$50 million in operational expense to deliver cleaning and maintenance programs in the period since its inception in 1999.
- 2.6 [§7(2)(b)(i)] has offices in Auckland and Wellington and employs 27 staff and approximately 40 subcontractors throughout New Zealand.

Contract with Hutt City Council

- 2.7 [§7(2)(b)(i)] is in partnership with 15 city and district councils throughout New Zealand for the supply of advertising and non-advertising street furniture.
- 2.8 [§7(2)(b)(i)] contract with HCC requires that Adshel provide bus and/or pedestrian shelters on footpaths in the HCC area otherwise referred to as street furniture.
- 2.9 Under the contract, [§7(2)(b)(i)] has the exclusive right to advertise on street furniture in the territory. That street furniture contains advertising panels which are designed to be an integral part of the shelter, and do not detract from the aesthetics or functionality of the shelter.
- 2.10 [§7(2)(b)(i)] required to design, construct and install the shelters and provide a maintenance and repair service to the Council at no charge. Advertising on pedestrian and bus shelters has enabled [§7(2)(b)(i)] provide over 35 items of street furniture in the Hutt City area since 2000 at no charge to the Council or the ratepayers.
- 2.11 In addition, HCC receives a share of the revenue generated by [§7(2)(b)(i)] advertising signs for investment back into the community. [§7(2)(b)(i)] business formula is based on a "virtuous circle" which is outlined below:
- (a) *High quality advertising units* – [§7(2)(b)(i)] advertising units are technologically advanced and are designed to blend into the structure. They have been designed with a high level of versatility which enables them to be changed in minimal time.
 - (b) *Attracting blue chip advertisers* – Premium advertising units not only appeal to property owners, but they also attract premium advertisers. "Blue chip" advertisers account for the majority of advertising spend and [§7(2)(b)(i)] high quality advertising units, plus the reach and frequency of their extensive network, enables [§7(2)(b)(i)] to attract premium advertisers.
 - (c) *Advertising revenue* – [§7(2)(b)(i)] national presence maximises the appeal to advertisers who are prepared to pay premium rates to reach a broadcast audience. This sustains the ongoing viability of [§7(2)(b)(i)] street furniture agreements.

- (d) *High quality maintenance* – Premium advertising rates provide [redacted] with the resource to ensure high quality maintenance of the street furniture. In turn, street furniture which looks “as new” and is free of damage and graffiti showcase advertisers’ campaigns in the best possible environment and ensures that revenue continues at a sustainable rate.

- 2.12 [redacted] only able to supply high quality street furniture through third party advertising on the approved bus shelters. [redacted] is relied upon its contract with HCC in undertaking substantial capital investment already made in street furniture and the ongoing expenditure that [redacted] continues to incur in fulfilling the maintenance and repair obligations under the contract. The advertising signs on the bus shelters are therefore essential for the ongoing viability of the contract.

3. REGULATORY CONTEXT

- 3.1 [redacted] has engaged with HCC personnel to confirm the approval process required for digital advertising panels installed on existing and new bus and pedestrian shelters in the Hutt City district. [redacted] planning consultants, [redacted] undertook analysis in relation to the regulatory framework applying to digital advertising signage in the proposed locations to determine the approvals required, as set out in a letter from [redacted] to HCC dated 25 November 2016 (attached as **Attachment A**).

- 3.2 HCC officers confirmed that the analysis set out in the letter from [redacted] was correct in that:

- (a) Signage is governed by the Hutt City District Plan. The road reserve is subject to the same zoning (“Activity Area”) as the adjoining land. Therefore, activities, structures and signs in the road reserve are subject to the provisions of the Activity Area of the adjoining land.
- (b) Signs in all Activity Areas are a permitted activity, subject to compliance with the relevant conditions applying in the particular Activity Area in which the sign is located.
- (c) All of the signs proposed as part of the Project, except one sign (addressed below), are located in city centre and inner city commercial locations, and are located in the “Central Commercial”, “General Business” and “Petone Commercial – Area 1” Activity Areas. The proposed digital advertising panels will not comply with the requirement that a sign be no more than 30 per cent of the area of the wall on which it is attached. Therefore resource consent is required for new digital advertising panels as a restricted discretionary activity.
- (d) In addition, resource consent is required as a controlled activity for signs on any site which is adjacent to a Residential, Recreation, Rural Activity Area or Community IWI Activity Area 1.
- (e) The “swap out” of an existing static advertising panel may benefit from existing use rights given that the nature, scale and intensity of effects associated with a digital advertising panel are comparable to a static advertising panel. However, given that it is unclear what status the relevant planning provisions held at the time the [redacted] shelters and

signs were established (2001) for completeness resource consent will be sought for the swap out of existing advertising panels as a restricted discretionary activity.

- (f) The establishment of new bus shelters within the road reserve is a permitted activity.
- (g) The Hutt City Public Places Bylaw 2016 requires that approval from Hutt City Council is obtained to locate structures and advertising in public areas (including the road reserve).

- 3.3 Since the letter from [§7(2)(b)(ii)] was prepared [§7(2)(b)(ii)] consultants have identified that one site is located in the 'General Recreation' Activity Area. The conditions applying to that Activity Area are different to those applying to the Business and Commercial Activity Areas addressed in 3.2(c) above. The proposed digital advertising panel will not comply with the requirement that a sign in the General Recreation Activity Area shall not carry a variable message. Therefore resource consent is required for new digital advertising panels with variable messages as a discretionary activity.

Resource consents and HCC approval required

- 3.4 It follows that the establishment of shelters and digital advertising panels in the road reserve is subject to the District Plan and the Public Places Bylaw 2016.
- 3.5 Resource consent will be sought for both the swap out of an existing static panel with a digital advertising panel and the erection of new advertising panels.
- 3.6 The written permission of the Council is also required for any new shelter and advertising panel in the road reserve pursuant to the Public Places Bylaw 2016. [§7(2)(b)(ii)] application for approval is therefore made to HCC under the Public Places Bylaw 2016 and with reference to [§7(2)(b)(ii)] contracts with HCC as referred to above.

4. OVERVIEW OF DIGITAL SIGNAGE PROJECT

Details of locations

- 4.1 [§7(2)(b)(ii)] seeks HCC approval for the installation of digital advertising panels on up to six existing or new bus or pedestrian shelters at locations within the Hutt City Council area. These are listed in **Attachment B**.
- 4.2 [§7(2)(b)(ii)] has also identified three additional sites which are "back up" locations should it be necessary for any of the six identified sites to be removed. The back up sites are also listed in **Attachment B**.

Details of shelters

- 4.3 The proposed pedestrian shelter is the Evo Pedestrian shelter. No new bus shelters are proposed. The specifications of the pedestrian shelter are attached as **Attachment C**.

Details of advertising panels

4.4 s7(2)(b)(ii) 

4.5 The panel specifications are attached as **Attachment D**.

Installation and timing

4.6 The installation of new infrastructure, upgrading of existing and deployment of digital advertising panels will be completed in three stages:

- (a) Stage 1 - At locations requiring 12 to 24-hour connection upgrades, Adshel's electrical contractors will undertake required modifications to allow for constant power at the designated locations;
- (b) Stage 2 - Upgrading of the lightbox or deployment of new infrastructure, which involves civil works. This may include the removal of the existing enclosure and re-pouring footings, redirecting conduits to enable alteration of the power supply location, pouring new footings for the new enclosure and installing the new enclosure;
- (c) Stage 3 - Subsequent installation of the digital advertising panel which is attached to the internal structure of the enclosure.

4.7 A detailed summary of the installation process is set out below:

Stage 1

4.8 Electrical works (day/night works – location dependent) would comprise:

- (a) Upgrade existing connections from 12 hour connections to 24 hour connections;
- (b) Re-check existing wiring to meet standards;
- (c) Fitment of Smart Meter at all locations and redirecting supply via Smart Meter.

4.9 One to two locations would be completed per day/night.

Stage 2

4.10 Civil works (day/night works – location dependent) would comprise:

- (a) Disconnection of shelter from power supply;
- (b) Break out existing lightbox, concrete and footings – works will be undertaken by excavation machinery;

- (c) Form and pour new footings to meet requirements for new enclosure.
- 4.11 This may require closure of one lane and traffic management and redirecting any pedestrians during works.
- 4.12 One to two locations would be completed per day/night.
- 4.13 The reinstallation of new enclosure (night works) would comprise:
 - (a) Installation of lightbox – requiring hiab truck to lift asset into place; and
 - (b) Road closure of one lane and traffic management required and redirecting any pedestrians during works.
- 4.14 One to two locations would be completed per night.

Stage 3

- 4.15 Enclosure and digital installations (day works) would comprise installation of digital screen & components – requiring a glass lifter machine to install digital unit. This may require closure of one lane and, traffic management required and redirecting any pedestrians during works. Two to three locations would be completed per day.
- 4.16 Commissioning (day works) would comprise programming the digital screen and components on site (no heavy works undertaken). Four locations would be completed per day. No traffic management would be required.
- 4.17 The installation of the digital advertising panels is proposed to commence in March 2017 and be completed by June 2017. §7(2)(b)(i) will inform HCC of the proposed timeline for works in early 2017.

5. EFFECTS OF DIGITAL SIGNAGE AND OPERATING PRINCIPLES

- 5.1 It is widely accepted that the only potential adverse effects associated with signage (including digital signage) relate to:
 - (a) Traffic safety;
 - (b) Adverse aesthetic and amenity effects;
 - (c) Related to (b), potential cumulative effects; and
 - (d) The effects of illumination.
- 5.2 These matters are addressed in more detail below.

Traffic safety

- 5.3 Advertising panels and billboards can potentially have an effect on traffic safety if drivers are distracted by the image displayed on the panel. §7(2)(b)(i) has prepared a comprehensive report on the traffic safety implications of the Project, including detailed assessment of three

"representative" sites that encompass the characteristics of all sites included in the Project. s7(2)(b) report is attached as **Attachment E**.

- 5.4 The assessment is undertaken by reference to standards developed for the operation of digital advertising panels in Wellington, Christchurch and Auckland, the NZTA TCD Part 3 criteria and the relevant provisions of the Hutt City District Plan.
- 5.5 In addition, the s7(2)(b)(ii) report also took account of a number of specific traffic safety assessment criteria relating to the potential for additional driver distraction due to:
- (a) Variable images compared to static images (which requires consideration of image dwell times, transitions between images, and animation);
 - (b) Driver confusion and/or distraction due to the nature of the advertising content (which requires consideration of the message and graphics that are being displayed); and
 - (c) Potential conflict of the variable digital images with any adjacent traffic control devices.
- 5.6 s7(2)(b)(ii) assessed each of the three representative sites and found that digital panels at none of the representative sites will have adverse traffic effects. The key conclusion of the s7(2)(b)(ii) is as follows:

"...subject to the recommendations provided herein, it can therefore be confidently concluded that the bus and pedestrian shelter digital advertising panels as proposed, can be accepted without compromising traffic safety, traffic operations, or traffic amenity; and that any resultant traffic engineering effects will be negligible."

- 5.7 HCC can therefore have a great deal of confidence that the proposed digital advertising panels can be installed without adverse traffic effects.

Aesthetic and amenity effects

- 5.8 The presence of advertising panels within the streetscape has the potential to have both positive and negative effects on the amenity of the streetscape. The nature and extent of the effect will be determined by the characteristics of the surrounding environment.
- 5.9 The change from a static advertising panel to a digital advertising panel is much less pronounced in terms of effects on amenity. The digital advertising panels are so similar to the existing static panels that pedestrians are unlikely to notice the change. However, images on digital advertising panels appear crisper, with better definition and visual quality compared to printed media. Digital images have a more uniform appearance compared with that of printed media, in respect of which the light intensity can vary.
- 5.10 A more noticeable difference between static advertising panels and digital advertising panels occurs when the digital image changes from one advertisement to another. An abrupt change from one image to another may cause a distraction so the digital panels have been designed to enable a dissolve of one image and the subtle introduction of the next. The speed of transition can be controlled so that the effect is minimised. The generally accepted transition

time, as reflected in Auckland Council resource consents and plan provisions, is eight seconds. This is addressed in more detail below.

Transition of images

- 5.11 A key benefit of digital advertising panels is that the images in the panel can change without attending the bus shelter and physically changing the image. In order to avoid potentially adverse urban design and traffic safety effects, §7(2)(b)(ii) proposes conditions of HCC's approval which have been adopted in jurisdictions throughout New Zealand and have been proven to be the most appropriate from a traffic and amenity perspective.

5.12 §7(2)(b)(ii)



- 5.13 §7(2)(b)(ii) digital advertising panels in Auckland have been operating successfully on this basis for over 18 months with no traffic safety issues arising, and in Christchurch and Wellington for over six months again with no traffic safety issues.

Effects of illumination

- 5.14 Excessive luminance from digital panels is undesirable from an advertisers perspective because it can cause flaring (blurring) of the digital image making it difficult to read comfortably and therefore be a source of distraction. Digital billboard owners such as §7(2)(b)(ii) are keen to ensure that an image does not become unreadable due to excessive brightness, as that defeats the purpose of the display.
- 5.15 Inadequate luminance can be an issue in digital billboards because colour contrasts may not be able to be distinguished, particularly the darker greens and browns. High ambient light in the vicinity of a digital billboard may also render the image displayed illegible, unless the brightness of the digital display automatically compensates accordingly.
- 5.16 To address these potential issues, the luminance emitted from the LEDs used in digital billboards is automatically controlled by sensors built into the Panel to ensure images can be viewed, are legible at all times, and will not cause adverse local amenity effects as a result of excessive luminance.
- 5.17 To ensure that an appropriate luminance is maintained, digital billboard luminance is automatically controlled based on ambient light conditions. In that regard, the Proposed Auckland Unitary Plan prescribes the range of luminance as 250-5000 candelas. §7(2)(b)(ii)

§7(2)(b)(ii)

ATTACHMENT A

s7(2)(b)(ii)

LETTER OUTLINING HUTT CITY COUNCIL
REGULATORY FRAMEWORK DATED 25 NOVEMBER 2016

Released under the Local Government Official Information and Meetings Act

ATTACHMENT B

SITE LIST

Released under the Local Government Official Information and Meetings Act

ATTACHMENT C
PEDESTRIAN SHELTER SPECIFICATION

Released under the Local Government Official Information and Meetings Act

ATTACHMENT D
DIGITAL SCREEN SPECIFICATION

Released under the Local Government Official Information and Meetings Act

ATTACHMENT E

Bus and Pedestrian Shelter Digital Signs – Lower Hutt

Traffic Engineering Report

January 2017

s7(2)(a)

s7(2)(b)(i)

Released under the Local Government Official Information and Meetings Act

25 November 2016

Hutt City Council
Via Email

Attention: Tim Johnstone, Lyle Earl

Dear Tim, Lyle,

RE: Hutt City Council - provisions for shelters and signs in road reserve

Statement of Position

s7(2)(b)(ii) in respect of the resource management requirements for their bus and pedestrian shelters and integrated advertising panels nation-wide. **s7(2)(b)** are currently engaging with Hutt City Council officers with regards to the opportunities for the establishment of 'digital advertising panels' within particular existing and new bus shelters located within the Council-owned road reserve.

We have undertaken a review of the relevant statutory documents that apply in the Hutt City Council jurisdiction, as they relate to pedestrian and bus shelters, and associated digital signage ('digital advertising panels'), located in the road reserve. The purpose of this analysis is to confirm our the interpretation of the relevant Hutt City Council provisions that relate to structures (bus and pedestrian shelters) and advertising signs in the road reserve, and to seek the agreement of Hutt City Council of the same. The statutory documents and the related approval processes are in addition to any commercial land-owner approval that is required to undertake such activities on Council-owned land.

As discussed in the following analysis, the documents that are considered to be relevant to the erection and use of shelters and digital advertising panels are the Hutt City District Plan and the 'Public Places Bylaw 2016'.

Hutt City District Plan

Status of Activities in the Road Reserve

In respect of activities that occur within the road reserve, Clause 14A(a) of the Hutt City District Plan ("District Plan") states that the provisions of the adjacent 'Activity Area' (zone) where the road reserve is located shall apply, and that where two different activity areas are located either side of the road reserve, the centreline of the road will be the boundary between the two Activity Areas. Therefore, activities, structures and signs in the road reserve are subject to the provisions of the Activity Area of the adjoining land.

s7(2)(b)(ii)

Chapter 14 of the District Plan is subject to Plan Change 39. Plan Change 39 was notified to the public on 4 October 2016. Submissions closed on 4 November 2016. The purpose of the plan change is to update the transport chapter (Chapter 14A) of the District Plan to give effect to changes in the Regional Policy Statement, and to update particular standards and controls which unduly restrict development.

Plan Change 39 has no particular effect on the analysis below, other than to clarify the status/zoning of roads in the district.

The notified version of Plan Change 39 seeks to introduce the following statement in Appendix Transport 1, Standard 1(a):

Roads overlay zones, as shown in the Planning maps. When a road is stopped under a Local Government Act or Public Works Act process, the underlying zone is revealed.

Signs

The District Plan manages the erection of signage throughout the district, and defines „sign“ as follows:

any word, letter, model, sign, banner, placard, board, hoarding, billboard, poster, symbol, emblem, notice, name, image, character, outline, spectacle, display, delineation, announcement, device or representation, or any other means of a similar advertising nature intended to principally attract attention whether a specially constructed device, structure or apparatus, whether painted, printed, written, carved, inscribed, endorsed or projected onto a place or otherwise fixed or attached to any wall, roof, fence, rock, stone, structure, canvas or stationary vehicle. Aerial signs (for example, blimps) and free standing signs are included.

Sign does not include any advertising matter placed on or within a display window of a shop, business (excluding home occupation) or industrial premises and does not include traffic signs.

Onsite Sign: a sign which is located on the site to which it relates.

Offsite Sign: a sign which advertises products, goods or services not available on the site on which the sign is located.

Face Area: the total area of a sign facing any one direction.

Where the lettering or design is on an existing surface, the face area of a sign is calculated by measuring the area which encloses all symbols, emblems, words and letters which make up the sign, together with any material or colour forming an integral part of the display or used to differentiate such a sign from the background against which it is placed.

Temporary Sign: a sign advertising an event not held frequently or regularly. A temporary sign shall only be visible for a short period of time.

The design, content, location and scale of signs are managed by Chapter 14B of the District Plan. Clause 14B 2.1 sets out that signs in all Activity Areas are a permitted activity, subject to compliance with the relevant „conditions“. These conditions are specific to the Activity Area within which a sign is located.

With regards to the city centre and inner-city commercial locations, Clause 14B 2.1.5 sets out the relevant „conditions“ for permitted signs in the Commercial and Business activity areas (excluding the Petone Commercial Activity Area 1). These conditions are appended to this letter as **Attachment 1**, for completeness. The pertinent conditions for digital advertising panels are as follows:

b) Maximum Height:

- (i) The maximum height of any sign attached to a building may not project above the highest point of the highest building on the site by more than 20%.*

...

c) Maximum Face Area:

- (i) Where any sign is painted on or attached in any way to the exterior of a building, the maximum face area of all signs visible in any one direction shall not exceed 30% of the area of that wall.*

...

e) Movement

- (i) No sign shall have any parts which are moving. This shall not preclude however any sign with a variable message, suspended signs or flags.*

With regards to 14B 2.1.5(b)(i), the height of the proposed digital advertising panels that are attached to a bus or pedestrian shelter will be no higher than the height of the shelter, and therefore will comply with this condition.

With regards to 14B 2.1.5(c)(i), the digital advertising panel sign is technically attached to the wall of the bus shelter, and will comprise more than 30% of the area of the wall on which it is attached.

With regards to 14B 2.1.5(e)(i), „variable message“ signage (digital advertising) is specifically provided for, and therefore will comply this condition.

Pursuant to Rule 14B 2.3(c), any sign which does not comply with the permitted activity „conditions“ requires a resource consent as a restricted discretionary activity.

Notwithstanding the permitted activity „conditions“ for signs in the Commercial and Business activity areas, pursuant to Rule 14B 2.2(a)(i), any sign on a site that is adjacent to a Residential, Recreation, Rural Activity Area or Community Iwi Activity Area 1 requires a resource consent as a controlled activity.

New Panels

With regards to the signage provisions of the District Plan set out above, a new digital advertising panel would technically exceed more than 30% of the area of the wall to which it is „attached“, and would therefore trigger Rule 14B 2.1.5(c)(i). In this respect, any new digital advertising panel on a new „site“ will require a resource consent as a restricted discretionary activity, pursuant to Rule 14B 2.3(c).

In all other respects, a new digital advertising panel will comply with the permitted activity conditions for signage in the Commercial and Business activity areas.

Existing Panels

Notwithstanding the signage provisions of the District Plan set out above, the „swap-out“ of an existing static advertising panel with a digital panel might benefit from existing use rights, having regard to the nature, scale and intensity of effects associated with a „static“ and a „digital“ advertising panel.

