

## Addendum to Section 42A Report

Resource application by	Bekon Media Limited
Application number	RM230535
Site address	332 Queen Street, Richmond
Legal description	Pt Sec 83 Waimea East Dist (RT NL1D/1120)
Report and recommendation prepared by:	Victoria Woodbridge, Consultant Planner

**Note:** This is not a decision.

This report sets out the advice and recommendations of the reporting planners.

The independent commissioners delegated by Tasman District Council to decide this resource consent application have not considered this report yet.

The independent hearing commissioners will only make a decision after they have considered the application and heard all evidence from the applicant, submitters and council officers.

### 1 Introduction

- 1.1 This report is an addendum to my Section 42A report for the above application and should be read in conjunction with my Section 42A report and associated attachments.
- 1.2 In accordance with the directions contained in 'First Minute' dated 11 October 2024 issued by Commissioner Dean Chrystal the purpose of this addendum report is to address the amended application lodged by the applicant on 8<sup>th</sup> October 2024.
- 1.3 It should be noted that this report does not provide a detailed response to, or address in detail, evidence provided by the applicant, however, I have responded to the following:
  - a. Ms Collie's comments on the recommended draft conditions.
  - b. Ms Collie's comments on precedent effect.
  - c. Mr Compton-Moen's further amendment to the parapet design.

- 1.4 Mr Berry, Legal Counsel for the applicant, has indicated that both the parapet option presented within the amended application and the option put forward within the evidence remain 'on the table' for the purposes of the hearing<sup>1</sup>. Therefore, in order to assist the Commissioner and for the sake of efficiency I have addressed both options in this report.
- 1.5 I have also reviewed and taken into consideration the hearing statement from New Zealand Transport Agency Waka Kotahi (NZTA) dated 25 October 2024.
- 1.6 The application site is fully described in my Section 42A report and I have not repeated the description again here. From a recent site visit there have not been any appreciable changes to the receiving environment since my Section 42A report was issued.
- 1.7 In preparing this addendum I have received expert advice from Tony Milne of Rough Milne Mitchell (RMM) in relation to urban design and visual effects and Ari Fon of Affirm NZ Limited in relation to traffic effects. I have stated where I rely on their expert advice.
- 1.8 The following attachments are provided with this addendum:
- Attachment 1 – Updated recommended draft conditions
  - Attachment 2 – Review of Traffic Effects (Affirm NZ Ltd)
  - Attachment 3 – Urban Design and Visual Assessment (Rough Milne Mitchell)

## Qualifications and experience

- 1.9 My qualifications and experience as an expert in planning are set out in full in my Section 42A report.
- 1.10 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's practice Note 2023, as applicable to this independent hearing panel.

## 2 Scope

- 2.1 The amended application documents include a planning analysis from Anita Collie, Town Planning Group. Ms Collie concludes that the proposed amendments do not engage any additional provisions of the Tasman Resource Management Plan (TRMP) nor do they alter the activity status of the resource consent<sup>2</sup>.

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<sup>1</sup> Memorandum of Counsel for Bekon Media Limited To Accompany Evidence, paragraph 2.7, page 2

<sup>2</sup> Amendments to Application – RM230535 Bekon Media Ltd, 332 Queen Street, Richmond 7 October 2024

- 2.2 I have undertaken my own review of the TRMP in respect of the amended application and reached the same conclusion as Ms Collie. I also agree that the proposal remains relevant to previously considered matters of amenity values and traffic safety which were assessed both within the original application, Section 95 Notification Report, Section 42A report and amended application.
- 2.3 For these reasons I consider that the amendments are within the scope of the application as lodged on 22 May 2024. Therefore, I consider that the application can be progressed on the basis of the amendments put forward by the applicant on 8<sup>th</sup> October 2024.

### 3 Amended Application

- 3.1 As noted above I consider the amended application is within the scope of the application as notified. I do not intend to repeat the statutory considerations relevant to the proposal as these are outlined in detail in my Section 42A report and in my opinion the amended proposal has not resulted in any change in statutory considerations.
- 3.2 The activity status remains Restricted Discretionary, and the matters of discretion remain as set out in paragraph 7.1 of my Section 42A report.
- 3.3 My understanding of the amendments to the application are set out below:
- a. The size and form of the billboard remains unchanged; however, the location has altered as the billboard has been reorientated to face south-east, facing the Gladstone Road leg of the intersection.
  - b. The applicant has volunteered a lower nighttime maximum luminance level of 125 cd/m<sup>2</sup> which is reduced from 250 cd/m<sup>2</sup> as proposed in the original application.
  - c. A parapet structure is proposed behind the billboard.
    - I. The amended application proposes a partial parapet which is approximately half the height of the billboard, and which extends behind the billboard, around the corner and along the Richmond Deviation frontage of the building for 2.5 metres (refer to Figure 1)
    - II. The applicant's evidence from Mr Compton-Moen proposed an alternative parapet design which extends above the maximum height of the billboard and spans the length of the existing roof parapet along Queen Street across the corner of the building and then extends for 16.5 metres along the Richmond Deviation frontage (refer to Figure 2).
  - d. The dwell (display) time for images on the billboard has been increased from 8 seconds to 30 seconds.