The existing §7(2)(b)(ii) shelters and advertising panels were established in Lower Hutt in accordance with a commercial contract between Hutt City Council and §7(2)(b)(ii) in 2001. It is unclear as to the status of the relevant planning provisions at this time, and therefore for completeness a resource consent will be sought for the „swap out“ of an existing static advertising panel with a digital advertising panel as a restricted discretionary activity, pursuant to Rule 14B 2.3(c) (consistent with the requirements for a new site).

Shelters

Chapter 13 of the District Plan relates to „network utilities“. Rule 13.3.1.37 of the District Plan provides for „bus stops and shelters“ as a permitted activity, subject to compliance with Condition 13.3.2.5 (earthworks). A copy of Condition 13.3.2.5 is appended to this letter as **Attachment 2**, for completeness.

With regards to the nature and scope of works involved in establishing a shelter within the road reserve, it is considered that Condition 13.3.2.5 can be readily complied with, and that no resource consent is required to establish a new bus or pedestrian shelter within the road reserve.

Hutt City Council Public Places Bylaw 2016

On 20 September 2016, Hutt City Council adopted the Public Places Bylaw 2016 (the “Bylaw”). The Bylaw does not have a stated purpose or set of objectives. The Bylaw seeks to manage activities (including structures and advertising) in public areas, but does not include a definition for „public area“. It is considered that the council-owned road reserve constitutes a public area, and that therefore the Bylaw is relevant to the proposal to provide shelters and advertising panels in the road reserve.

Advertising

Section 13 of the Bylaw relates to “display and advertising in public places”. Clause 13.1.c states that no person may “display or carry a placard, board, flag, screen, or frame, by way of advertisement upon or over a carriageway or footpath of a public place” without the prior written permission of the Council. The digital advertising panels that are proposed by s7(2)(b)(ii) are considered to be subject to Clause 13.1.c of the Bylaw. The erection of a digital advertising panel will require the written permission of Council pursuant to Clause 13.1.c.

The Bylaw does not set out what constitutes the written permission of Council, or the process for obtaining such permission, other than to state that a form may be required. It is understood from discussions with Hutt City Council officers that obtaining a resource consent for digital advertising panels in the road reserve (as discussed above) will constitute Council’s written permission, and satisfy the requirements of the Bylaw with respect to advertising in public places.

Shelters

Section 17 of the Bylaw relates to buildings on public places. Clause 17.1.a states that no person may “construct or place any part of a building or structure under, upon, over, or across a public place” without the prior written permission of the Council.

The Bylaw does not set out what constitutes the written permission of Council, or the process for obtaining such permission. Therefore, confirmation is required from Council as to what is required for this process to authorise the erection of new shelters in public places.

Summary

The establishment of shelters and digital advertising panels in the road reserve within the Hutt City Council jurisdiction is subject to the provisions of the District Plan and the Public Places Bylaw 2016.

There is an overlap between the District Plan and the Bylaw in terms of how shelters and advertising panels in the road reserve are to be „authorised“. The District Plan „zones“ the road reserve consistent with the adjacent private land.

The swap-out of an existing „static“ panel with a digital advertising panel, and the erection of a new digital advertising panel at a new „site“, requires a resource consent under the District Plan as a restricted discretionary.

The written permission of Council is required for any new shelter and advertising panel in the road reserve pursuant to the Public Places Bylaw 2016.

s7(2)(b)(ii)

Confirmation is sought that the above analysis is agreed with, to enable s7(2)(b)(ii) to proceed with a sufficient level of comfort to progress the necessary applications for resource consent and/or Council's written permission to erect shelters and digital advertising panels.

Yours faithfully,

s7(2)(b)(ii)

s7(2)(b)(ii)

Released under the Local Government Official Information and Meetings Act

s7(2)(b)(ii)



ATTACHMENT 1

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I4B 2.1.5 Permitted Activities - Conditions In all Commercial Activity Areas, Business Activity Areas, and Community Iwi Activity Area 3 - Kokiri Centres, excluding the Petone Commercial Activity Area 1

- a) **Location:**
- (i) No sign shall be painted onto the roof of any building.
- b) **Maximum Height:**
- (i) The maximum height of any sign attached to a building may not project above the highest point of the highest building on the site by more than 20%.
 - (ii) The maximum height of free standing signs shall be 8m.
- c) **Maximum Face Area:**
- (i) Where any sign is painted on or attached in any way to the exterior of a building, the maximum face area of all signs visible in any one direction shall not exceed 30% of the area of that wall.
 - (ii) Where a sign is erected within the Avalon Business Activity Area the maximum face area of all signs erected at the main entrance to the site shall not exceed 3m².
 - (iii) The maximum face area of free standing signs shall be 20m².
- d) **Illumination:**
- (i) If a sign is to be lit, they shall be lit by constant illumination, and shall not flash. Such signs may be lit by directional illumination or lit from within.
 - (ii) Artificial light shall not result in added illuminance in excess of 8 lux measured at the window of any dwelling house within a residential, recreation or rural activity area, Community Iwi Activity Area 1 - Marae, or Community Health Activity Area.
 - (iii) All measures shall be taken to ensure there is no unreasonable light spill beyond the boundary of the site.
- e) **Movement:**
- (i) No sign shall have any parts which are moving. This shall not preclude however any sign with a variable message, suspended signs or flags.
 - (ii) No sign shall be inflated by any means.
- f) **Temporary Signs:**
- (i) Electioneering signs shall not be displayed more than 42 days before the election, or 2 days after the election.
 - (ii) Any other temporary sign shall not be displayed more than 3 months prior to the purpose or event, and shall be removed within 2 days of the completion of the purpose or event for which the sign was erected.

s7(2)(b)(ii)

ATTACHMENT 2

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13.3.2.5 Earthworks

13.3.2.5.1 Sediment and Erosion Control

Erosion and sediment control measures shall be installed and maintained for all network utility activities, in accordance with the "Erosion and Sediment Control Guidelines for the Wellington Region – September 2002" – reprinted 2006.

13.3.2.5.2 Slope, Height, Depth and Area of Earthworks

The following shall apply to all network utility activities, except to earthworks within 2.0 metres of the exterior walls of any network utility structure or the outer edge of a network utility structure without walls measured in plan view, trenching in the road reserve or rail corridor, and to piling associated with the installation of a network utility.

- i) Slope - No earthworks shall be carried out on a slope greater than 45 degrees.
- ii) Height, Depth - Earthworks shall not exceed 1.5 metres in height or depth.
- iii) Recession Plane - Any earthworks that involve the raising of the height of land above existing ground level shall not exceed a height recession plane measured at an angle of 45 degrees from any neighbouring boundary.
- iv) Area:
 - Riparian Areas - 25m²
 - All Recreation and Residential Activity Areas - 100m²
 - All Rural Activity Areas - 1000m²
 - All Other Activity Areas - 500m²
 - Rail corridor and state highway - 1,000m²

ATTACHMENT B

Submission	#	Site Number	Placing for Digital Screen - Inside/Outside/Other	Location	Suburb	Longitude	Latitude	Priority List A or B
1st	1	630040	Inside	s7(2)(b)(ii)	LOWER HUTT	s7(2)(b)(ii)		A
1st	2	630038 (outside)	Outside		LOWER HUTT			A
1st	3	New Site	Facing intersection		LOWER HUTT			A
1st	8	New Site	Facing intersection		LOWER HUTT			A
1st	4	630028	Inside		PETONE			A
1st	5	New Site	Option for either Inside or Outside		PETONE			A
1st	6	630041 (outside)	Outside		LOWER HUTT			B
1st	7	630039	Inside		LOWER HUTT			B
1st	9	New Site	Facing intersection		LOWER HUTT			B

NOTES:
 Inside - facing oncoming traffic
 Outside - facing direction of traffic
 Other - as described



s7(2)(b)(ii)

s7(2)(b)(ii)

Released under the Information and Meetings Act



HUTT CITY COUNCIL

POPS

Released under the Local Government Official Information and Meetings Act

14 March 2017

Adshel New Zealand Ltd
C/- Bentley & Co Limited
PO Box 4492
Shortland Street
Auckland 1140
Attention: Anthony Blomfield

Kerry Wynne
Environmental Consents
04 570 6959
Kerry.Wynne@huttcity.govt.nz
Our reference: RM170027

Dear Anthony,

Approval of land use resource consent for static and digital sign displays on bus and pedestrian shelters at Jackson Street, Petone, the intersection of High Street and Margaret Street, Hutt Central and the intersection of High Street and Andrews Avenue, Hutt Central (under council records address: All Road 1 Hutt City Roads, Hutt Central) - RM170027

I am pleased to advise that, acting under delegated authority from Hutt City Council, I have granted a resource consent for the proposal at the above property (in Road Reserve at five locations within the Hutt Valley; All Road 1 Hutt City Roads, Hutt Central) without requiring public notification.

The decision is subject to the following conditions:

1. That the proposal is carried out substantially in accordance with the information and approved plans (drawing no. 7500-100-00-000 & 7500-100-00-000-XX, sheets 1-2, revision P1 (both), prepared by Manufacturing Resources International and dated 11 November 2015; and drawing no. C-010-100169-01, sheets 1-4, prepared by Adshel and dated 24 February 2016) submitted with the application and held on file at the council.
2. That the consent holder keeps a copy of this decision on site when work starts and makes it available on request to council staff.
3. That the consent holder advises the council (enforcement@huttcity.govt.nz or (04) 560 1044) at least two working days before any work starts on site; and that the consent holder also supplies the name, phone number and address of the main contractor and, if applicable, the same details for the earthworks company.

Important notes:

- When given notice of a start date, a compliance officer will suggest an on-site meeting to run through a checklist of things to make sure the project runs as smoothly

as possible. This service is included in the resource consent application fee. Using it could avoid difficulties later on. Please note that additional monitoring visits will be charged at \$150 per hour.

- Notification of work commencing is separate to arranging building inspections.
4. That the consent holder shall ensure that at all times, the digital advertising panels be operated in accordance with the standards outlined in the assessment of environmental effects (page 3-4, titled '*Proposed Standards*', provided by Bentley & Co and dated February 2017) submitted with the application and held on file at the council.
 5. That the maximum luminance of the static advertising panel shall be 800 candelas/m² between 7pm-7am during Daylight Saving, and between 5pm-7am when Daylight Saving has ended.

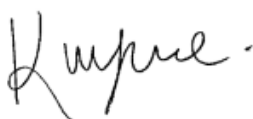
The council has granted consent for the following reasons:

1. At all proposed locations, the proposed static and digital signs are considered to be in keeping with the character of the surrounding activity area. The use of signage is an anticipated activity within the Petone Commercial – Area 2 and Central Commercial activity areas.
2. The proposal has been reviewed and is supported by council's Senior Environmental Health Officer, Dean Bentley. With regards to the sign located on Jackson Street, adverse effects arising from lighting are sufficiently mitigated by the presence of verandahs and separation distances to residential dwellings. Separation distances to near-by residential dwellings are sufficient to mitigate light spill effects on residential properties within the central Commercial activity area.
3. The proposal has been reviewed and is supported by Bill Barclay, council's consultant traffic engineer. I concur with Mr Barclay's assessment and conclude that the signs are not considered to adversely effect traffic safety or efficiency.
4. The proposal is consistent with the policies and objectives of the city's District Plan.
5. The proposal is consistent with the principles and purposes of Part 2 of the Resource Management Act 1991.
6. The council has given due regard to the New Zealand Coastal Policy Statement, any national, regional or proposed regional policy statement and any other relevant regulations in reaching its decision. The council considers there are no other relevant matters that need to be dealt with.

Notes:

1. In accordance with section 357 of the Resource Management Act 1991, the consent holder is able to object to the conditions of the consent. The consent holder must submit reasons in writing to the council within 15 working days of the date of this decision. A fee of \$900 is payable when lodging an objection.
2. This consent does not waive the requirement to obtain the approval of Hutt City Council as the road controlling authority. Approval will need to be obtained from council's Roading and Traffic team.
3. The consent lapses, in accordance with section 125 of the Resource Management Act 1991, if the proposal is not given effect to within five years, that is, by **14 March 2022**.
4. The consent applies to the application as approved by the council. The consent holder should notify the council if there are changes to any part of the plans. The council may require that the consent holder submits a new resource consent application.
5. The proposal has been assessed against the requirements of the city's District Plan. Bylaws may apply to the proposal that may require separate approval from the council before starting any site works. See www.huttcity.govt.nz for a full list of bylaws.
6. The proposal has not been checked for compliance with the Building Act 2004. No associated building work should start without first getting a building consent.
7. The consent is not a licence to create adverse effects such as unwarranted dust, noise, disruption and so on. It does not alter the legal duty to avoid, remedy or minimise such effects. The council may enforce the provisions of the Resource Management Act 1991 if the consent holder fails to meet this obligation.
8. Failure to comply with an abatement notice may result in the council imposing an infringement fine or initiating prosecution.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kempster'.

Kerry Wynne
Resource Consents Planner

Peer reviewer:



Peri Zee
Resource Consents Planner

Application lodged: 16 February 2017
Application approved: 14 March 2017
Working days to process application: 18

Released under the Local Government Official Information and Meetings Act

NOTIFICATION REPORT – RM170027

1. The proposal:

The applicant is seeking land use consent to install new static and digital signage on five existing bus and pedestrian shelters within Petone and central Lower Hutt. It is proposed to retain the existing shelters, replacing only the double-sided static advertising panels with a new 'box'. This 'box' would incorporate a new digital advertising panel on one face of the unit and a traditional static advertising panel on the other.

The digital advertising panels comprise of an Ultra High Definition 75" LCD screen behind laminated glass with an anti-reflective coating. These digital screens are connected to light sensors which automatically adjust screen brightness to ensure signs are legible in all conditions (i.e. brighter on sunnier days, and more dimly lit during cloudy or night time hours when ambient light is lower).

It is proposed to display variable advertising messages on the digital screens, in accordance with the following parameters:

- *The transition from one image displayed to the next shall be via a 0.5 second dissolve;*
- *The display time for each image displayed shall be a minimum of 8 seconds;*
- *Each image displayed shall be static. No image shall contain full motion video or emit flashing lights;*
- *The display panel may display no more than three sequential images to impart a single advertising message;*
- *The images shall not incorporate the predominant use of colours that could cause confusion or conflict with any traffic control device.*

The static display panels would not be illuminated during daylight, but would be internally lit at night.

The proposed signs do not comply with the permitted activity conditions for signage, specifically the maximum face area condition.

2. The site:

It is proposed to install new digital and static advertising panels in five existing bus and pedestrian shelters located around Petone and Hutt Central. As the proposed works will occur within the Road Reserve, there is no specific property to which they relate. Nevertheless, this site description outlines the location and general environment surrounding each proposed bus or pedestrian shelter.

Site A – Jackson Street, Petone

One bus shelter, identified as site 630028 by the applicant, is located on the road reserve outside 73 Jackson Street, Petone. Jackson Street is a busy pedestrian and vehicular thoroughfare. Applying the activity area of the adjacent site to the centreline of the road,

the bus shelter is located within the Petone Commercial – Area 2 activity area of the City of Lower Hutt District Plan. Surrounding the application site are a mix of commercial, business and service activities, as well as large format retail. It is proposed that the digital advertising panel will be facing west, towards oncoming traffic.

Site B – intersection of High Street and Margaret Street, Hutt Central

Two pedestrian shelters, identified as sites 630040 and 630041 by the applicant, are located on the road reserve at the intersection of High Street and Margaret Street, Hutt Central. Respectively, these are located on the footpath outside 204 High Street (on the southern corner of the intersection), and 215 High Street (to the west of the intersection). Applying the activity area of the adjacent site to the centreline of the road, the pedestrian shelters are located within the Central Commercial activity area of the District Plan. As such, the surrounding area is characterised by a mix of commercial, retail, and service operations. The digital advertising panels on both shelters will be facing into the intersection to the north-east.

Site C – intersection of High Street and Andrews Avenue, Hutt Central

Two pedestrian shelters, identified as 630038 and 630039 by the applicant, are located on the road reserve at the intersection of High Street and Andrews Avenue, Hutt Central. Respectively, these are located on the footpath outside 148 High Street (to the east of the intersection) and 151-155 High Street (to the north of the intersection). Applying the activity area of the adjacent site to the centreline of the road, these shelters are located within the Central Commercial activity area of the District Plan. The surrounding area contains commercial and retail properties, car parking structures, and a church. The digital advertising panels on both pedestrian shelters will be facing into the intersection to the south-west.

3. Activity status:

The proposal is considered to be a Discretionary activity under Rule 14B 2.4(a) of the Signs Chapter which states “*in all activity areas, excluding the Petone Commercial Activity Area 1:*

- (i) *Any Permitted, Controlled or Restricted Discretionary Activity which does not comply with any of the Permitted Activity Conditions.”*

4. The District Plan rule which the proposal does not comply with:

Rule 14B 2.1.5(c) Maximum Face Area:

- (i) *Where any sign is painted on or attached in any way to the exterior of a building, the maximum face area of all signs visible in any one direction shall not exceed 30% of the area of that wall.*

The proposed shelter ‘walls’ to which the signage will be attached have an area of 3.22m². Signage displayed on the digital screen will consist of an ‘active’ area of 1.53m², resulting in a maximum face area of 48%. Static posters have a standard size of 2.09m², resulting in a maximum face area of 65%. Respectively, these exceed the District Plan rule by 18% and 35%.

5. Permitted baseline:

The permitted baseline allows a consent authority to disregard adverse effects that are the same as could arise from a permitted development.

Digital and static signage attached to a wall could proceed without a resource consent within Petone Commercial – Area 2 and Central Commercial activity areas, provided the sign had a maximum face area not exceeding 30% of the area of the wall when viewed from one direction, was constantly illuminated and did not flash, did not contribute to unreasonable light spill beyond the boundary of the site, and did not have any moving parts. It is noted that signs with a variable message are permitted within both Commercial activity areas.

This permitted baseline is considered relevant for assessing adverse effects of this proposal.

6. Existing environment:

The existing environment establishes the context against which the effects of a proposal will be assessed. This includes any legally established uses on the subject site and surrounding properties, as well as the anticipated future environment. In this instance, the existing bus and pedestrian shelters are already used to display static advertising posters which exceed the 30% maximum face area rules of the District Plan.

It is noted that residential dwellings are permitted (above ground level) at 73 Jackson Street, Petone. This site is immediately adjacent to the Jackson Street bus shelter where digital signage is proposed and is therefore an important component of the existing environment.

This existing environment is considered relevant for assessing the effects of this proposal.

7. Potential adverse environmental effects of proposal:

- Visual amenity and commercial character effects; and
- Traffic effects.

8. Has the applicant requested notification?

No.

9. Is there sufficient information to consider the application?

Yes. The provisions of section 95C triggering automatic notification when an applicant does not supply enough information, and still fails to do so when asked, do not apply in this case.

10. Which properties are adjacent to the site, as defined by section 95D(a)?

In accordance with s95D(a), I must disregard any effects on the owners and/or occupants of properties adjacent to the application site when determining whether adverse effects on the environment are more than minor. On this basis, I consider the following to be adjacent to each of the application sites:

Site A – Jackson Street, Petone

- 73, 75, and 136 Jackson Street, Petone, and 1 Petone Avenue, Petone.

Site B – intersection of High Street and Margaret Street, Hutt Central

- 204, 210-216, 215 and 217 High Street, Hutt Central.

Site C – intersection of High Street and Andrews Avenue, Hutt Central

- 133-137, 148, 148R, and 151-155 High Street, Hutt Central.

11. Having regard to section 95A, are the potential adverse effects on the environment minor?

Visual amenity and commercial character effects

Light spill from illuminated signs has the potential to generate adverse visual amenity effects at all of the application sites. The new digital signs will be lit at a maximum rate of 5,000 candelas/m² during daylight hours when ambient light conditions are brighter, and a maximum of 250 candelas/m² during the night. Static signs will not be lit during daylight, and will not be illuminated at a rate exceeding 800 candelas/m² during night hours.

Input about potential light spill effects was sought from Dean Bentley, council's Senior Environmental Health Officer. Mr Bentley supports the proposed works at all five sites, noting that the digital signs are sufficiently separated or screened from residential properties such that light spill effects will be negligible, and that static signs will be directionally lit, limiting the risk of unwanted light spill. I concur with Mr Bentley's assessment, noting also that static signs will be illuminated to a level that is consistent with the existing display panels, and that neither the digital nor static signs will flash. It is considered that the 0.5 second dissolve between advertisements does not constitute a 'flash', and could be anticipated as the District Plan explicitly provides for signs with a variable message. Accordingly, I consider that adverse visual amenity effects associated with light spill will be less than minor at all sites.

The appearance, nature and frequency of signs also have the potential to adversely affect amenity values and commercial character.

Site A – Jackson Street, Petone

Signage is characteristic of commercial areas, and is an accepted feature along Jackson Street. There are numerous signs evident within the surrounding environment, including two static signs within the existing bus shelter, and it is considered that the proposed static and digital signs will be absorbed into this context with negligible effect on visual amenity. With a face area of 1.53m², the proposed digital sign will be smaller than the existing static display (2.09m²) facing west along Jackson Street, while the proposed static sign facing east will have the same dimensions as the existing posters. It is also recognised that illuminated signs with variable messages are permitted within Petone Commercial – Area 2. Potential adverse visual amenity effects are therefore considered to be less than minor.

Site B – intersection of High Street & Margaret Street, Hutt Central

Signage is prevalent within central Lower Hutt, and is characteristic of the Central Commercial activity area. There are numerous signs evident within the areas surrounding the High Street & Margaret Street intersection, including static posters displayed on the existing pedestrian shelters. It is considered that the proposed static and digital signs will be absorbed into this context with negligible effect on visual amenity. With a face area of 1.53m², the proposed digital signs facing north-east (into the intersection) will be smaller than the existing static display (2.09m²), whilst the proposed static sign will have the same dimensions as existing posters. Given that illuminated signs with variable messages are permitted within the Central Commercial activity area it is considered that, overall, the proposed advertising 'box' will have a less than minor effect on visual amenity.

Site C – intersection of High Street & Andrews Avenue, Hutt Central

Signage is a common feature of the Central Commercial activity area. There are numerous signs evident within the areas surrounding the High Street & Andrews Avenue intersection, including static posters displayed on the two existing pedestrian shelters. It is considered that the proposed static and digital signs will be absorbed into this context with negligible effect on visual amenity. With a face area of 1.53m², the proposed digital signs facing south-west into the intersection will be smaller than the existing static display (2.09m²), whilst the proposed static signs will have the same dimensions as the existing posters. Given that illuminated signs with variable messages are permitted within the Central Commercial activity area it is considered that, overall, the proposed advertising 'box' will have a less than minor effect on visual amenity.

Overall, I consider adverse visual amenity and commercial character effects to be less than minor.

Traffic effects

Signs can have adverse effects upon traffic safety and visibility, particularly when located within the road reserve. A traffic impact assessment prepared by TDG Limited provided by the applicant considered the risk of potential driver confusion and distraction arising from variable images and transitions, and potential conflict between digital images and traffic control devices. This report was further assessed by Bill Barclay, council's consultant traffic engineer, who supports the five proposed signage 'boxes' on the grounds that:

- *Many of the signs already exist in static form, and have been present for some years. TDG have not found evidence of safety problems as a result of their presence. While the animated displays will engage the attention of motorists for a longer period, signs are erected in commercial areas which already have a large number of signs, and I do not believe they will unduly detract from traffic safety or efficiency.*
- *The proposal shows that signs will not form a visual or physical obstacle, and will not resemble traffic signs.*

Overall, Bill Barclay supports the proposal. I concur with his assessment, and consider that traffic effects arising from the development are no more than minor.

Based on the assessment above, I consider that potential adverse effects associated with the proposed advertising boxes are no more than minor.

12. In accordance with section 95E, are there any parties adversely affected by the proposal?

In accordance with section 95E, I have considered whether the proposal could adversely affect any persons. I consider, for the purposes of making a decision under section 95E(1), that no persons could be adversely affected in a manner that is minor or more than minor for the following reasons:

Site A – Jackson Street, Petone

- Residential development is permitted (above ground floor level) at 73 Jackson Street, Petone, and a resource consent has been granted enabling such a development to take place. Given the proximity of the proposed signs to 73 Jackson Street, there is the potential for light spill to adversely affect residents. However, it is noted that verandahs are required for any building on this site and form part of the proposal approved for a new building on this site (RM160208). Dean Bentley, council's Senior Environmental Health Officer, has assessed the proposal and determined that the presence of a verandah will mitigate light spillage effects. I concur with Mr Bentley's assessment and consider that adverse effects upon visual amenity will be less than minor.
- The buildings at 75 and 136 Jackson Street, and 1 Petone Avenue, Petone are separated from the bus stop and lit signs by the roadway. Thus, should any residential units be constructed on these sites in the future any adverse effects caused by light spill will be less than minor; Dean Bentley council's Senior Environmental Health Officer, has assessed the proposal and determined that light spill would comply with the District Plan requirements at this point.
- Both TDG Limited and Bill Barclay, council's consultant traffic engineer, have assessed and support the proposal, noting that adverse effects on traffic safety and efficiency will be less than minor for the surrounding area. I concur with these assessments and the conclusions drawn.

Based on the above, adverse visual amenity, commercial character and traffic effects are considered to be less than minor for the adjacent properties at 73, 75, and 136 Jackson Street, and 1 Petone Avenue, Petone.

Site B – intersection of High Street and Margaret Street, Hutt Central

- Illuminated and variable signage is an anticipated part of the streetscape within the Central Commercial activity area whereby the proposed digital and static signs at sites 630040 and 630041 are considered to be consistent with the character of the surrounding area.
- Light spill has been assessed by Dean Bentley, council's Senior Environmental Health Officer, as having a negligible impact on the surrounding area; there are no

residential-zoned properties within the surrounding area. While residential activities are permitted above ground floor in the central commercial activity area, the separation distance is considered sufficient to mitigate adverse visual amenity effects resulting from light spill.

- Both TDG Limited and Bill Barclay, council's consultant traffic engineer, have assessed and support the proposal, noting that adverse effects on traffic safety and efficiency will be less than minor for the surrounding area. I concur with these assessments and the conclusions drawn.

Based on the above, adverse visual amenity, commercial character and traffic effects are considered to be less than minor for adjacent properties at 204, 210-216, 215, and 217 High Street, Hutt Central.

Site C – intersection of High street and Andrews Avenue, Hutt Central

- Illuminated and variable signage is an anticipated part of the streetscape within the Central Commercial activity area such that the proposed static and digital advertising panels at sites 630038 and 630039 can be absorbed within the surrounding environment.
- Light spill has been assessed by Dean Bentley, council's Senior Environmental Health Officer, as having a negligible impact on the surrounding area whereby adverse visual amenity effects are considered to be less than minor; there are no residential-zoned properties within the surrounding area. While residential activities are permitted above ground floor in the central commercial activity area Core Precinct, the separation distance is considered sufficient to mitigate adverse visual amenity effects resulting from light spill.
- Both TDG Limited and Bill Barclay, council's consultant traffic engineer, have assessed and support the proposal, noting that adverse effects on traffic safety and efficiency will be less than minor. I concur with these assessments and the conclusions drawn.

Based on the above, adverse visual amenity, commercial character and traffic effects are considered to be less than minor for adjacent properties at 133-137, 148, 148R, and 151-155 High Street, Hutt Central.

- All other persons are sufficiently separated from all application sites such that visual amenity, character, and traffic effects arising from the installation of digital and static advertising panels are considered to be less than minor.

13. In accordance with section 95E(3)(b), is it unreasonable to require the written approval of anyone?

No.

14. In accordance with section 95A(4), are there any special circumstances that warrant notification of the application?:

No.

15. Decision:

Non-notification under sections 95D and 95E(3) because the environmental effects are less than minor.



Kerry Wynne
Resource Consents Planner

Peer reviewer:



Peri Zee
Resource Consents Planner

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TO BE USED BY ALL EMPLOYEES, CONTRACTORS AND CONSULTANTS WHEN PROCURING GOODS AND SERVICES

Division	Finance
Date created	May 2020
Publication date	May 2020
Review period	Three years
Owner	Chief Financial Officer
Approved by	Corporate Leadership Team

Version	Author	Date	Description
V 1.0	Bradley Cato	01/10/2016	Approved by SLT
V 2.0	Paula A kema	19/03/2020	Reviewed.
Rev 2.3	Allen Yip	May 2020	Approved by CLT

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1. INTRODUCTION

Procurement plays an important role in how Hutt City Council (the Council) together with its Council-Controlled Organisation's (CCOs) delivers its strategies and our work towards making the city a great place to live, work and play. Together Council and its CCOs form the Council Group. The Council Group is a major buyer of goods, works and services. The way we plan, source and manage our expenditure and spend public money has an impact in the local economy and can affect the Council Group's performance and reputation.

2. PURPOSE

The purpose of this policy is to ensure that all Council Group procurement occurs within the parameters of public sector policy, rules and guidelines and gives effect to the Council Group's Organisational Procurement Strategy *[INSERT LINK]*. It outlines Council's approach to planning, sourcing and managing our procurement.

This policy set out Council's expectation for how all Council Group procurement activities will be planned and managed.

3. COMPLIANCE WITH THE PROCUREMENT POLICY

This Procurement Policy and the Procurement Guide reflect current Government requirements and international procurement best practice. Inherent in the procurement process are options which allow tailoring to suit individual requirements.

All Council Group employees and, contractors must comply with this policy and the associated Procurement Guide *[INSERT LINK]* whenever a procurement exercise is undertaken unless there is compelling justification to depart from the procurement process and the reasons are recorded and approved by a person with the appropriate financial delegation to grant an exemption.

This Group policy and the guidelines apply to all CCOs wholly owned by Council.

4. SCOPE

This procurement policy covers all procurement processes entered into by employees, including permanent staff members (full-time and part-time), temporary staff, seconded staff, consultants, contractors and any entity acting as a procurement agent for the Council Group.

This policy does not apply to:

- sub-contracting or sourcing activities undertaken by Council suppliers, unless specifically required under contract
- entering into employment contracts¹
- property transactions, including the lease, sale or purchase of land or buildings.

All procurement processes relating to transport infrastructure works which claim financial assistance from the Waka Kotahi NZ Transport Agency (Transport Agency) must comply with the [Procurement Manual](#) for activities funded through the National Land Transport Programme².

¹ Assistance should be sought from Human Resources with regards to employment contracts.

² Enabled through the joint Hutt City and Upper Hutt City Council Procurement Strategy

5. PROCUREMENT OBJECTIVES

This procurement policy informs Council employees and contractors of the appropriate requirement when undertaking procurement for the Council, with particular consideration to:

- Contributing to the achievement of Council's strategic objectives as expressed in the Organisational Procurement Strategy *[INSERT LINK]*
- Demonstrate best value for money spent
- Demonstrate transparency and accountability in our decision making
- Promote consistency of approach to deliver efficient and continuous improvement
- Deliver broader outcomes
- Develop strategic partnerships with our supply chain.

This policy is not a "how-to" procurement guide. In order to make it easy for Council to comply with this policy and achieve its business outcomes, support and guidance is available through Council's Procurement Guide *[INSERT LINK]* and supporting templates.

6. PRINCIPLES OF PROCUREMENT

The following specific principles apply to all Council Group procurement activities. Each principle is supported by one or more statements that reflect the requirements of Council's procurement guide and the expectations of Council's Leadership Team.

BEST VALUE FOR MONEY

All of our procurement decisions must be justifiable on the basis of best value.

- Before initiating any sourcing process, the criteria by which best value will be determined must be documented, approved and communicated to potential suppliers.
- Procurement planning and decision making must consider potential social, environmental, sustainability, cultural and economic benefits and impacts
- Procurement planning should consider the management of risk associated with any new or modified buildings or structures, equipment, material, services or work processes introduced into the workplace and provide evidence that health and safety issues have been incorporated into purchasing decisions where applicable.
- Procurement decision making should be objective and evidence based wherever possible. More subjective decisions of best value must apply professional and informed judgement, with a record rationale.

TRANSPARENCY AND ACCOUNTABILITY

Our procurement practices must be able to withstand public scrutiny at all times.

- All procurement decisions and resulting contracts are the responsibility of the individual named positions in the delegations matrix
- Procurement processes and decisions must be clearly recorded so they can be reviewed or audited.
- All procurement activities and supplier relationships must be managed with the highest levels of

integrity, in accordance with Council's [Code of Conduct](#)

- The [Conflict of Interest policy](#) applies to all procurement activities and decisions. Formal conflict of interest declaration must be completed by all employees and suppliers directly involved in a procurement activity.

CONSISTENCY OF APPROACH

All procurement activities and decisions must comply with Council's policies, procurement procedures and delegation schedules.

- Compliance with procurement procedures and the financial delegation matrix is mandatory.
- All procurement processes should use Council's endorsed templates and processes.

BROADER OUTCOMES

Council will look to create opportunities and benefits for the City and wider Region by investing in economic, environmental, sustainable and social and cultural outcomes.

- Broader outcomes must be considered when planning all procurement activities.
- Support suppliers that provide cost-effective, environmentally responsible products and services.

SUPPLY CHAIN

Develop strategic partnerships with our supply chain

- Create opportunities for early and proactive engagement with our supply chain to help inform procurement planning
- Develop a pipeline of procurement opportunities to encourage confidence from the supply chain that translates into multiple viable responses to tenders
- All open tenders will be publicly advertised using the local paper and, on the Governments Electronic Tendering Service (GETS)³ website and/or Tenderlink⁴
- Give sufficient response times for suppliers to respond to our requests

PRINCIPLES OF GOVERNMENT PROCUREMENT

Council will apply the [Principles of Government Procurement](#) when procuring goods, works and services, when planning, sourcing and managing our procurement.

- Plan and manage for great results
- Be fair to all suppliers
- Get the right supplier
- Get the best deal for everyone
- Play by the rules

³ GETS is a free online service designed to promote open, fair competition in the New Zealand Government market and meet international trade agreement commitments to provide information about New Zealand Government business opportunities.

⁴ Tenderlink is a commercial e-tendering network used by the public and private sectors.

7. FINANCIAL THRESHOLDS

The Council Group is required to conduct an open tender for contracts for goods and services with a value in excess of \$100,000 NZD or \$500,000 NZD for construction related contracts. These thresholds relate to the total anticipated value of the contract for the full term of the contract (i.e. the aggregated total cost of the contract) e.g. a two-year requirement/relationship with an annual value of \$30,000 would equal a total contract value of \$60,000. Contract values must not be structured or divided at any stage to fall under the thresholds to avoid tendering.

COUNCIL GROUP (EXCL UPL)⁵

Procurement Activity	Total Value of Contract (Goods and Services)	Total Value of Contract (Construction)
Direct purchase	\$0 - \$20,000	\$0 - \$50,000
Closed tender ⁶	\$20,001 - \$99,999	\$50,001 - \$499,000
Open and competitive tender	>\$100,000	>\$500,000

URBAN PLUS LIMITED⁷

Procurement Activity	Total Value of Contract (Goods and Services)	Total Value of Contract (Construction)
Selective purchase	\$0 - \$50,000	\$0 - \$50,000
Competitive quotation ⁸	\$50,001 - \$200,000	\$0 - \$200,000
Closed tender ⁸	\$200,001 - \$499,999	\$200,001 - \$499,999
Open tender	>\$500 000	>\$500,000

Before goods are purchased or services are engaged, a purchase order (for direct purchase only) or a written contract must exist.

The financial delegations outlined in the Financial Delegations Matrix *[INSERT LINK]* must be adhered to when conducting any procurement process. All requests to procure goods and services must be authorised by a person holding the appropriate financial delegation for the total life of the contract.

8. ALL OF GOVERNMENT/SYNDICATED/PANEL CONTRACTS

The Council will utilise the [All-of- Government Panels](#), Syndicated Contracts and Council's own panel contracts if there are contracts in place that can meet their needs unless there is a good reason not to.

9. RELATED POLICIES, MANUALS AND GUIDANCE

The following documents should be read in conjunction with this Policy:

- Organisational Procurement Strategy *[INSERT LINK]*
- Procurement Guide *[INSERT LINK]*
- Financial Delegations Policy *[INSERT LINK]*
- [Code of Conduct](#)
- [Conflicts Of Interest](#)
- [Receiving of Gifts Policy](#)
- [Waka Kotahi NZ Transport Agency's Procurement Manual](#)

⁵ Financial thresholds must be followed unless there is an approved exemption

⁶ Quotes to be sought from at least three different vendors / suppliers

- Hutt City Council and Upper Hutt City Council Joint Procurement Strategy *[INSERT LINK]*
- [Government Procurement Rules](#)
- Health and Safety Manual *[INSERT LINK]*

10. RELEVANT REFERENCES

Additional reference material can be found through the following websites:

- [Office of the Auditor General's Procurement Guide for public entities \[2008\]](#)
- [Ministry of Business, Innovation and Employment's Government Rules of Sourcing \[2019\]](#)
- [State Services Commission's Conflicts of Interest Model Standards](#)
- [State Services Commission's Code of Conduct for the State Services](#)

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Approved by	CLT

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V 2.0	Paula A kema	27/03/2020	Review and update
Rev 2.3	Allen Yip	May 2020	Approved by CLT

AMENDMENT AND REVIEW STRATEGY

This document is subject to review and amendment from time-to-time. Document revisions will be issued with an Amendment Notice detailing the changes and section(s) affected.

	Comments	Frequency
Amendments (of a minor nature)	Incorporate as part of Annual Review	Annual: January – March quarter
Review (major changes)	Urgent amendments fundamentally changing the content or structure of the guide will be incorporated as soon as practicable	As required
Notification	Email sent to Council employees	Annually or as required

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1. INTRODUCTION / PURPOSE

The purpose of this document is to provide guidance to employees and contractors who are involved in procurement activity on behalf of the Council Group.

This document outlines the procedure for standard Procurement and provides instructions/ guidelines as to the relevant template documents to be used at each stage of the process.

2. HOW TO USE THIS DOCUMENT

2.1 COUNCIL POLICIES

This document should be read in conjunction with Council's Organisational Procurement Strategy and Procurement Policy [INSERT LINKS]. References to other applicable policies and manuals are included within this guide.

This document provides guidance and instructions. If there is any inconsistency between this document and any of Council's policies, Council's policies will usually prevail. In the event of any such inconsistency, input should be sought from the Chief Financial Officer.

2.2 STRUCTURE OF THIS DOCUMENT

This document is divided into various sections and is to be used as a reference manual. Once staff are familiar with Council's procurement framework in general, they will only need to refer to the specific sections applicable to the specific stage of their procurement activity.

The guide is in two parts:

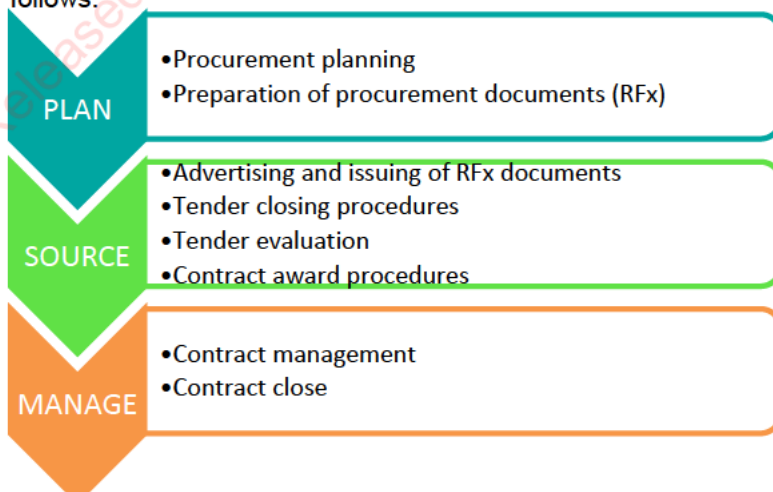
Part 1 – explains the procurement framework and types of procurement processes available, and

Part 2 – deals with the procurement of goods, works and services and:

- Provides administrative guidelines
- Defines actions / processes that are to be undertaken, and'
- Describes the required documentation for each.

Each action / process undertaken must be documented in a clear and orderly manner.