3.4 The applicant also presented an updated set of draft conditions which incorporated the above amendments. I have considered these in relation to the draft conditions attached to my Section 42A report.

Figure 1: Amended billboard location and parapet design (source



Figure 2: Amended parapet design (source:



## 4 Key issues

- 4.1 The key issues for the application were assessed at Section 7 of my Section 42A report and related to amenity effects, including visual amenity and light spill / pollution, and traffic effects.
- 4.2 These remain the key issues for the amended application and are assessed below as they relate to the amendments made by the applicant.

## 5 Key issue – Traffic effects

- 5.1 The amendments to the orientation of the billboard and the increased dwell time have, in my view, resulted in positive improvements in relation to traffic safety concerns.
- 5.2 Mr Fon has considered the amendments and notes that at the Lower Queen Street leg of the intersection the billboard will not be visible by vehicles using the left turn lane and will only be visible by limited vehicles very close to the intersection who are travelling straight. Drivers in the right hand turn lane would have a view of the billboard approximately 20 metres from the intersection line. It is also noted that the reorientation removes any overlap between the sign and the traffic signals when viewed from Lower Queen Street.
- 5.3 The billboard will now predominantly be viewed from the Gladstone Road leg of the intersection by drivers traveling east. Mr Fon notes that the Gladstone Road approach has a *“much simpler arrangement than Lower Queen Street as traffic can only (legally) travel straight or turn left and the left turn lane is stood up to the signals.”* I consider that this leg of the intersection is likely to see a higher percentage of pedestrian foot traffic using the intersection due to the connection between new housing developments along Lower Queen Street and the town centre. However, pedestrian crossing is controlled by lights and is a relatively straight forward crossing with good visibility.
- 5.4 Mr Carr states that the increase in dwell time will mean that the majority of users of the intersection (he calculates 95%<sup>3</sup>) will not see a change of image. Mr Fon generally agrees with this assertion but notes that due to heavy traffic at peak times, typically the morning, slow moving traffic may result in more drivers seeing a change in image. However, overall, the increase in dwell time does reduce the likelihood of potential driver distraction from the billboard.

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<sup>3</sup> Proposed Digital Billboard, 332 Queen Street: Proposed Reorientation, Carriageway Consulting, 4 October 2024, page 8

- 5.5 Mr Fon has also taken account of the range of research relating to the effects on driver distraction from billboards in relation to the amended proposal. Mr Fon notes that *"reported crash data in New Zealand shows a very low number of crashes where distraction due to roadside advertising is noted as a contributing factor."* In summary Mr Fon states *"while we still note the underlying safety record of the intersection, in our opinion the amended application largely mitigates traffic safety concerns raised in the previous Affirm NZ review as well as the Waka Kotahi submission."*

## NZTA Hearing Statement

- 5.6 I acknowledge the hearing statement from NZTA dated 25 October 2024 which states that they *"consider that the billboard will have acceptable effects on the safe and efficient functioning of the state highway."* I note that this is based on the amended design and the conditions relating to minimum letter heights which they consider address the primary issues raised in their submission. I have recommended inclusion of the condition provided within their statement in the recommended draft conditions provided in Attachment 1 to this Addendum Report.

## TRMP Objectives and Policies

- 5.7 The TRMP objectives and policies which I consider relevant to traffic effects associated with signs are provided in section 7.1.1 of my Section 42A report. The policy direction generally seeks to ensure that signs do not cause confusion or distraction which may detract from traffic safety. I do not find the relevant policies particularly directive, however, the outcomes sought are relatively clearly expressed in Objective 11.1.2 and Policy 11.1.3.11 is intended to give effect to that objective.
- 5.8 My interpretation of Policy 11.1.3.11 is that it is not the distraction from signs which should be avoided (I have interpreted the 'do not detract' direction as being somewhat equivalent to an avoid direction) but that distraction from signs should be avoided where it will adversely affect traffic safety. However, where I consider the TRMP is confusing is the relationship between policy direction and the rule framework. The rules allow for signs within the Commercial Business Zone as a permitted or restricted discretionary activity, which, in my view, does not necessarily align with any form of 'avoid' policy direction, instead it is a more enabling rule framework which in my view leads to some confusion as to what the Plan anticipates.
- 5.9 Notwithstanding the above policy confusion it was my opinion, expressed in my Section 42A report, that as originally proposed the billboard had the potential for distraction that could lead to more than minor adverse effects on traffic safety, given the intersection has existing inherent safety deficiencies. However, the amended proposal is, in my view more consistent with the TRMP policy direction.