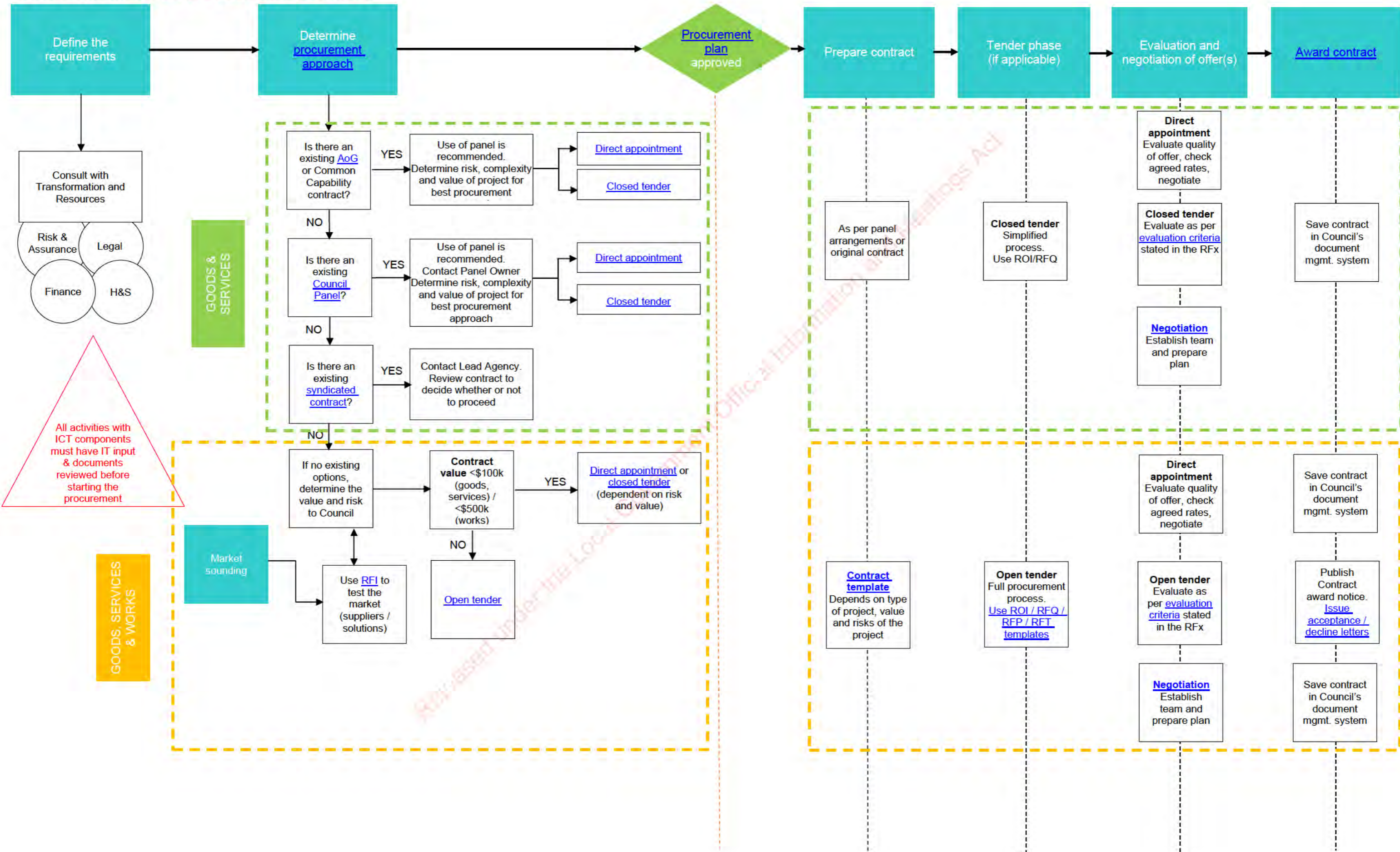
This section of the guide aligns with the Plan, Source, Manage lifecycle of a procurement process as follows:



2.3 KEY CONSIDERATIONS

Confidentiality	<p>Confidentiality is a key requirement of any procurement process. Particular care must be taken with commercially sensitive information. Confidentiality obligations apply throughout the procurement process, including after the contract has terminated or expired. Council should:</p> <ul style="list-style-type: none"> ▪ Respect the confidentiality of information received in the course of the work ▪ Not use information for personal gain ▪ Always communicate information accurately, impartially and in a manner not designed to mislead ▪ Maintain confidentiality of tenderer information throughout the tendering process. <p>Council staff and contractors must ensure that tenderer information is not used in a way that may influence other suppliers. Council could be held liable should commercially sensitive information relating to tenderers be negligently released.</p> <p>Tenderer information may be able to be released if Council receives a request under the Local Government Official Information Act and Meetings Act 1987.</p>
Broader outcomes	<p>The secondary benefits that are generated by the way a good, service or works is produced or delivered. These outcomes can be social, environmental, cultural or economic benefits, and will deliver long-term public value for Lower Hutt, in particular.</p> <p>Council has outlined its priorities for these within its <i>Organisational Procurement Strategy</i> [<i>insert link</i>]. Each procurement activity must consider how these objectives can be achieved through each subsequent contract. The rationale for considering / not considering broader outcomes should be articulated within the procurement plan.</p>
Maximum total estimated value of procurement	<p>This refers to the total anticipated value of the full term of the contract (i.e. the aggregated total cost of the contract) e.g. A four-year requirement/relationship with an annual value of \$15,000 would equal a purchase value of \$60 000. The Maximum Total Estimated Value must consider the whole-of-life costs associated with the contract.</p> <p>It is this value that dictates which procurement approach should be used.</p>
Records to be kept	<p>Under the Public Records Act 2005, Council is required to create and maintain full and accurate records in accordance with normal, prudent business practice. This includes activities carried out by contractors on Council's behalf. These records must be available over time.</p> <p>Additionally, every procurement process Council undertakes must have a comprehensive audit trail.</p> <p>All procurement documentation, from the business case through to the final signed contract should be retained and saved the relevant contract folder in Council's Document Management System (CM9).</p>
Right of renewal	<p>If a contract has a right of renewal period written into it, Council can exercise this right however, if the contract renewal period has been exhausted then we will need to go to the market. Council may use the right of renewal point as an opportunity to harmonise the service or goods provision with other contracts, or if CLT agree that any extenuating circumstances exist.</p>
Tenderer Complaints	<p>Council must be open to, and accord impartial and timely consideration to, any complaints from any supplier regarding an alleged breach of any tendering process in which they have or have had an interest.</p> <p>For assistance in dealing with any complaints from a tenderer please contact the Legal Services Team.</p>

PROCUREMENT LIFECYCLE FLOWCHART



PART 1 - PROCUREMENT FRAMEWORK AND PROCESSES

3. PROCUREMENT FRAMEWORK

All Council contracts (and the procurement processes behind those contracts) are potentially subject to an audit or investigation by the Office of the Auditor-General, to ensure that Council is "spending rate payer money wisely". All procurement activities should be properly planned and conducted.

This document details Council's procedures for procuring:

General Goods, works and services	The standard procurement process applies where Council business unit/projects define their requirements to go out to the open market. This approach covers all procurement that is not included in the Waka Kotahi NZ Transport Agency's Procurement Manual for activities funded through the NLTP, current Council panel agreements, syndicated or all-of-government contracts.
National Land Transport Programme Funded Procurement	The Waka Kotahi NZ Transport Agency's Procurement Manual is dedicated for transport infrastructure projects that are funded by the NLTP. This Manual MUST be utilised for any procurement activity that receives NLTP funding. Additionally, Council together with Upper Hutt City Council has developed a joint procurement strategy[<i>INSERT LINK</i>] that gives effect to the requirements set out in the Procurement Manual which has been endorsed by the Transport Agency. This Strategy outlines how Council will plan, source and manage its roading infrastructure contracts.

4. TYPES OF PROCUREMENT

4.1 PROCUREMENT APPROACH

The fundamental principle of a procurement approach is to ensure that a competitive and transparent process is used. The following provides a guide. Officers should seek guidance from their Director for clarity.

At first instance the need for Council to procure goods, works and/or services must be established, following that, these procurement options are available to Council:

Council Panel Agreements	<p>Panel contracts are a contractual agreement with a group of suppliers to provide specified goods and services as and when required under a schedule of rates for each supplier under a quotation basis.</p> <p>These contracts can be used when Council has identified the need for specialist external resources to assist as and when required. The selection process involves going to the open market and forming several supplier panels.</p> <p>Council's panel contracts can be used for:</p> <ul style="list-style-type: none"> ▪ Projects – to cover a fixed term resource requirement ▪ Business as Usual – to cover short term gaps in resources or spikes in workload ▪ Advisory – to provide advice to Council on various levels and subjects. Refer to your Director for information on panel contracts. <p>Existing Panel contracts should be considered prior to undertaking any procurement activity.</p> <p>For information Council's panel contracts please refer to your Director.</p>
Direct Appointment	<p>A direct appointment is where only one supplier is directly approached to provide Council requirements.</p> <p>A sole source tender can be used in situations where a competitive procurement process is not appropriate. For example:</p> <ul style="list-style-type: none"> ▪ The total value of the contract is under \$20,000; and / or. ▪ There is only one supplier in the market as determined by the market analysis, or officer determination based on experience (a decision which must be clearly documented), and/or

	<ul style="list-style-type: none"> ▪ To standardise products or services for compatibility purposes (e.g. with existing equipment)
Closed Tender	<p>A closed tender is where a limited number of suppliers are approached to respond to Council requirements.</p> <p>A closed tender may be appropriate in the following circumstances:</p> <ul style="list-style-type: none"> ▪ Goods and services procurements where the total value of the purchase is under \$100,000 ▪ New construction projects where the total value of the purchase is under \$500,000 ▪ There is confidential information contained in the tender ▪ There are a limited number of suppliers in the market (as determined by market analysis or officer determination based on experience (a decision which must be clearly documented)) ▪ Cost/benefit analysis suggests that undertaking an open tender is not justified. <p>Seek guidance from your Director on which process is the most appropriate for your procurement project.</p> <p>Approval from the delegated authority must be sought prior to utilising this option.</p>
Open Tender	<p>Open tender processes are used to promote transparency and value for money and are usually for middle to high value procurements where there are a number of potential suppliers in the market.</p> <p>The tender is advertised publicly usually using GETS (Government Electronic Tender Service), and allows any supplier or provider to submit a tender (proposal). The supplier or provider must have a GETS account in order to respond to the GETS listing.</p> <p>Council's policy requires that an open tender process is used for the procurement of goods or services with a value of a \$100,000 or more, or \$500,000 or more for construction contracts, over the life of the contract. When sourcing contracts of this value they are usually higher risk good, services or works, and there are a number of suppliers who can deliver the contract.</p>
Emergency procurement	<p>Emergency procurement of goods or services may be authorised provided:</p> <ul style="list-style-type: none"> ▪ life, property or equipment are immediately at risk, or ▪ standards of public health, welfare or safety needing to be established without delay, such as in the case of disaster relief. <p>Emergency procurement allows all normal procurement rules to be set aside to meet an emergency. The prime element that constitutes an emergency procurement is that unforeseen circumstances have risen that require urgent attention by Council.</p> <p>When the goods or services that are needed to cope with an emergency cannot be obtained within the required time by normal procurement procedures, they may be purchased from the most convenient suitable supplier, provided that:</p> <ul style="list-style-type: none"> ▪ the purchase is limited to the meeting the requirement needed to cope with the particular emergency, and ▪ the price quoted is a fair market price at the time and place where the purchase is made. <p>Any Council employee may exercise emergency procurement provisions to meet a genuine emergency situation, provided that the person can later justify their actions. Where Council employee concerned does not have a formal purchasing delegation, the value of the purchase is limited to that of a Manager. All others may make emergency procurement up to their purchasing delegation level.</p> <p>Responsibility for determining that the circumstances warrant an emergency purchase rests with Council employee placing the emergency request. An individual may be liable for any expenditure or loss resulting from misuse of the emergency purchase procedure.</p>

	<p>All documentation relating to the procurement must be retained.</p> <p>Post procurement</p> <p>As soon as practical after the emergency procurement has taken place notification of the emergency procurement must be sent to the Finance team and the Director responsible for the expenditure outlining:</p> <ul style="list-style-type: none"> ▪ The reason for the emergency procurement ▪ The value and term of the emergency procurement ▪ The supplier appointed, the form of contract used, and why ▪ Any other relevant information to support the emergency procurement.
<p>Competitive dialogue</p>	<p>Competitive Dialogue enables Council to work with shortlisted suppliers in structures dialogue sessions to develop Council's requirements before issuing an RFT. A standard RFP / RFT process (with only the shortlisted tenderers) will follow once the requirements have been determined.</p> <p>This should only be used on complex projects e.g. new community facilities such as a library or a pool.</p>

There are two stages in which a tender process can be run. The stages depend on the volume of responses anticipated from the market.

<p>Single-Stage Process</p>	<p>A single-stage process means that a Request for Proposal (RFP) or Request for Tender (RFT) is issued to suppliers without having conducted the Registration of Interest (ROI) process to shortlist potential suppliers first</p> <p>For low value/low risk procurements a Request for Quotation (RFQ) can be used.</p>
<p>Multi-Stage Process</p>	<p>A multi-stage process is an open tender process that uses a ROI process to shortlist potential suppliers prior to releasing a RFP or RFT document to the shortlisted respondents. This process is particularly useful if Council expect to receive a high number of responses.</p>

In addition to the different types of procurement processes listed above Council has the opportunity to join a range of Government and syndicated contracts. Therefore, where it is applicable and practical, Council should consider joining such agreements.

<p>Syndicated Procurement</p>	<p>Syndicated procurement is a process whereby agencies aggregate their requirements prior to going to the market. This approach avoids duplication of effort across agencies and also increases the buying power of the tendering agencies.</p> <p>As a Government Agency, Council has access to a number of syndicated procurement opportunities. Council must sign up to the contract and enter into agreement with the Lead Agency.</p> <p>Existing syndicated procurement options should be considered prior to undertaking any procurement activity.</p> <p>Should Council wish to allow other agencies to join a contract that they have created in the future then a Common Use Provision (CUP) clause may be included to enable other eligible agencies to join the contract at a later stage.</p> <p>For assistance or advice on syndicated procurement please contact the Chief Financial Officer.</p>
<p>All-of-Government</p>	<p>All-of-Government (AOG) contracts establish a single supply agreement between the Crown and approved suppliers for the supply of selected common goods and services purchased across government. These contracts deliver a range of benefits including:</p> <ul style="list-style-type: none"> ▪ Cost savings to agencies ▪ Productivity gains

	<ul style="list-style-type: none"> ▪ Improved competition <p>When using these contracts, Council is still bound by its procurement thresholds and should elect to run a secondary process to select a provider.</p> <p>There are numerous AOG contract available for Council to access. For information please contact the Chief Financial Officer.</p>
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4.2 MINOR ADMINISTRATIVE PURCHASES

Administrative purchasing	<p>An administrative purchase is a low value, low risk purchase not directly related to an existing contract, project or tender process. Purchases may be made using:</p> <ul style="list-style-type: none"> ▪ HCC Credit Card - up to the delegated authority and credit limit, and following the rules of the Credit Card Policy <i>[INSERT LINK]</i> ▪ HCC Purchase Orders - approvals must be obtained from an employee's manager.
Contract exists	<p>Where the purchase is related to an existing contract (e.g. post, and telecommunications) check that the contract covers the scope of your requirement, and the process to engage the supplier set out in that contract must be followed. Contact the Contract Manager for further guidance.</p>

4.3 CONTRACTOR VS CONSULTANT

Contractor vs employee	<p>Council engages several types of contractors:</p> <ul style="list-style-type: none"> ▪ A contractor filling a role that could be undertaken by an employee. ▪ An individual contractor or consultant to undertake a special project. ▪ A contractor or contracting firm employed to undertake a range of activities such as repairs and maintenance of buildings ▪ A contracting or consulting company employed to undertake a project(s). <p>There are strict tests applied by the Inland Revenue (IR) to determine whether a contractor is a genuine contractor or is actually an employee. Managers should be aware of this control test and ensure that the contractor is not an employee.</p> <p>Where it is unclear whether the requirement is for a contractor or for employee, contact the HR team.</p>
Contractor vs consultant	<p>A consultancy service is where Council pays a consultancy company for the delivery of an outcome. A consultant is an expert in a particular field, who can demonstrate relevant skills and experience not readily available from within Council.</p> <p>A contractor is an individual who is either hired directly or through a third party to perform duties that would normally be provided by an existing staff member.</p>

4.4 EXEMPTIONS

In the normal course of business Council prefers that appropriate procurement approach adopted. However, there are times when going to market is not practicable or not going to market would provide a better outcome for Council. In such cases, officers shall prepare a memorandum for CLT's consideration and approval explaining (for example):

1. Rationale and justification for deviating from standard practice, and;
2. What alternative measures will be implemented as a result – ideally, an evaluated approach should be employed. A competitive process should also be employed.

In all cases, a request for an exemption shall not be used to avoid a competitive process, discriminate against suppliers, or due to lack of time / planning.

Further information on this can be obtained from the Government Procurement Rules. [Rule 14 of the](#)

[GPR](#) explains the circumstances under which Council may be exempt from the requirement to openly advertise and outlines the steps for documenting the rationale behind seeking the exemption (refer to Rule 14.9).

Written endorsement from a General Manager or the CEO in accordance with the appropriate delegated authority must be sought prior to utilising any of the exemption rules above. A Director or CEO may refer the matter to the CLT for approval.

An exemption request should be documented on the Tender/Contract Initiation Request Form [\[INSERT LINK\]](#).

4.5 CONTRACT MODELS

Council endorses the MBIE suite of contracts that should be used for all contracts entered into.

Should your project require a more complex contract, or should you need to change any of the clauses in a standardised contract, please contact Council's Legal team.

Selection of contract model	<p>Project risk and potential for innovation are the key criteria for selecting a contract model. There is no definitive point for moving from one model to the next, rather the trend is to move to less traditional models as the potential for innovation and risk sharing with the supplier increases.</p> <p>All contracts must include an expiry date. While the requirement may need to continue beyond that date, and expiry date enables a forced review of the arrangement through initiating procurement activity (direct or competitive) to ensure the needs of Council are still being appropriately met.</p>
Goods and services	<p>For low value, low risk common goods and services, Council uses the</p> <ul style="list-style-type: none"> • Government's Model conditions (Form 2); or • CCCS Short Form Agreement <p>For larger value and higher risk contract, contact Council's Legal team</p>
Works	<p>Council uses the suite of Conditions of Contract for Building and Civil Engineering Construction (NZS391x:2013): for any construction, physical works and/or roading related works</p> <ul style="list-style-type: none"> • NZS3910: 2013 – Construct only • NZS3915: 2005 – Construct only (where no person is appointed to act as the Engineer to the Contract) • NZS3916: 2013 – Design and construct • NZS3917: 2013 – Fixed term (maintenance contracts)

PART 2 – PROCUREMENT LIFECYCLE

5. APPROVAL TO COMMENCE A PROCUREMENT PROCESS

5.1 OVERVIEW

Before commencing a procurement process confirm with the Director whether a Business Case and/or Tender/Contract Initiation Request Form *[INSERT LINK]* is required. These documents outline the need to procure and approval of the budget to do so.

The information to be included in the Business Case/Project Initiation Form *[INSERT LINK]* is the basis of the Procurement Plan *[INSERT LINK]*. It is the responsibility of the project / contract manager to ensure the relevant documentation is completed and the necessary approvals are obtained.

5.2 PROCUREMENT PLANNING

The purpose of procurement planning is to document the strategic context and considerations in the choice of procurement method, approach to market, evaluation criteria and the indicative timeline for the procurement process. The content and detail required in procurement planning should be scaled for the size and risk of the procurement.

Procurement Plan <i>[INSERT LINK]</i>	<p>A Procurement Plan provides the methodology and approach, process and project management structure for implementation. The purpose of the procurement plan is to:</p> <ul style="list-style-type: none"> ▪ Outline the project scope ▪ Determine the total cost of contract ▪ Undertake market analysis – capacity and capability of suppliers ▪ Confirm the project budget ▪ Assess the potential broader outcomes ▪ Determine the procurement methodology ▪ Outline the evaluation criteria and panel ▪ Confirm Conflict of Interest and ensure Confidentiality Declarations are signed ▪ Determine the indicative timeline ▪ Outline the risks.
Procurement Checklist <i>[INSERT LINK]</i>	<p>To assist you with the procurement process a Procurement Checklist has been developed. This is a step-by-step guide to procurement and also indicates the templates available for use.</p>

5.3 TENDER EVALUATION METHODS

There are a number of different methods available that will ensure that the best supplier is selected for the right reasons and at a price that represents value-for-money over the whole-of-life of the contract. Parameters for their use are described below.

Weighted Attribute	<p>This is the most common evaluation methodology used in the NZ public sector. This is typically used for sourcing goods and services (non-NLTP projects). Criteria (e.g. track record, experience, methodology, price) have different levels of importance (or weightings). All attributes and the price are all weighted to come up with a preferred respondent that optimises price and quality.</p> <p>Responses should, be received in two files so that assessment of attributes and prices can be</p>
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	shown to be undertaken independently.
Lowest Price Conforming	<p>Typically only used for contracts that are low complexity and low value, where scope is tightly defined, where risks are insignificant and could not have a material effect on the success of the project; and where there are limited opportunities for whole-of-life cost benefits, innovations, or added value alternatives.</p> <p>The evaluation can be made on price only, or price together with some attribute information (using two files) that is assessed on a pass/fail basis.</p>
Brook's Law (also known as Quality Based)	<p>Used where the scope of the project is unclear and/ or it is difficult, time-consuming or not possible to estimate the price of carrying out a contract. It is also useful when the relationship between Council and the supplier will need to be extremely cooperative to deliver the project.</p> <p>Responses are evaluated on a quality only basis i.e. price does not form part of the evaluation. Price may be required to be submitted in a separate file for the purposes of negotiation only. Only the highest ranked supplier invited to negotiate. All other prices remain unopened. If negotiations are successful with this supplier, then a contract is awarded.</p> <p>Should negotiations be unsuccessful, then the second ranked supplier is invited to negotiate, and their price is opened.</p> <p>This process continues until a satisfactory agreement is negotiated. A supplier, once rejected, should not be recalled for further negotiations.</p>
Purchaser Nominated / Target Price	<p>Used when budgets are fixed or the required outcome is known, but it is difficult to define the scope of the work in the specification of requirements. Reliant on suppliers to describe how they will achieve the required output for the specified budget. The budget (target price) must be specified in the RFP.</p> <p>This method is focused on quality only.</p>
Price Quality Method (PQM)	<p>This method may be considered for use on all contracts where a balance between price and quality needs to be achieved and where Council determines that:</p> <ul style="list-style-type: none"> • best value for money will be obtained by having suppliers compete on both price and quality, and • selecting the supplier that offers the best combination of the two. <p>PQM uses a mathematical model to translate the non-price attribute grades of each respondent to an explicit dollar value, the supplier quality premium (SQP). The SQP shows how much Council is prepared to pay to secure a higher quality tender relative to the lowest quality tender.</p> <p>For transparency purposes, the base estimate must be specified in the RFT / RFP, as it will be used in the calculation of the SQP.</p> <p>Attribute weight setting and evaluation tools can be found in the Procurement manual tools in the Transport Agency's <i>Procurement manual</i>.</p> <p>Further guidance can be found on the Transport Agency's website.</p>
Assistance	For assistance on what evaluation methodology is appropriate for your tender activity please discuss with your Director.

5.4 EVALUATION CRITERIA AND WEIGHTINGS

Evaluation criteria and associated weightings should always be developed prior to the closing of the tender process to eliminate any potential accusations that Council is developing criterion and weightings around a particular tenderer's response. Criteria and weightings must be specified within the RFx document to provide transparency of the procurement process.

It is important that appropriate subject matter experts input into designing the evaluation criteria and weightings. Criteria and weightings will depend upon the subject matter of the contract,

should be aligned with key risks and meet Council's key strategic objectives. An example of some common evaluation criteria is:

Preconditions	<p>Preconditions, sometimes called pre-qualifying criteria, are prerequisite requirements that must be met, or the response will be rejected. They are either pass or fail. Preconditions should be worded explicitly so it's easy to assess whether the supplier meets or doesn't meet it. If there are concerns about limiting competition through onerous preconditions, you can require that a supplier either meets the precondition now or agrees to meet it before the contract begins.</p> <p>Use preconditions sparingly and only for critical requirements that are essential to the deliverables.</p>
Company capacity	The supplier's ability to deliver the required outputs within the timeframes. Can also be used to assess the proposed resources (equipment, facilities, number of staff) to be utilised to deliver the outputs.
Company capability	The supplier's previous experience in areas relevant to the outputs being purchased. Can also be further expanded to align with key roles under the contract for the supplier to demonstrate individual capability within their nominated delivery team.
Track Record	The supplier's record of delivering works or services to the quality standards, on time and within budget.
Methodology	The procedures the supplier proposes to use to achieve the specified end product. Can be further expanded to areas such as programme, health and safety procedures, provision of a transition plan (for long term delivery contracts).
Broader Outcomes	<p>This assesses the supplier's proposal to deliver economic, environmental, social and cultural outcomes through the life of the contract. Specific areas to be targeted are:</p> <ul style="list-style-type: none"> • Environmental sustainability • Growing future capability in the sector • Engaged communities
Price	Suppliers price to deliver the required outputs.

For NLTF projects, the [Transport Agency's Procurement Manual defines four non-price attributes \(NPAs\)](#) which can be used in price quality and quality-based evaluations:

- relevant experience
- track record
- relevant skills and
- methodology

Only relevant experience, relevant skills and methodology are mandatory. Additional non price attributes that can be considered are resources and financial viability. Under methodology it is recommended that aspects of the broader outcomes attribute described above are included.

5.5 EVALUATION PANEL

The evaluation panel should be made up of a mix of users and other stakeholders with an adequate level of competence in the subject matter being tendered and should consist of between 3-5 people (depending on the scale and complexity of the procurement). It is important to ensure that panel members have the capacity to undertake this role over the evaluation process timeline. A chairperson should also be appointed to lead the evaluation process. For NLTF projects with an estimated total value exceeding \$200,000, the Transport Agency requires that an evaluation panel includes at least one appropriately

experienced and qualified person.

The evaluation panel can be supported by technical experts that can provide advice to the panel on particular aspects of the responses received. The experts do not need to be members of the evaluation panel.

It is encouraged to use supplier nominated referees to independently verify the attributes of suppliers. To ensure fairness the RFX must detail how referees will be used and the evaluation panel must act consistently with the RFX.

Those making the final decision (for example the Project Sponsor) should not be a member of the evaluation panel, as they are required as an escalation point.

All evaluation panel members are to sign Conflict of Interest and Confidentiality declarations *[INSERT LINK]*. These are live documents and are to be updated throughout the lifecycle of the planning and sourcing phase of a procurement.

5.6 CONFLICT OF INTEREST

As part of the general obligation to act fairly, Council must take care that its decision-making processes cannot be challenged on the basis of actual or perceived conflict of interest.

Conflicts of interest arise when an individual's personal interest interferes, or has the potential to interfere, or may be perceived as interfering, with their official public duty. Impartiality and transparency during procurement processes is essential to maintaining the integrity of Council.

Project personnel and evaluation panel members are required to sign a Conflict of Interest and Confidentiality Declaration at the commencement of the procurement project.

All Conflict of Interest and Confidentiality Declarations should be updated by the project members and evaluation panel after the tender closes and the actual tenderers are known.

5.7 TENDERING PERIOD

[Rule 34 of the Government Procurement Rules](#) outlines the minimum number of business days that must be allowed for the preparation of tender responses associated with the range of procurement methods.

For the purposes of Rule 34, Council considers a closed tender as equivalent to an RFQ.

When determining the minimum number of business days required, both the day that the tender was released and the day that the tender is due to be submitted must be excluded from this calculation.

6. RFX PREPARATION

6.1 OVERVIEW

RFX documents need to be clear, easy to understand and tailored to each individual procurement and its specific requirements. RFX documents should generally be prepared by Council, but the project manager may use a consultant to undertake the preparation or assist in this process. Council retains the sole right to approve the RFX document prior to advertisement.

Where a consultant has been used to prepare an RFX, they shall be precluded from tendering for that contract.

6.2 PROFORMA DOCUMENTATION

Council typically uses the following suite of RFx documents *[INSERT LINKS]*:

Registration of Interest	<p>An ROI is normally used when there is a large or an undefined number of suppliers in a market. An ROI enables Council to select a few suppliers with the right credentials to respond to a more comprehensive RFP or RFT process.</p> <p>The ROI process is designed to ascertain whether suppliers have the experience and capability to do the required work. It is not designed to determine their proposed methodology or pricing structure; this information will be determined during the subsequent RFP or RFT process.</p> <p>Respondents to an ROI process should be evaluated using the following criteria: (this is not an exhaustive list).</p> <ul style="list-style-type: none"> ▪ Company capacity ▪ Company capability ▪ Track record ▪ Organisational and financial standing ▪ Technical knowledge.
Request for Quotation	<p>An RFQ should only be used for low value, low risk, low complexity, one-off purchases. An RFQ's primary focus is to obtain supply availability and the best price of the required goods and/or services for delivery at the right time to the required location.</p>
Request for Proposal	<p>An RFP is a form of tender that encourages innovation from the respondents and can be undertaken through both a closed and open procurement approach.</p> <p>An RFP is used to determine the following:</p> <ul style="list-style-type: none"> ▪ Identify capable organisations in the market ▪ Allow potential providers to tell Council whether they can meet Council requirements and timeframes ▪ Seek innovation ▪ Ascertain market price. <p>When responding to an RFP document, respondents will outline what they are going to provide Council and how they propose to fulfil Council's requirements. It is at this stage that respondents will provide a price for these products and/or services.</p>
Request for Tender	<p>An RFT is a tender document that is prescriptive and rigid. Tenderers will respond to Council's exact specifications without offering any innovation unless Council has provided an opportunity for tenderers to submit an alternative tender. Council should ensure it knows exactly what it wants and the required outcome before embarking on this process. If in doubt the RFP process should be used.</p>

6.3 PRICE FILES

For procurement methods that consider price as part of the evaluation process, clear instructions must be given in the RFx as to the identification of the two files in which respondents return the tender:

Two-file Approach to Tendering	<p>Tenderers are required to submit the non-price attributes in one envelope and the price in another.</p> <p>The non-price file is opened and evaluated first against the predetermined criteria and weightings.</p> <p>At the conclusion of the evaluation on non-price attributes, the price files are opened.</p>
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6.4 TENDER CLOSING

Tender closing procedures should be clearly described with the RFx document:

- Tender closing date
- Tender closing time
- Tender format – hard copy, electronic
- Location to deliver - post/email
- How the tender should be labelled
- Whether it is a two-file approach.

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7. ADVERTISING AND ISSUING OF TENDER DOCUMENTS

7.1 APPROACHING THE MARKET

When approaching the market, Council must follow the tender process rules, procedures and any evaluation methodology and criteria specified, determined and agreed by Council prior to the release of the tender.

Council must also:

- Ensure any additional material information, including questions asked by tenderers, is conveyed to all potential tenderers in a timely manner;
- Avoid inadvertently creating a contractual situation during the process; and
- Avoid inadvertently discriminating against any potential tenderer.

7.2 ADVERTISING TENDERS

Council advertises all open tenders through one or more of the following mediums:

- [Government Electronic Tendering Service \(GETS\)](#)
- [Tenderlink](#)
- Local newspapers.

If the GETS website is used, then at the completion of the procurement process the results of the procurement process must be uploaded onto GETS.

Refer to the minimum time periods in section 7.7 of this guide.

When using a closed tender, the selected suppliers must be invited to the tender advert.

7.3 DURING THE TENDER PHASE

Communication during the tender period outside of a prescribed briefing will be in writing (this includes e-mail communication, which may include attachments) and be directed through Council's Authorised Representative, as stated in the tender documents. This should be someone outside of the evaluation panel. This ensures that all information released by Council is accurate, consistent and conducted in a formal manner.

Tenderer Briefings	<p>Briefings may be held where all potential tenderers are invited to meet with Council and receive a verbal briefing on the tender process, the service/goods specifications and the contract. Briefings may include a visit to the Council facility or the area which is the subject of the procurement process e.g. a tour of a facility which is the subject of a cleaning service tender. Briefings also provide tenderers with the opportunity to ask Council questions about the tender.</p> <p>The RFx document will contain information regarding the tender briefing, for example, date, time, location, etc.</p> <p>Briefings can be held:</p> <ul style="list-style-type: none"> ▪ During the ROI phase for a multi-stage process. ▪ During the RFP or RFT phase for a single-stage process.
Questions from Tenderers	<p>Throughout the tender process, potential tenderers have the right to ask questions relating to the tender document and associated requirements. Council has an obligation to answer relevant questions. The answers must be disseminated to all potential tenderers, not just the tenderer who asked the questions. Answers to all tenderers' questions can be submitted via</p>

	<p>the GETS website, uploaded to Tenderlink or answered electronically for those tenders advertised in the local newspapers.</p>
Notice to Tenderers (NTT)	<p>An NTT is the formal notification to tenderers informing them that there is a change to the initial tender document. An NTT is also used when releasing the answer to tenderer questions (clarifications).</p> <p>During an open tender, NTTs must be released to all potential tenderers either via GETS or Tenderlink websites or by other electronic means in the event of registration.</p> <p>In a closed tender or sole source situation, NTTs can be sent directly all individual tenderers via electronic means.</p> <p>It is the responsibility of Council to ensure that the content of all notices is correct. It is the responsibility of the nominated contact person issuing the notice to ensure that the notice is sent to the correct tenderer.</p>
Meeting with Tenderers	<p>Meetings with tenderers during the tendering process should be handled with care. It is preferred that one-to-one meetings are not conducted. If meetings are requested by a tenderer, then the same opportunity should be provided to all tenderers.</p> <p>Should Council's current service provider also be tendering then any meetings regarding business as usual work should be handled with care and where possible, facilitated outside of the tendering period. In particular the current tender should not be a topic of conversation and the tenderer should be referred to Council's Authorised Representative.</p> <p>If in doubt, then please contact Council's Legal team for guidance prior to meeting with a current service provider.</p>
Requests for Extension to the Tender Period	<p>Council has the right to extend the tender period during the process if, for example, Council considers that there was material information missing from the original tender document.</p> <p>In such a case, the extension should be advised by means of a Notice to Tenders and distributed to all potential tenderers with sufficient notice to enable all to benefit equally.</p> <p>Note: Council should not agree to a request by an individual tenderer to extend the time for submitting their tender, except in circumstances that Council deems exceptional.</p>

8. TENDER CLOSING PROCEDURES

8.1 CLOSING A TENDER

Tender Delivery	<p>Tenderers will be asked to deliver their tender documents to a specific physical location, via e-mail (if requested in the RFx document) or uploaded to the electronic tender box on the GETS website. In instances where a physical document is delivered then they will be placed in a secure lockable location as soon as they are received.</p> <p>All tenders, including those received by e-mail are to remain unopened until the closing time and date.</p>
Tender Closing Register <i>[insert link]</i>	<p>A tender closing register should be developed prior to the closing time and date of the tender process. After the closing time for the tender, each tender document is date stamped and signed by two people, one of whom is Council's Authorized Person, named in the RFx document..</p>
Tender Receipt Letter <i>[insert link]</i>	<p>A tender receipt letter/email should be sent to all tenderers after the tender closing date to confirm receipt of a tender document.</p> <p>Tenders closing via the GETS eTenderbox do not require a receipt letter.</p>
Late Tenders	<p>Late tenders are those tenders that are received after the tender closing time and date. As a general rule, late tenders can be accepted at the sole discretion of Council as long as the RFx document released to the market contains a provision to allow this.</p> <p>From a probity perspective, if Council accepts any late tenders, then a written justification must be held on the project file.</p>

Prior to accepting a late tender, Council must be satisfied that the late tender has not received any unfair advantage over those tenderers who were able to submit their tenders on time. For example: Council may elect to accept a tender that is an hour late being delivered when the courier was delayed because an accident blocked the motorway, or delays / errors associated with uploading of an electronic tender if the tenderer can provide evidence of an error message.

8.2 OPENING OF TENDERS

Tender opening	<p>Post tender close, tender responses will be opened by Council's Authorized Person in the presence of a witnessing officer. No other people should be present.</p> <p>The process should be undertaken without interruption and in a secure area preventing any other person from seeing the tenders.</p>
Procedure	<p>Council's Authorized Person should check that the tender responses comply with the requirements of the RFx:</p> <ul style="list-style-type: none"> ▪ Submitted in two files (where required) ▪ All required information submitted ▪ Page limits and font sizing (where required) ▪ Note any tags ▪ Acknowledgement of any notices issued during the tender period <p>Nonconformity's should be removed from the tender responses and stored / saved in a secure location. The Authorised Person should note the nonconformities and advise the evaluation panel chairperson to agree on the required action.</p>
Price file (two file tenders)	<p>Following confirmation from the evaluation panel chairperson that the non-price evaluation has been completed, Council's Authorised Person shall open the price files in the presence of a witnessing officer.</p> <p>If the price file is found to contain tags that appear to constitute an unauthorised alteration or qualification of the RFx, Council's Authorised Person should consult with the evaluation panel chairperson. With the consent of the evaluation panel chairperson, Council's Authorised Person should request the tenderer to remove unacceptable tags. Refusal to remove unacceptable tags may result in the tender being rejected.</p> <p>An arithmetic check of the accuracy in the extensions of rates and addition for the preferred tenderer shall be carried out by Council's Authorised Person or another appropriate person prior to award.</p> <p>If Council's Authorised Person discovers errors and/or omissions in a tender, Council's Authorised Person may, in consultation with the evaluation panel, without advising the tenderer of the errors and/or omissions, request the tenderer confirm the tender without correction. Where such confirmation is not received the tender may be rejected.</p> <p>Where Council's Authorised Person and/or the evaluation panel discovers a tender contains errors in extension of unit rates or summation of items such as to vary the tendered sum, Council's Authorised Person will draw the error to the attention of the tenderer and invite the tenderer to confirm the tendered sum notwithstanding the error. Where such confirmation is not received, the tender may be rejected.</p> <p>If the tendered rates are found to contain any errors in extension of unit rates or in summation, such as to vary the tendered sum, then Council's Authorised Person shall adjust the rates, after consultation with the evaluation panel and tenderer, to agree with the tendered sum. The adjusted rates shall then become the contract rates for payment. If agreement cannot be reached as to the adjustments, then the tender shall be rejected.</p>
Modification of tenders	<p>A tenderer may modify their tender after tender submission provided the modification is in writing and received prior to the closing time.</p>

Withdrawal of tenders	A tenderer may withdraw their tender at any time prior to issue of a tender acceptance notice.
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9. TENDER EVALUATION

9.1 OVERVIEW

The evaluation must be undertaken fairly and impartially in accordance with the requirements of:

- This guide and / or the Transport Agency's Procurement manual; and
- the RFX document.

Confidentiality	Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations concerning the award of contracts shall not be disclosed to tenderers or other persons not officially concerned with such processes, until award of the contract to the successful tenderer has been announced. The information disclosed shall then be only as prescribed in the Award of contract section of this manual .
Referee checks	<p>Where a tenderer is required by the RFX to provide the names of any referees in support of their tender, the evaluation panel is encouraged to contact all such referees. This will normally be done by telephone. Where appropriate the evaluation panel may nominate a suitably qualified individual, preferably not a member of the evaluation panel, to contact a referee(s) on behalf of the evaluation panel. In such a case this individual is required to comply with all the referee check requirements as specified below, that would otherwise be carried out by the evaluation panel.</p> <p>In making reference checks with referees, an evaluation panel should ensure that:</p> <ul style="list-style-type: none"> ▪ where the initial effort to contact a referee is unsuccessful, at least one more attempt is made to contact that referee ▪ a detailed record is kept of unsuccessful attempts to contact a referee ▪ where an individual member of the TET contacts the referee, that team member reports back to the rest of the team on the referee's comments ▪ detailed notes are kept of any comment or opinion offered by a referee ▪ neutral and balanced questions are asked, and the referee is not lead in any way.

9.2 TENDER TAGS

Tender tags	<p>Tender tags shall be dealt with in accordance with the requirements of the tender document or in the absence of any specific requirements shall be dealt with as follows:</p> <ul style="list-style-type: none"> ▪ The tenderer shall be requested to remove tags that are unacceptable to Council without amendment to the tendered price. The tender is to be rejected if the tenderer refuses to remove unacceptable tags. <p>If tags are found on the tender form or any contract pricing schedule or included in the price file, the tenderer shall be requested to remove the tags. The tender is to be rejected if the tenderer refuses to remove any unacceptable tags in the pricing schedule.</p>
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9.3 EVALUATION

The evaluation panel will evaluate, independently, all the tenders received against the agreed criteria.

Evaluation panel members are required to:

- Read all the tender responses
- Conduct individual and independent evaluations for each tender
- Attend evaluation panel meetings and any subsequent tenderer presentations and site visits.

Tender documents are released to the evaluation panel with the evaluation sheets following the tender compliance checks and once the Conflict of Interest Declarations *[INSERT LINK]* have been completed and authorised.

If tender responses have been received in hard copy, it is important to note that evaluation panel members must not write on the documents as tenderers may request that these are returned at the conclusion of the tender process.

Independent Evaluation	<p>Each member of the evaluation panel should score independently of the others. This prevents the possibility that panel members potentially influencing each other during the scoring process.</p> <p>Using the evaluation sheet describing the criteria, each panel member will evaluate and apply a rating to each tender, basing of the documented scoring scale</p>
Consolidated Matrix	<p>The consolidated matrix will combine all independent scores and establish an overall “group” score. This is usually done by averaging all of the individual scores. The group score will be the final score attributed to each tenderer.</p>
Group scoring	<p>The evaluation panel will use a matrix / spreadsheet to combine all independent scores and establish an overall agreed group score. This is usually done by agreeing the ranking for each tenderer (for each criteria) and assigning a corresponding score. The group score will be the final score attributed to each tenderer</p>
Evaluation Panel Meeting	<p>Evaluation panel meetings allow panel members to discuss their findings. Panel members can amend their original scores to reflect the discussion. At any point during the evaluation process the evaluation panel can request tenderers to clarify aspects of their tender submission. This is done formally in writing so that all communication between Council and tenderers can be captured.</p> <p>Clarification letters must include a date and time by which the tenderer is required to respond.</p> <p>The outcome of this meeting will be to:</p> <ul style="list-style-type: none"> ▪ Shortlist tenderers and invite them to present to the evaluation panel or for the panel to visit some of the tenderer’s reference sites, or ▪ Select a preferred tenderer and enter into negotiations with that tenderer.

If the outcome of the evaluation panel meeting is to shortlist tenderers and invite them to present to the evaluation panel or for the panel to visit some of the tenderers reference sites, then the following applies:

Tenderer Presentations	<p>Tenderer presentations are optional and are designed so that tenderers can present their proposal/tender to the evaluation panel. Tenderer presentations also allow the evaluation panel to discuss the tenderer’s proposal/tender with the tenderer.</p> <p>If presentations are conducted, all tenderers invited to make a presentation should be treated the same. This means allocating the same length of time to make their presentations and the same opportunity to ask any questions of the evaluation panel.</p>
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Tenderer Site Visits	<p>Site visits are usually conducted with shortlisted tenderers. Site visits also allow the evaluation panel to visit a reference site where the tenderer is providing similar goods/services to those Council is seeking to procure. Site visits enable the evaluation panel to see the goods/services delivered and, if a reference site, ask questions of the reference organisation.</p> <p>All costs associated with attending site visits are met by Council and NOT by the tenderer or the reference site organisation.</p>
Final Evaluation/ Selection	<p>Following the site visits and/or presentations, the evaluation panel will meet to discuss their findings and potentially revisit their scoring from the initial evaluation. All information collected during the site visits and/or presentations can now be used to finalise the scoring.</p> <p>The outcome of the final evaluation is to select a preferred tenderer and undertake due diligence with a view to enter into negotiations with that tenderer.</p> <p>Before the final sign-off, reference checks should be conducted on all tenderers. The section on Due Diligence covers this in detail.</p>

9.4 EVALUATION METHODS

The procedures and processes to complete the evaluation of tenders for different procurement methods are discussed below. This section outlines how you undertake the evaluation, as opposed to a description of the evaluation method.

Weighted Attribute	Detailed process can be found on the Government's website
Lowest Price Conforming	<p>This method comprises two stages with the first being the ranking of tenders in ascending order based on price. The second stage consists of evaluating the non-price attributes commencing with the highest ranked (lowest price) tenderer from the first stage. This process shall continue until an acceptable conforming tender is determined. The contract shall only be awarded to the highest-ranking (lowest price) tenderer who obtains a pass on all non-price attributes.</p>
Brook's Law (also known as Quality Based)	Detailed process can be found on the Government's website
Purchaser Nominated / Target Price	<p>Offers are evaluated on their non-price quality factors without the price being disclosed to the evaluation panel. Only suppliers that are evaluated as being clearly able to deliver the requirements are shortlisted for further consideration.</p> <p>The price file of the highest ranked supplier is opened. The price needs to equal or be less than the purchaser nominated priced for the supplier to be preferred. However, should their price exceed the purchaser nominated price then the price file of the second ranked supplier is opened.</p> <p>The process continues until a preferred tenderer is found.</p>
Price Quality Method (PQM)	<p>First evaluate the non-price attributes. Non- price attributes grades should be transferred to the Transport Agency's template VII Form G PQM simple spreadsheet. This spreadsheet calculates each tenderers' SQP and determines the preferred tenderer.</p> <p>Once the SQPs have been calculated and mathematically checked, the evaluation panel must perform a 'sanity' check on the SQP calculated for each tenderer to confirm that the respective SQPs represent the amount that Council is prepared to pay to secure one tenderer, relative to another. If the evaluation panel is not satisfied with any SQP, they are entitled to adjust the SQP. Where an SQP is adjusted the evaluation panel must record the calculation of the adjusted SQP and provide written and well-documented justification for the adjustment.</p> <p>Once the scores and SQPs have been finalised and approved, the evaluation panel chairperson will then request Council's Authorised Person to open price files for conforming tenders.</p>



9.5 DUE DILIGENCE

Due diligence is about independently verifying the ability of the supplier to fully deliver against the contract over the term of the contract. It is a matter of prudence and good business practice.

It is an opportunity for both parties to test their expectations and understanding of the deliverables and the contract. During this phase assumptions should be checked and roles and obligations clarified. If serious issues arise during the due diligence that cannot be resolved, Council should find another supplier. This usually means selecting the second ranked supplier.

When is Due Diligence Required?	<p>Council should undertake due diligence on a tenderer when:</p> <ul style="list-style-type: none"> ▪ Risk of performance failure under the contract is high ▪ The tenderer is a new supplier to Council or a new supplier to the market ▪ Expected benefits of conducting due diligence outweighs the cost.
When is Due Diligence Not Required?	<p>A full due diligence is not required for simple, routine procurements. Council could conduct reference and/or finance checks for these procurement processes.</p>
What is Included in Due Diligence?	<p>Council may address the following when undertaking a due diligence process:</p> <ul style="list-style-type: none"> ▪ The tenderer's ability to deliver the goods and/or services for the price tendered. ▪ The terms and conditions of any proposed financing structures, including the certainty of funding and the tenderers ability to service the debt. ▪ The financial viability of the tenderer (credit check). ▪ Tax check. ▪ Experience of the tenderer and any subcontractors offered by the tenderer. ▪ Qualifications of key personnel.
Does the Tenderer Conduct Due Diligence?	<p>The tenderer can conduct due diligence on Council. If the tenderer chooses to conduct due diligence then Council should:</p> <ul style="list-style-type: none"> ▪ Provide relevant material for the tenderer to inspect ▪ Make key personnel available for questioning by the tenderer ▪ Respond to any further requests for information that the tenderer may have during the due diligence period ▪ All tenderers should be made aware of the opportunity to conduct due diligence on Council.

9.6 RECOMMENDATION TO SELECT

The recommendation to select is the final stage of the tender evaluation process. When the evaluation panel has conducted all of the required processes, including any due diligence they must seek approval from the appropriate managers' for their selection and to enter into negotiations with the preferred tenderer (if negotiation is appropriate).

All recommendation documents are to be submitted to management for endorsement.

9.7 WITHDRAWING OR CANCELLING A TENDER

Tenderer Wanting to Withdraw from the Process	<p>A tenderer may withdraw from the tendering process after they have submitted a tender by providing notification in writing to Council.</p>
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Council Suspending or Cancelling a Tender Process	<p>In some instances, Council may need to suspend or cancel a tender process. All of the tendering templates associated with this guide allow Council the right to suspend or cancel the tendering process.</p> <p>Suspending or cancelling a tender process can be undertaken at any stage, if for example:</p> <ul style="list-style-type: none"> ▪ The original scope of work that Council released to the market in the tender document has changed significantly since the tender documents were made available. ▪ None of the tenders received comply with the requirements Council released. ▪ The tenders received cannot be adequately or fairly compared or evaluated during the evaluation process. <p>Should Council wish to suspend or cancel a tender process then all tenderers must be notified in writing.</p> <p>Note: Prior to suspending or cancelling a tender process Council should ensure that it has advised in the tender documents that it has the right to do so. The tendering templates contain a clause that allows Council the right to suspend or withdraw from a tender process without legal implications.</p>
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9.8 CONDUCTING NEGOTIATIONS

This section is a brief overview of how negotiations should be conducted when negotiating on behalf of Council.

Authority to Negotiate	<p>Prior to negotiating, authority to negotiate must be obtained. This can be done via the "Recommendation to Select" paper that is submitted to management. Examples of a negotiation checklist and negotiation template can be found on MBIE's website.</p>
Phase One – Establish the Negotiating Team	<p>It is important to ensure that the negotiating team (or individual) has the skill and experience required and is comfortable with undertaking contract negotiation on behalf of Council. This will include:</p> <ul style="list-style-type: none"> ▪ Facilitation skills ▪ Negotiator experience ▪ Subject matter expert/technical expertise ▪ Financial analysis skills ▪ Legal support.
Phase Two – Analyse the Parties and the Deal	<p>This phase is non-negotiable. Before any Council staff member enters a negotiation they must spend some time on planning and preparation.</p> <p>This phase is where Council decides what it wants and what its priorities are. The preparation phase should include but not be limited to the following:</p> <p>Council:</p> <ul style="list-style-type: none"> ▪ What are Council's goals? ▪ What are Council's key issues and pressures? ▪ What sort of relationship does Council want to have with this supplier? ▪ What timeframes does Council need to meet? <p>The Supplier:</p> <ul style="list-style-type: none"> ▪ How does the supplier view Council? ▪ How does the supplier view the potential deal? ▪ Who are the key decision makers?

	<ul style="list-style-type: none"> ▪ What is its culture and style? <p>The Deal</p> <ul style="list-style-type: none"> ▪ Identify any “deal breakers”. ▪ What concessions can Council give? ▪ What concessions can Council gain? ▪ What is Council’s ideal outcome? ▪ What is a compromise outcome? ▪ What is your fall-back position?
Identify Council’s Best Alternative to a Negotiated Agreement (BATNA)	<p>A BATNA is Council’s Best Alternative to a Negotiated Agreement.</p> <ul style="list-style-type: none"> ▪ List everything Council could do if it doesn’t reach an agreement ▪ Explore each of Council’s options and try to improve on them ▪ Choose Council’s best option – this is Council’s BATNA.
Phase Three – Proposal	<p>Once both parties understand what each other wants then a proposal based on the commonality of both parties is determined. Once the proposal has been agreed the parties then move to the points that are more contentious.</p>
Phase Four – Bargaining	<p>Bargaining involves making exchanges in return for gaining something else.</p> <p>Council must be clear about what it is willing to compromise on and exchange for gains based on their main priorities.</p> <p>Always remember that nothing is agreed unless Council negotiator says it is agreed.</p>
Reaching Agreement	<p>Reaching an agreement is imperative to be able to move to the next stage of contract signing. If an agreement is met then the contract is signed by both parties and the formal contractual relationship commences.</p> <p>Note: If an agreement is not met then Council can exit the negotiations with that supplier and revisit their evaluation process.</p>
Documentation	<p>The final outcome of the negotiation should be recorded in writing and incorporated in the contract.</p>

9.9 INFORMING TENDERERS OF THE OUTCOME

Notification to Tenderers of Shortlist from an ROI Process	<p>Once the evaluation has been conducted and the recommendation to shortlist has been approved by management, then the ROI respondents can be informed of the outcome. This will either be:</p> <ul style="list-style-type: none"> ▪ Not shortlisted and not part of the next stage, OR ▪ Shortlisted for further consideration and invited to respond to an RFP or RFT process.
Notification to Tenderers of Shortlist from an RFP/RFT Process	<p>Once evaluation has been conducted and the recommendation to shortlist has been approved by management, RFP/RFT tenderers need to be informed of the outcome. This will either be:</p> <ul style="list-style-type: none"> ▪ Not shortlisted and not considered for further evaluation, OR ▪ Shortlisted for further consideration (e.g. tenderer presentations, site visits), OR ▪ Shortlisted and preferred to proceed to negotiation.

Notification letters	<p>All tenderers should be issued with appropriate tender acceptance and decline notices <i>[INSERT LINKS]</i></p> <p>If all tenderers have an email, email a copy of the tender acceptance notice to the successful tenderer and tender decline notices to unsuccessful tenderers. If an unsuccessful tenderer does not have an email, post all tender decline notices. If the successful tenderer does not have an email, post tender acceptance notice and all tender decline notices.</p>
Disclosure of evaluation information	<p>On award of the contract, all tenderers are to be advised of the following:</p> <ul style="list-style-type: none"> ▪ Name of successful tenderer. ▪ Price and SQP of successful tender (submitted price preceding any negotiation). ▪ Price range for tenders received (except for Brook's law tenders) where three or more conforming tenders are evaluated. ▪ Range of grades for each non-price attribute and range of SQPs, where three or more conforming tenders are evaluated (PQM). ▪ For each tenderer, their individual non-price attributes grade and SQP (PQM). <p>Council shall not be required to provide any further information regarding details of tenders or details of how the evaluation was arrived at.</p>
Publication of outcome	<p>If the RFX has been run through GETS, then the details of the contract award shall be published on the GETS website.</p>
Tenderer Debriefings	<p>Debriefing tenderers (successful and unsuccessful) at the end of the tender process (following the award of the contract), helps to identify areas where they can improve in future tenders.</p> <p>Debriefings give Council the opportunity to:</p> <ul style="list-style-type: none"> ▪ Provide constructive feedback to tenderers on their ROI/RFP/RFT responses ▪ Demonstrate the use of a fair, transparent and equitable process ▪ Gain confidence in the tenderers to want to bid for Council work in the future. <p>Tenderers are debriefed individually. During the debriefing discussions should be limited to comparing that individual tenderers response against the criteria.</p>

10. CONTRACT AWARD PROCEDURES

10.1 OVERVIEW

A contract is a formal written agreement between Council and the successful tenderer (the supplier). It should be clear, accurate, and outline each party's obligations.

The contract should:

- Be comprehensive and capable of meeting the objectives of Council;
- Reflect the full specification of the goods and/or services;
- Contain relevant and key agreed Key Performance Indicators (KPIs);
- State the contractual terms and conditions;
- Include the agreed pricing schedule; and
- Have Council legal approval before execution.



10.2 COMPILATION OF CONTRACT SIGNING SETS

Contract signing sets	<p>Signing sets of contract documents shall be executed no later than 20 working days following acceptance of tender. At least two sets (hardcopy) or a single set (electronic) shall be assembled and checked for completeness prior to executing. Council's Authorised person is responsible for compiling the contract sets.</p> <p>Council shall execute the contract prior to issuing to the supplier.</p> <p>In addition to the items above, the contract sets should also contain the tenderers RFX response and any tender correspondences.</p>
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10.3 SIGNING OF THE CONTRACT

Council execution	Refer to Council's Financial Delegations <i>[INSERT LINK]</i> to determine who has the responsibility to execute the contract on behalf of Council.
Company	<p>Where the supplier is a company, the contract agreement must be signed by either:</p> <ol style="list-style-type: none"> 1. two or more directors of the company (whose signatures need not be witnessed) 2. if there is only one director, by that director whose signature must be witnessed 3. if the constitution of the company so provides, a director and another person, in which case both signatures must be witnessed, or 4. a person appointed as the attorney of the company (copy of power of attorney and a certificate of non-revocation required)
Partnership	Where the supplier is a partnership, the contract agreement may be signed by any of the partners. If there is any doubt about the authority of the person signing, the authority of the particular person involved must be checked. Generally any partner can bind a partnership to a contract in the usual course of the partnership business
Joint ventures / consortia	<p>There is no fixed rule for joint ventures/ consortia as their ability to enter into contracts is governed by the individual agreement creating the joint venture/ consortium. A joint venture/ consortium is not a legal entity in its own right. When contracting with a joint venture/ consortium a check must always be made with the joint venture/ consortium to find out what the correct procedure is for that particular joint venture/ consortium.</p> <p>Where a joint venture / consortium has formed a company then the usual rules for limited liability companies are followed.</p> <p>If the joint venture/ consortium is not a limited liability company, then as a general rule an authorised representative of each joint venture/ consortium party must sign.</p>
Individuals	Contracts dealing with individuals must be signed by the individual. It must be noted that individuals sometimes use trading names. Example: John Smith may use the trading name John Smith Signwriting. A trading name is not a legal entity and in such a case the individual must sign his/her name. The signature must be witnessed, and the witness must add name, occupation and address



11. CONTRACT MANAGEMENT

11.1 OVERVIEW

The purpose of contract management is to ensure that contractual arrangements operate as intended and that the provider continues to meet Council's requirements throughout the term of the contract.

Each contract will be assigned a contract manager who is responsible for:

- Ensuring contracted parties deliver on their contractual commitments.
- Proactively identifying and managing areas of contractual risk.
- Monitoring and tracking the Service Level Agreement (SLA).
- Maintaining regular contract performance meetings with suppliers.
- Conducting contractual reviews including co-ordinating decisions on contractual extensions and price reviews, etc.
- Robust analysis of current contracts, identifying opportunities for cost savings, and performance management.
- Overseeing the management and maintenance of contract documentation.
- Ensuring robust processes and controls are in place to minimise commercial risk.
- Ensuring there are no surprises for either party.
- Authorising contractual payments, penalties and incentives.
- Budgetary responsibility for all the contractual spend.
- Ensuring disputes are rare and resolved.

For a contract to be effectively managed, to meet the objectives of Council, the contract manager should ensure they have a thorough understanding of:

- The contract terms and conditions.
- The agreed service levels.
- The programme of work.
- The potential risks associated with that contract.
- The required outcome of the contract.
- Technical requirements.
- Obligations required of both parties.
- Business and value for money expectations.

11.2 CONTRACT MANAGEMENT PLAN (CMP)

Generally, a CMP should be prepared for all contracts, particularly the high value, high risk contracts. There are two types of CMP:

1. High level Contract Management Plan - for low value, low risk contracts.
2. Detailed Contract Management Plan - for high value, high risk contracts

Standard “High-level” CMP	<p>A high-level CMP includes but is not limited to the following:</p> <ul style="list-style-type: none"> ▪ SLAs ▪ Immediate milestones e.g. development of a detailed Business Continuity Plan or Risk Register ▪ Pricing ▪ Contact Details ▪ Formal meeting requirements ▪ Formal reviews ▪ Audit requirements ▪ Reporting requirements ▪ Transitional requirements
Detailed CMP	<p>A detailed CMP is used for high value, high risk contracts that have the potential to cause Council unwanted publicity should they go wrong. The minimum requirements are described in Appendix 1.</p>

The CMP *[INSERT LINK]* provides guidance for Council employees involved with the management and administration of a contract. The plan summarises high level requirements, deliverables and tasks, and describes the overall process for performing the tasks.

Principles	<p>The Contract Management Plan (CMP) <i>[INSERT LINK]</i> is developed with the guiding principles that it:</p> <ul style="list-style-type: none"> ▪ Shall be a useful tool for administering the contract ▪ Shall be an executive summary of roles and responsibilities of the contracting parties ▪ Shall identify who is responsible for various contract activities ▪ Is a live document that requires updating. <p>Note: A CMP does not include every action to make the contract successful.</p>
What is a Contract Management Plan?	<p>A CMP contains all key information about how a particular contract will be managed.</p> <p>The plan establishes systems and processes to assist the contract manager with ensuring that the service provider complies with the agreed terms and conditions during the performance of the contract.</p> <p>The plan does not replace the contract document. A CMP is a working document that contains the salient contractual points to assist with the management and administration of a contract.</p> <p>The use of an appropriate CMP will enable the contract manager to effectively manage the contract. The contract manager will be able to:</p> <ul style="list-style-type: none"> ▪ Develop a good understanding of the contract and the responsibilities of the parties involved ▪ Develop a system which will assist with monitoring the performance of the parties ▪ Manage the on-going service to the agreed levels outlined in the contract ▪ Monitor the service provider's performance and ensure that all SLAs are met, and any outstanding issues are promptly resolved ▪ Ensure performance through enforcement of contract levers e.g. penalties and



	<p>incentives</p> <ul style="list-style-type: none"> ▪ Manage the service provider's and Council's expectations in relation to the contract <p>Identify any potential risks associated with the contract.</p>
When is a CMP Developed?	The CMP should be developed once agreement is reached with a supplier and the contract has been formally executed.
What should be considered as we develop the CMP?	<p>The CMP is a live document that is subject to continuous review throughout its lifecycle. During the initial stages of its development the following should be considered:</p> <ul style="list-style-type: none"> ▪ Who will manage the contract? ▪ Do they have adequate experience to manage a contract of this size and nature? ▪ How will the contract manager interact with the service provider? ▪ Who has the authority to make decision on behalf of Council in relation to the contract? ▪ How will the service provider's performance be managed? ▪ Are there any penalties and/or incentives attached to the service provider's performance? ▪ What are the reporting requirements? ▪ What are the risks associated with the contract?

11.3 MONITORING THE SERVICE PROVIDER'S PERFORMANCE

The contract manager's role includes monitoring of the service provider's performance to ensure that the service provider is performing at the level as agreed by the parties.

The aim of monitoring the service provider's performance is to:

- Take prompt action if a service provider's performance falls below the agreed performance levels.
- Avoid exclusive reliance on reporting provided by the service provider.
- Make the service provider aware of any problems as they occur. This should be done verbally and in writing to ensure that there is an audit trail for future reference.
- Identify any issues to be addressed by all parties.
- Provide an opportunity for the service provider to improve performance over a stipulated period of time.
- Enforce penalties for non-performance.

11.4 CONTRACT PAYMENTS

Goods / Services	Contract payments for goods / services performed are made at the time and in the manner as set out in the general and special conditions of contract
Services (Physical Works)	Contract payments work performed by a contractor are made at the time and in the manner as set out in the general and special conditions of contract and in accordance with the Construction Contracts Act 2002.



11.5 TRANSITION PLANNING

Transition-In Plan	<p>A transition plan is a plan that Council and the service provider prepare to transition from one service provider (the incumbent) to another.</p> <p>Council and the service provider should jointly prepare and agree on a Transition-In Plan. This plan should be attached as a schedule to the CMP or can be used in most cases as a stand-alone document.</p> <p>Things to consider for the transition-in plan:</p> <ul style="list-style-type: none"> ▪ Timeline of activities/events ▪ Reporting ▪ Responsibilities, resources, policies and procedures required to make the transition a success. ▪ Impact on fixed assets ▪ Effect on customers ▪ Effect on delivery services ▪ Tasks or activities which the parties will perform during the transition phase. ▪ Training requirements ▪ Communication requirements e.g. communications plan that includes any reporting structure required ▪ Risk and risk management ▪ Reports on progress ▪ Matters that may affect customers e.g. customer communication strategy.
Transition-Out Plan	<p>A transition-out plan is where the service provider's current contract is due to expire and there is a requirement to affect an efficient transition to the new service arrangements with a new service provider.</p> <p>The transition-out plan should include:</p> <ul style="list-style-type: none"> ▪ Access to premises and staff ▪ Sale of equipment ▪ Training offered to the new service provider ▪ Completion of all outstanding works in progress or negotiated suitable alternative arrangements ▪ Arrangement to sign-off all services with Council in accordance with the master agreement ▪ Complete final processing of outstanding claims and/or invoices ▪ Debrief the service provider ▪ For building maintenance – hand over of all of Council's assets, plant records, general documentation (equipment warranties etc.) and all keys and security access cards.



11.6 CONTRACT COMPLETION

Contract completion requirements will vary, depending on the nature of the contract and the general and special terms applicable to it. Council should ensure that the supplier honours all its obligations before it is released from its commitments – subject to its rights under the contract.

<p>When is a Contract Complete?</p>	<p>Completion may be in stages and will include some if not all of the following:</p> <ul style="list-style-type: none"> ▪ The term has expired, or the contract is terminated e.g. for breach ▪ End of contract review is conducted by Council with the supplier and a final report stating the project or work has been completed has been accepted by Council ▪ Warranty period has expired ▪ Confidentiality period has expired ▪ Retentions have been released ▪ Final payments have been made ▪ Confirmation from the service provider in writing that all intellectual property is retained by Council ▪ “Completion of works” certificates have been issued ▪ All security access cards, security passes, keys, pin numbers and codes that the services provider used to grant access to Council sites are returned with a written guarantee that duplicates have not been made.
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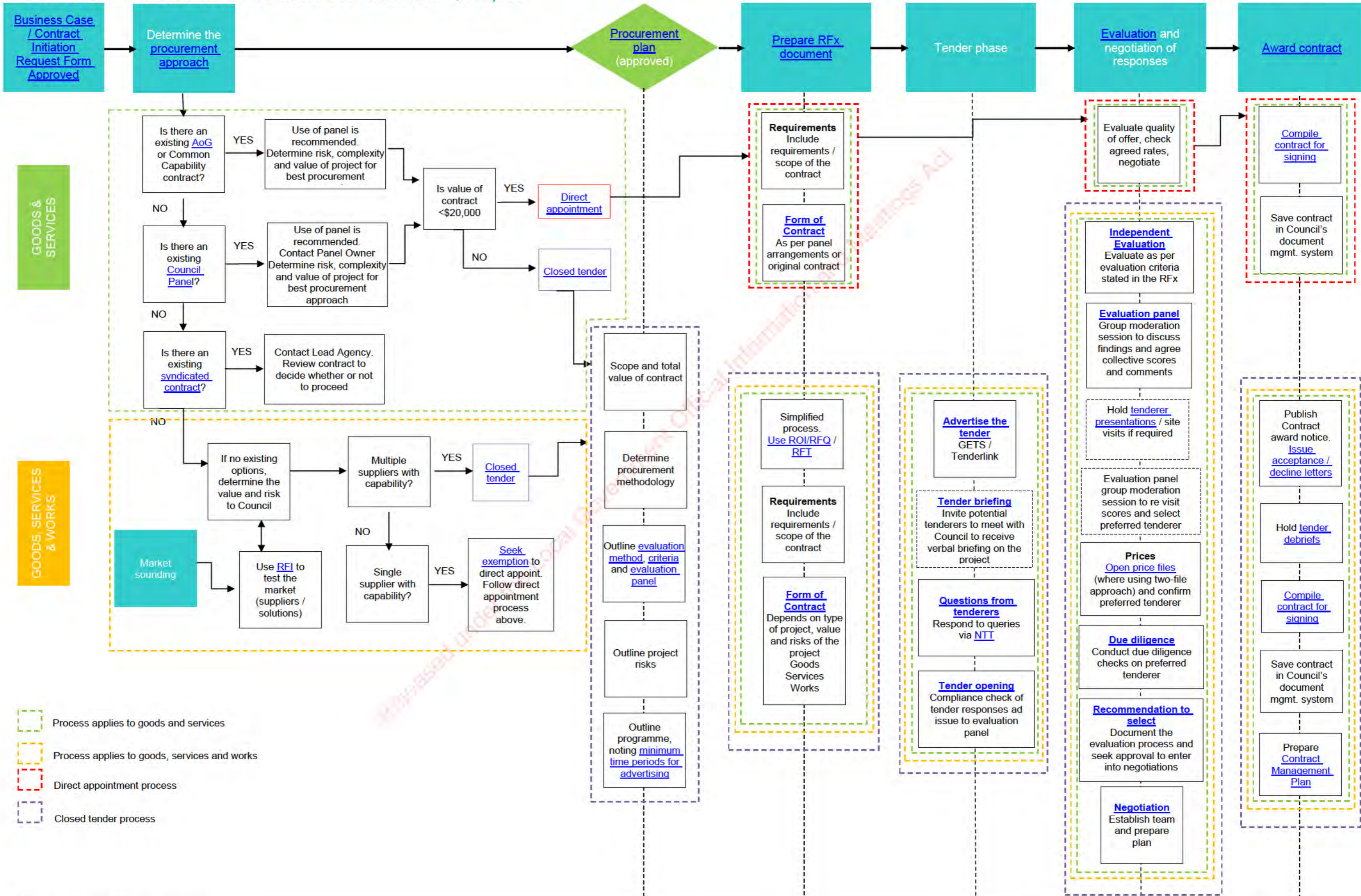
TERMINOLOGY

TERM	ABBREVIATION	DEFINITION
Conditions of Contract		<ul style="list-style-type: none"> ▪ Conditions of Contract for Building and Civil Engineering Construction - NZS 3910:2013 ▪ Conditions of Contract for Building and Civil Engineering Construction (where no person is appointed to act as Engineer to the contract) - NZS 3915:2005 ▪ Conditions of Contract for Building and Civil Engineering - Design and Construct - NZS 3916:2013
Closed contest (limited invitation to tender)		Limited number of tenderers invited to submit a tender without public advertisement of contract
Corporate Leadership Team	CLT	The group that provides leadership and oversight of procurement practises. All procurement decisions occur under delegated authority from the Chief Executive.
Evaluation panel	EP	The group that evaluates supplier responses to an RFx against the set criteria and makes a recommendation of a shortlist or the preferred supplier. For NLTP funded projects, this group must contain at least one certified tender evaluator in accordance with the Transport Agency's Procurement Manual .
Lowest price conforming method	LPC	This is a supplier selection method that can be used where the purchaser determines that best value for money can be obtained by selecting the supplier(s) that offer the lowest price and meet the requirements as set out in the tender documents
Government Procurement Rules	GPR	The Ministry of Business Innovation and Employment's Procurement Rules defines procurement procedures up to contract award to be used by government agencies for all contracts over \$100,000. To be used for non-NLTP projects.
Price quality method	PQM	Price quality method is a type of price quality supplier selection method as referred to in the Transport Agency's Procurement manual.
Qualified evaluator		This is a member of an evaluation team that holds a National Certificate in Competitive Pricing Procedures or New Zealand Certificate Infrastructure Civil Engineering (Procurement Procedures). A qualified evaluator is required on all tender evaluations over \$200,000. For use on NLTP funded projects
Registration of interest	ROI	Used to identify suppliers interested in, and capable of, delivering the required goods or services. Potential suppliers can be asked to provide information on their capability to do the work. It is usually the first stage of a multi-stage tender process. An ROI is similar to an expression of interest (EOI). Suppliers can be shortlisted using an ROI.
Request for information	RFI	A formal request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies that may be available.
Request for proposal	RFP	A formal means of seeking proposals from the market for goods or services where Council is open to supplier innovation – that is, where the outputs and outcomes are important, rather than the process the supplier follows to deliver them.
Request for	RFQ	Formal means of seeking quotations from the market for goods or

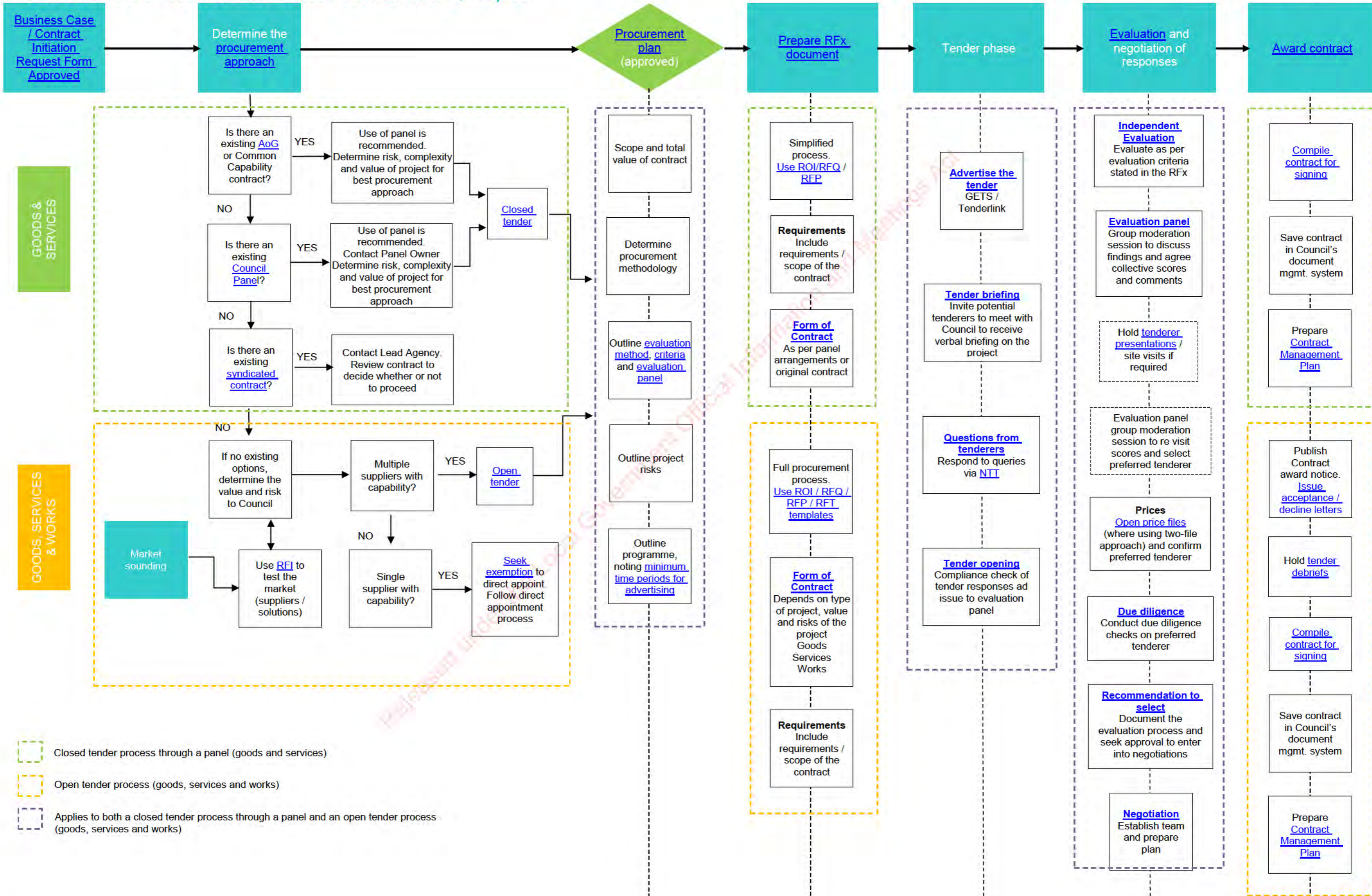
quotation		services where price is the main selection criterion, the requirement is for “stock standard” or “off the shelf” goods or services, and the procurement is low risk.
Request for tender	RFT	A formal means of seeking tenders from the market to provide goods or services where the public entity's specification or requirements are clearly defined and there is little room for flexibility or innovation.
Supplier quality premium	SQP	Defined as ‘the amount the tendering authority is prepared to pay to secure a higher quality tender relative to the lowest quality tender’. Used in PQM to represent an explicit dollar value that represents the difference in quality between tenderers.
Transition plan		<p>A transition plan must be prepared if the transition is likely to affect Council's service delivery. Transition expectations may be relevant to document in a high-risk transition contract.</p> <p>A transition plan will be most likely required where Council has a supplier providing complex or high-value services (e.g. advertising, printing and design services, and bulk mail-outs), or high-volume, services (facilities and roading maintenance)</p>
Transport Agency's Procurement Manual		Defines procurement procedures to be used for all contracts funded from the National Land Transport Fund.

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FLOWCHART FOR PROCUREMENT PROCESSES <\$100,000




FLOWCHART FOR PROCUREMENT PROCESSES >\$100,000



- Closed tender process through a panel (goods and services)
- Open tender process (goods, services and works)
- Applies to both a closed tender process through a panel and an open tender process (goods, services and works)

SUMMARY OF PROCUREMENT PROCESS DOCUMENTATION

 PLAN	<ul style="list-style-type: none"> ▪ Project Initiation Form
	<ul style="list-style-type: none"> ▪ Procurement Checklist
	<ul style="list-style-type: none"> ▪ Procurement Plan.
	<ul style="list-style-type: none"> ▪ Registration of Interest (ROI)
	<ul style="list-style-type: none"> ▪ Request for Quotation (RFQ)
	<ul style="list-style-type: none"> ▪ Request for Proposal (RFP)
	<ul style="list-style-type: none"> ▪ Request for Tender (RFT)
 SOURCE	<ul style="list-style-type: none"> ▪ Conflict of Interest and Confidentiality
	<ul style="list-style-type: none"> ▪ Tender closing register
	<ul style="list-style-type: none"> ▪ Tender receipt letter
	<ul style="list-style-type: none"> ▪ Tender compliance check
	<ul style="list-style-type: none"> ▪ Weighted Attribute Evaluation sheet
	<ul style="list-style-type: none"> ▪ Consolidated Evaluation Matrix
	<ul style="list-style-type: none"> ▪ Recommendation to select paper
	<ul style="list-style-type: none"> ▪ Tender award / decline letters
 MANAGE	<ul style="list-style-type: none"> ▪ Contract management plan
	<ul style="list-style-type: none"> ▪ Transition plan
	<ul style="list-style-type: none"> ▪ End of contract review

APPENDIX 1 – Detailed contract management plan

As a minimum the following should be included in a detailed CMP:

Executive Summary	<p>Provide an executive overview of the contract that is being managed. The overview could include:</p> <ul style="list-style-type: none"> ▪ A description of the contract. ▪ What did Council do to get to this stage? ▪ What are the salient points of the contract? For example: <ul style="list-style-type: none"> ▪ Contract term ▪ Annual cost ▪ Major risks ▪ Reporting ▪ Review Dates ▪ SLAs
Purpose	<p>Explain the main purposes of the CMP, for example:</p> <ul style="list-style-type: none"> ▪ What are the main objectives of the CMP? ▪ What are the main objectives of each contracting party? ▪ How will the relationship be managed?
Communication	<p>It is important for the flow of information and communication to be established at the start of the contract and maintained through its life. There are normally three primary levels of communication for both parties in a contractual arrangement:</p> <ul style="list-style-type: none"> ▪ Operational – end users and technical staff ▪ Business – commercial/contract manager and relationship manager ▪ Strategic – executive management
Technical Component	<p>Each contract has what is called a “technical component”. The technical component is the actual service and/or product that are being procured by Council.</p> <p>What are the technical components of this contract? This could include:</p> <ul style="list-style-type: none"> ▪ Specifications ▪ Detailed user requirements ▪ Product description and user manual.
Key Performance Indicator (KPIs)	<p>Key Performance Indicators (KPI) are the key measures that Council will use to monitor the performance of a Service Provider. As part of the contract negotiations the KPIs have been agreed as being capable of achievement by the Service Provider.</p> <p>Unless something occurs that is beyond the Service Provider’s control there should be no reason why the Service Provider cannot deliver on the KPIs.</p> <p>An example of some KPI for a maintenance-type contract could be:</p> <p>EXAMPLE ONE: Output: Call Centre/Help Desk</p> <p>Performance Measure: Calls to the Call Centre/Help Desk are answered within 20 seconds. This applies 24/7, 365 days a year.</p> <p>Performance Standard: 80% of the time</p>

	<p>Frequency of measure: Monthly</p> <p>EXAMPLE TWO: Output: Faults Logged Performance Measure: All faults are assigned the correct priority Performance Standard: 95% of the time Frequency Measure: Monthly</p> <p>EXAMPLE THREE: Output: Customer Satisfaction Performance Measure: Overall customer satisfaction Performance Standard: 95% of the time Frequency Measure: Quarterly</p>
<p>Identification of Milestones to be Reached</p>	<p>In some instances, there may be milestones that the Service Provider and Council agree need to be met as part of the contract deliverables.</p> <p>Examples of milestone-based deliverables include:</p> <ul style="list-style-type: none"> ▪ Business Continuity Plan (BCP) ▪ Annual Business Plan ▪ Annual Risk Assessment and Management Register ▪ Proposed Annual Scheduled Maintenance Programme e.g. for IT and Facilities Contracts) ▪ Each completed stage of a minor works contract ▪ Quality Plan completed
<p>Requirements for Forecasting Periods</p>	<p>Council should undertake an annual analysis to determine what it expects a contract should deliver over the next period.</p> <p>For example:</p> <ul style="list-style-type: none"> ▪ Proposed future savings ▪ Proposed scheduled maintenance programmes e.g. for IT and facilities contracts ▪ Future product volumes for goods-based contracts. <p>In order to determine the forecast, think about:</p> <ul style="list-style-type: none"> ▪ What are the requirements for a multi-year contract? ▪ If each year is different then what is the proposed forecast for each period? ▪ Is there an agreed process to determine each forecast?
<p>Variation of Contract Terms</p>	<p>Most contracts contain a clause that allows the parties to modify the contract. This information can be taken directly from the variations clause in the contract.</p> <p>What are the terms and conditions around making variations to the contract? For example:</p> <ul style="list-style-type: none"> ▪ Annual CPI adjustment/price review ▪ Modifications to service delivery ▪ Extension of contract term.

<p>Claims</p>	<p>Some contracts, (primarily facilities/property contracts) require the service provider to undertake certain per-determined work as well as other “ad-hoc” work. How does the service provider claim for the ad-hoc work they have undertaken in a month?</p> <p>An example of a claims system for building maintenance contract is as follows:</p> <p>The Service Provider must provide:</p> <ul style="list-style-type: none"> ▪ Details of work carried out and a complete breakdown of cost ▪ Details of the unit that requested the additional work ▪ The location of where the work was undertaken ▪ A copy of the signed works order issued by Council.
<p>Contact Details</p>	<p>Contact details for the service provider:</p> <ul style="list-style-type: none"> ▪ Legal name of entity ▪ Physical and postal address ▪ Name of authorised representative ▪ Contact phone/fax/e-mail ▪ After hours contact number (if required) ▪ Communication points: <ul style="list-style-type: none"> ○ Operational ○ Business ○ Strategic.
<p>Pricing</p>	<p>Every service/product has a price for its use. The final contract price is agreed between the parties during the negotiation stage of the contract.</p> <p>What is the pricing for each service category?</p> <p>For example:</p> <ul style="list-style-type: none"> ▪ If you are managing a corporate stationery contract, then the pricing would be an itemised list of stationery items. ▪ If you are managing a service contract then this would relate to the schedule of rates e.g. per m2, daily rate, etc. or fixed lump sum contract rate for those services. <p>This information can be taken directly from the contract.</p>
<p>Payment Conditions</p>	<p>Each contract has its own unique conditions about how Council will pay the service provider and manage the contract budget, e.g.</p> <ul style="list-style-type: none"> ▪ What are the conditions of payment as stated in the contract e.g. invoice received by Council by the 10th of the month will be paid by the 20th of the month? ▪ Will payment be a lump sum of 1/12th plus agreed claims (for facility/property contracts)? ▪ What will happen to any disputed claims? <p>This information can be taken directly from the contract.</p>

Managing Contract Risks	<p>The initial stage of risk management is to identify the key risks. In the case of service contracts these could be:</p> <ul style="list-style-type: none"> ▪ Service failure – the service provider does not deliver the service to the standard or timeliness specified in the contract. ▪ Reputational damage – the service is provided as specified however; the supplier causes harm to Council's reputation in the process. ▪ Additional cost – the cost of the contract is more than expected or budgeted and those costs do not represent value for money.
Risk Assessment and Management Register	<p>In order to manage the risks for each particular contract, the service provider should be asked to provide an updated risk register during the contract mobilisation stage and, if applicable, at the annual review meeting between Council and the service provider. The risk register is purely from the service provider's own perspective.</p> <p>Things to think about when writing a risk assessment and management register:</p> <ul style="list-style-type: none"> ▪ What are the risks associated with this contract? ▪ How will the risks be monitored? ▪ What is the likelihood of the risks materialising? ▪ What are the contingency plans should any of the risks occur? ▪ What is the impact if the risk does materialise?
Insurances	<p>Council should insist on every service provider holding appropriate levels of insurance for the service/product they are providing.</p> <p>A copy of the insurance policy and/or certificate should be provided to Council by the service provider as proof of insurance cover.</p> <p>The following information is required:</p> <ul style="list-style-type: none"> ▪ Type of Policy <ul style="list-style-type: none"> ○ Public Liability ○ Professional Indemnity ○ Motor Vehicle ○ Others (specify) ▪ Insurer ▪ Policy Number ▪ Insured Amount ▪ Expiry ▪ Exclusions <p>This information can be taken directly from the contract.</p>
Contract Reporting	<p>Council should insist on suppliers providing reports that cover the work they have undertaken over a certain period of time. The frequency of reporting can be negotiated between Council and the supplier and included in the contract. The frequency should generally be one of the following:</p> <ul style="list-style-type: none"> ▪ Monthly ▪ Bi-monthly ▪ Quarterly <p>Supplier reports should contain the following as a minimum:</p> <ul style="list-style-type: none"> ▪ Summary of the work undertaken prior to the reporting period

	<ul style="list-style-type: none"> ▪ Identify milestones reached ▪ Issues ▪ Variances ▪ Saving initiatives <p>Planned work for the next period.</p>
Internal Reporting	<p>What are the internal reporting requirements that Council wants established? For example:</p> <ul style="list-style-type: none"> ▪ Weekly contract meetings ▪ Formal monthly progress reports ▪ Issues register.
Formal Meeting Programme	<p>It is important that Council meets and discusses contract performance on a regular basis with the Service Provider.</p> <p>The contract should state the frequency of meetings between the service provider and Council.</p> <p>For example, meetings could be held weekly if they are high value, high risk contracts and there is a greater requirement for Council to have direct input.</p>
Contract Reviews	<p>Reviews of contracts are normally held periodically throughout the term of the contract. The frequency of when they are held should be stated in the contract.</p> <p>Reviews are to discuss the previous and on-going performance of the service provider, potential price variations for the coming year, and any issues that are still outstanding. It also gives Council an opportunity to review:</p> <ul style="list-style-type: none"> ▪ Whether the contract still meets our current and future needs? ▪ Whether the contract represents value for money? <p>To inform these questions, information received from the service provider could include the following:</p> <ul style="list-style-type: none"> ▪ A presentation from the service provider looking back on the previous year ▪ A presentation from the service provider on the plan for the following year ▪ Business Continuity Plan for the following year ▪ Business Plan for the following year ▪ Risk Register for the following year ▪ Savings made in the previous year ▪ Forecasted saving for the following year. <p>For maintenance agreements, also consider including the following:</p> <ul style="list-style-type: none"> ▪ Information on all new equipment purchased in the previous year ▪ Information on all disposed equipment and the disposal price ▪ List of all assets proposed to be included in the planned maintenance programme and the estimated cost of maintenance. <p>Note: It is recommended that Council requests a copy of the service provider's presentation and/or report well in advance of the review meeting. This will enable Council time to peruse and make comments for discussion at the review meeting.</p>

Contract Renewal	<p>A contract renewal is a formal review that occurs prior to the completion of the initial term of the contract. Detailed analysis should be conducted by Council to determine whether they are completely satisfied with the delivery of the agreed contract over the first contractual term.</p> <p>Council's satisfaction or dissatisfaction could lead to a contract renewal or termination in accordance with the master agreement.</p> <p>Areas for Council to assess prior to deciding whether a contract should be renewed for a further period include but not limited to the following:</p> <ul style="list-style-type: none"> ▪ Does the master agreement contain the right to renew? ▪ Whether the contract represents value for money? ▪ Are there any modifications required to the service that would make it more aligned to Council's current vision? ▪ What would the renewal period cost? ▪ Are there any modifications to the contractual document that could enhance the future period? ▪ Are there any key personnel changes and if so, what impact would this have on the renewed period? ▪ Are there any political influences that could cause Council concern if they renew e.g. potential to bring outsourced services back in-house?
Audit Requirements	<p>All public sector contracts are subject to a certain level of scrutiny. A robust audit trail should be maintained to ensure that Council can withstand any scrutiny.</p>

Local government procurement

Introduction

Each year councils spend more than \$8 billion (more than two thirds of their revenue) on goods and services to provide and maintain vital infrastructure facilities, and services for their communities.

People expect that their rates will be spent appropriately and competently. They also expect value for money. These expectations for how public money is spent apply to all public organisations, and failure to deliver on them goes to the heart of trust and confidence in our public sector.

We visited 21 councils throughout New Zealand to see how they carry out procurement. During these visits, we heard common messages about the challenges councils are facing and where they felt they could improve.

Through our Office's other audit and inquiry work, we have seen many situations where procurement goes wrong. In our view, this is more likely to happen when public organisations do not have the right culture, leadership, or systems in place for procurement. This applies to councils as much as it does across the public sector, as our council visits confirmed.

In this article, we ask a series of questions about the procurement practice and culture in a council. These questions have been informed by some of the concerns that we heard from council staff and observations that we have made from our other work. The topics the questions cover are:

- good governance for procurement;
- planning for significant capital projects;
- conflicts of interest;
- emergency procurement;
- procurement capability and capacity;
- procurement policies and training;
- contract management; and
- achieving broader outcomes through procurement.

We encourage councils to reflect on these questions and, where they see gaps, implement the necessary changes to strengthen their processes and procedures.

Good governance for procurement

- Does your council have appropriate governance arrangements in place for procurement?
- Do the governance arrangements in place for procurement support effective accountability of management and elected members?
- Are there effective delegations to allow procurement to be managed effectively?
- Does your council have effective means for informing and engaging with elected members about procurements so they can make informed decisions when required?

For an organisation to function well, and to be able to account properly to its stakeholders, there needs to be a clear distinction between those *managing* the organisation and those *governing* it.

It is the role of managers to carry out the day-to-day operations of the organisation. It is the role of the governing body to ensure that systems and processes are in place that shape, enable, and oversee the management of the organisation.

Governors have an important role in setting the organisation's procurement strategy. To do this, they need good information on the organisation's pattern of expenditure and a clear understanding of which suppliers are strategically important. However, when governors become involved in operational decisions, it interferes with their ability to hold management to account.

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We expect to see appropriate delegations and reporting systems in place for procurement.

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Unfortunately, our Office often sees examples of procurements where the lines between governance and management are blurred. For example, mayors or other elected members might be part of tender evaluation panels. This is not good practice.

We expect to see appropriate delegations and reporting systems in place for procurement. For councils, policies and delegations should clearly outline the authority of the chief executive and other staff to commit to particular types of expenditure. Delegations need to be flexible enough for councils to deliver day-to-day services and not be unnecessarily

constrained by schedules for council meetings. However, it is entirely appropriate for major procurements to require sign-off by the governing body. In order for elected members to approve procurement decisions when required, they need enough information to make informed decisions.

Planning for significant capital projects

- How confident are you about your council's forecasting of capital expenditure and that enough resources are available to achieve current forecasts?
- How has your council engaged with suppliers to determine their capacity and levels of interest?
- Has your council shared its plans with the New Zealand Infrastructure Commission – Te Waihanganga?

In our report, *Matters arising from our audits of the 2018-28 long-term plans*, we noted that some:

... councils are responding to unprecedented levels of growth. All councils are responding to increasing requirements for levels of service, including as a result of regulatory changes. They also need to reinvest in their existing infrastructure, often at higher levels than in the past to address historical underinvestment and improve services to meet community expectations.

These challenges mean that councils will need to do more, and larger, procurements. So it is even more important that councils do procurement well.

Although the situation will differ for each council, we expect all councils to carefully plan, prioritise, and monitor their future capital programmes so they can realistically achieve capital programme budgets and deliver the levels of service agreed with their communities. Procurement is an important part of this.

When we visited councils, many told us they were starting to see a decrease in the number of suppliers bidding for contracts, especially for construction projects. Although this had not yet affected their ability to meet their capital programme and deliver services, it could become a greater problem as the effects of growth are felt more widely. Only a few of the councils we visited actively discussed with suppliers upcoming works and ways of reducing any barriers to participate in procurement.

In 2019, the Government set up the New Zealand Infrastructure Commission – Te Waihanganga (the Commission), which is an independent body to

support infrastructure investment to improve long-term economic performance and social well-being. One area of focus for the Commission is an infrastructure pipeline of major capital projects that will be added to over time. The pipeline is intended to give more visibility and certainty about future projects to help suppliers plan and secure the capability and capacity that will be required for these projects.

A few councils have already started to include their planned infrastructure projects in the pipeline. The 4th edition of the *Government Procurement Rules*, which came into force on 1 October 2019, includes a requirement for agencies to engage with the Commission when considering procuring infrastructure with a total cost of ownership of more than \$50 million.¹ Although it is not mandatory for councils to comply with the *Government Procurement Rules*, they are encouraged to do so. We recommend that all councils consider engaging with the Commission so that their planned infrastructure projects can start being included in the pipeline.

The Commission also has procurement and delivery advice and support functions. Its capacity and capability in this area will develop over time. We recommend that councils look into how the Commission might be able to support them.

Conflicts of interest

- **Does your council have adequate policies and processes in place for staff and elected members to:**
 - **declare and manage risks from conflicts of interest (which might affect all stages in the procurement life cycle)?**
 - **record gifts and hospitality from suppliers and potential suppliers?**

Too often we find individuals and organisations with a poor appreciation of how conflicts of interest, whether actual or perceived, can undermine public trust and confidence. Although organisations might have a process for staff to declare actual, potential, or perceived conflicts, we often find that people's understanding of what needs to be declared, or how it is best managed, is limited.

As noted in our good practice guide *Procurement guidance for public entities*, individuals should be aware of the potential for conflicts of interest

whether they are elected members, staff members, or advisers directly or indirectly involved in any part of the procurement process. Anyone involved in the procurement process should be required to declare any personal interest that might affect, or could be perceived to affect, their impartiality. When an interest is declared, consideration will need to be given to what steps are necessary to manage the conflict. Councils should maintain a register of declarations of interests and record any conflicts of interest and how they will be managed.

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All those involved in the procurement process should be required to declare any personal interest that might affect, or could be perceived to affect, their impartiality.

Conflicts of interest can have both legal and ethical dimensions. Under no circumstances should a procurement process allow council staff or elected members to receive preferential treatment.

There are two specific restrictions that apply to elected members under the Local Authorities (Members' Interests) Act 1968. Under the Act, an elected member cannot:

- enter into contracts with their local authority worth more than \$25,000 in a financial year; or
- discuss or vote on matters before their authority in which they have a direct or indirect pecuniary interest, other than an interest in common with the public.

Councils also need to consider the treatment of gifts, hospitality, or other incentives from suppliers. Concerns might arise, for example, if a person who is managing a current contract has received gifts or hospitality from the supplier and then participates in the selection process for a new contract.

Further information is available in our good practice guides available on our website.

¹ Rule 64 of the *Government Procurement Rules*. The rules can be found at procurement.govt.nz.

Emergency procurement

- **Does your council have guidance for staff and elected members about:**
 - **what constitutes an emergency; and**
 - **the procedures that should be followed for an emergency procurement?**
- **How does your council ensure that anyone making an emergency procurement can be appropriately held to account for their decisions and actions?**

Councils sometimes need to procure goods and services quickly to respond to an emergency. An emergency is when there are genuine unforeseen and urgent circumstances. Examples include earthquakes, flooding, a pandemic, or a terrorist attack.

An urgent situation that has occurred because of a lack of planning, or a failure to mitigate a known risk, is not a genuine emergency. When there is no genuine emergency, we expect councils to follow the usual steps for any procurement, even if there is some urgency. These steps include making an informed decision, using a competitive process to select a supplier,² and getting appropriate authorisations before making any decisions. All decisions and agreements should also be recorded at the time they are made.

When there is a genuine emergency, procurement can be more flexible. For example, direct procurement might be needed to avoid delays in providing emergency relief. Other examples include staff making decisions without delegated authority or making a verbal agreement with a supplier instead of a written contract.

In any urgent situation, procurement can sometimes be done more quickly by using contracts that are already in place, such as an all-of-government or syndicated contract or a panel arrangement. In a genuine emergency, a council could consider using another agency's suppliers where they have been appointed through a competitive process.

During emergencies, councils are still accountable to their communities. This accountability needs to be balanced against avoiding delays in responding to the emergency. To help maintain accountability for emergency procurement, councils should ensure that they fully document each procurement, including any decisions made, as soon as possible. Councils still need to identify and manage conflicts of interest and actively manage other procurement risks that

can occur in an emergency situation. The Ministry of Business, Innovation and Employment provides more examples of emergency situations and guidance on emergency procurement in its *Quick Guide to Emergency Procurement*.³

Although an emergency is an unforeseen situation, we understand that emergencies can and do occur. Under the Civil Defence Emergency Management Act 2002, councils are required to plan for future emergency situations and to be able to function to the fullest possible extent during and after an emergency. We expect councils to plan for emergency procurement and to have guidance available for staff. This guidance should include criteria for what constitutes an emergency and procedures that should be followed. Our *Procurement guidance for public entities* includes more information on this.

Procurement capability and capacity

- **Does your council have enough staff capable of leading procurement practice in your council?**
- **Are all relevant staff receiving appropriate procurement training, development, and support?**

Procurement staff are often responsible for advising councils on spending large sums of money and on selecting the best suppliers for critical projects and services. Each staff member involved in a procurement process should have the required skills for the type and level of the procurement concerned.

Some councils told us they bring in specialist procurement capability when required, for example when doing a large, one-off procurement. Dedicated procurement resources within councils are typically small. Sometimes this consists of only one person, or even less than one full-time role. This means that procurement staff can be quite isolated. Councils need to consider ways to help those staff connect with people, including from other councils, to share experience and expertise.

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When there is no genuine emergency, we expect councils to follow the usual steps for any procurement, even if there is some urgency.

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² Unless there is a good reason not to, for example if the procurement is below the council's threshold for a competitive procurement process.

³ The guide is available at procurement.govt.nz.

In many councils, procurement expertise and procurement activity is dispersed throughout the organisation – even when there is a centralised procurement function. This arrangement, or devolved model, can be appropriate given the size and scale of many councils and the way their operations are organised. However, such devolved models rely on all staff involved in procurement having an appropriate level of skills, knowledge, and competence. These staff also need to be able to understand and interpret policies and procedures so they can apply them effectively.

In devolved models, procurement expertise can sometimes be held by only a few people in an organisation, such as long-serving staff members who have many years' experience in procurement. This depth of experience has benefits and risks. For example, when those staff leave or retire there can be a loss of their accumulated knowledge. Councils can mitigate this risk by, for example, having up-to-date policies and processes for procurement and ensuring that staff comply with them.

There are opportunities for councils to collaborate to reduce costs and improve efficiency, including increasing capability. Many councils already work together in different ways. This can range from developing a shared procurement framework to joint contracts. Collaboration can take place through formal structures such as shared-services companies that are jointly owned by member councils regional working groups and forums, and less formally on an as-required basis. Procurement staff from several councils also get together to share practices through the Local Government Strategic Procurement Group.

Procurement policies and training

- **Does your council provide training and development so that all staff involved in procurement are kept up to date with procurement policy and processes?**
- **What assurance is there that staff are complying with council procurement policy and processes?**

We expect every council to have their own procurement policy and processes that are tailored to their operating environment. These policies should be regularly reviewed as procurement processes evolve, new priorities emerge, laws and rules change, and market conditions develop. Staff need to be familiar with these policies and processes to ensure that they are consistently applied. Governors need assurance that those policies and processes are being followed.

We found that the councils we visited did have up-to-date procurement policies and processes or were updating them. Training was almost always provided, however this varied in content. Although some councils were satisfied with the training available, others felt there was not much training available beyond procurement basics. It is important that councils provide staff involved in procurement with regular and appropriate training so that they know what is the current best practice and current council policies and processes. Many councils are supporting staff to gain professional procurement qualifications, which can be a suitable option for staff who are procurement specialists.

Councils also need to ensure that there are regular internal audits, or other reviews, of procurement activity. The findings from these reviews should be reported to the governing body either directly or through the audit and risk committee. Regular reviews of procurement practice can also help to identify training needs and other risks.

Contract management

- **Does your council know which suppliers it is contracting with and what its obligations are?**
- **What assurance is there that:**
 - **your council is fulfilling its own contractual obligations; and**
 - **suppliers are meeting contracted performance requirements, and that actions are taken when performance falls below contracted levels?**
- **Does your council monitor contracts throughout their life cycle to ensure that they deliver the intended value for money?**

We expect councils to have ongoing management of the contract and the relationship with the supplier. Councils need to monitor and manage supplier performance to assess whether they are receiving value for money.

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We found that most councils could improve the way they manage contracts.
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We found that most councils could improve the way they manage contracts. Although councils have systems and processes in place for recording and managing contracts, these are often very basic and not always used consistently. For example, a lack of discipline in entering contracts into the system means that records are incomplete. Several councils told us they could not easily provide a list of all their current contracts.

Council staff believe they have enough day-to-day oversight over large contracts. Council staff also told us that supplier performance is monitored and action is taken when supplier performance falls below the agreed service level. However, some of our other work in this area indicates that this could be done better. For smaller contracts there is often little oversight, and there is a risk that the cumulative effect of many smaller contracts with less oversight can sometimes be greater than a larger contract that receives more oversight and attention.

Councils need to ensure that they are committing enough resources to properly manage the many contracts that they have. Although this might require significant investment for some councils, the benefits, in our view, of having proper systems and processes are worth the investment.

For example, one council had a contract where it shared the risks and rewards with the contractor (also known as a contract with a pain/gain share). The council had entered into this contract without having the systems and resources in place to manage it adequately. Consequently, the council had not monitored the contract or the contractor's performance for several years. This meant that the council was not in a position to enforce the pain/gain provisions in the contract, and might have had an unknown liability to the contractor or, alternatively, been owed money that it had a duty to its ratepayers to collect.

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Councils need to ensure that they are committing enough resources to properly manage the many contracts that they have.
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Achieving broader outcomes through procurement

- **Is your council clear about its role in promoting the social, economic, environmental, and cultural well-being of communities now and in the future?**
- **Does your council understand how procurement can contribute to those outcomes?**
- **How have those outcomes been incorporated into your council's procurement policy and processes?**

Price and value for money will always be important factors in procurement decisions. However, councils must consider other important factors that might be relevant to determining value and, as a result, how value for money is assessed.

Amendments to the Local Government Act 2002 in 2019 have reinstated that:

... the purpose of local government is to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

Councils have to determine the outcomes they aim to achieve and consider the four aspects of well-being when making decisions, and plan how their activities will contribute to their desired outcomes for their communities.

The *Government Procurement Rules* also reinforce this message. The rules require agencies to “consider, and incorporate where appropriate, broader outcomes when purchasing goods, services or works”. The rules define broader outcomes “as the secondary benefits that are generated from the procurement activity. They can be environmental, social, economic or cultural benefits”.⁴ Although it is not mandatory for councils to comply with the rules, they are encouraged to do so.

Councils that fail to comply with legislative requirements, or follow best practice, in their procurement practices will be at risk of legal challenge and additional scrutiny and criticism from stakeholders and other third parties.

Councils can mitigate some of this risk by engaging with their elected members about their strategic objectives and how they can align these with their intended procurement outcomes. For example, if elected members want to prioritise using local suppliers, or support suppliers that pay a living wage, councils should be exploring ways to build those objectives into procurement policies and processes.

4 Rule 16 of the *Government Procurement Rules*. The rules can be found at procurement.govt.nz.