## Precedent Effects

- 5.10 In her evidence Ms Collie has addressed the matter of potential precedent effect which was raised by several submitters<sup>4</sup>.
- 5.11 Ms Collie states that she does not consider precedent effects to be an issue because any application would be assessed on its own merits and specific effects arising from the proposal would be evaluated during the consent process. She also considers that the proposal is *"not at odds with the relevant policy so that approval would create an unexpected outcome."*<sup>5</sup>
- 5.12 I agree with Ms Collie that applications should be assessed on their own merits and the specifics of the proposal assessed taking account of the relevant receiving environment, local context and policy direction. In *Dye v Auckland Regional Council*<sup>6</sup>, the Court noted that the granting of a resource consent has no precedent effect in the strict sense and *"the most that can be said is that the granting of one consent may well have an influence on how another application should be dealt with."* The Court also confirmed that precedent effects are not a cumulative effect.
- 5.13 I note that the applicant's Traffic Assessment (and evidence) identifies research into the effects of billboards on traffic safety generally to support their conclusions that the proposed billboard will not adversely affect traffic safety.
- 5.14 There could be an argument that research leans into precedent effect in that it is held up as evidence that in other locations billboards have not led to adverse effects and so that will likely be the case in this instance. As such it is important to apply a site specific assessment over the top of this research evidence and I note that both the applicant's experts and Mr Fon have provided comprehensive site specific assessments of the proposal.
- 5.15 Therefore, whilst I am not disputing the validity of research nor dismissing its relevance, I have placed greater weighting on the specific assessments of the intersection and potential adverse effects which were identified by Mr Fon in his reviews dated 20 June 2023, 7 December 2023 and 19 September 2024.
- 5.16 In relation to the amended application, I acknowledge Mr Fon's conclusion that the amended application largely mitigates traffic safety concerns raised previously<sup>7</sup>.

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<sup>4</sup> Submitters #14 (I Currie), #23 (Kansai Properties Ltd) and #27 (D Penrose)

<sup>5</sup> Statement of Evidence of Anita Collie, paragraph 9.14

<sup>6</sup> *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA)

<sup>7</sup> Review of Traffic Effects, Affirm NZ Ltd, 30 October 2024, section 10 page 6

## Summary and Conclusions on Traffic Effects

- 5.17 Overall, whilst I still have some concerns that the billboard has the potential to result in a degree of distraction, these concerns have been reduced as the visibility of the billboard is now largely confined to the Gladstone Road approach, which as Mr Fon notes, has a much simpler arrangement.
- 5.18 Furthermore, whilst I have given the research evidence a lower degree of weighting than the site specific assessment of the proposal, I recognise that the evidence and research presented by the applicant does not wholly support the fact that if billboards do result in a distraction this necessarily leads to more than minor adverse effects on traffic safety.
- 5.19 As I noted in my Section 42A report the RMA does not require that a nil effects outcome is achieved. Therefore, I consider that the amendments have generally mitigated the adverse effects on traffic safety and reduced them to an acceptable level given the predominant view of the billboard is now limited to the Gladstone Road approach and the majority of people using the intersection will not view an image change.

## 6 Key issue – Amenity Effects

### Visual Amenity

- 6.1 The primary issues I raised in relation to the visual amenity effects associated with the billboard were a lack of integration with the building which resulted in adverse effects on visual amenity, in particular when viewed from Lower Queen Street. Further, I did not agree with Mr Compton-Moen that controlling image transition would mitigate visual amenity effects. I relied on advice from Mr Milne who also considered there to be a poor integration between the billboard and the building which impacted on visual amenity values.

#### **Amended Application Design**

- 6.2 This amended design is shown in Figure 1 above.
- 6.3 In my view the addition of the parapet design as proposed in the amended application does not achieve an integration of the billboard into the building. Instead, in my view, it just adds another elevated feature which is also disjointed from the architecture of the building.

- 6.4 Mr Milne states that

*"While I understood the reasons for the 'half parapet' approach and acknowledge that architecturally it is typical of buildings on corners, in my opinion it did very little to further mitigate the original visual effects concerns. This option in my opinion, due to it physically and visually being stepped down, presented more edge and corner to the skyline. As such, the 'half parapet' response did not satisfactorily address the shortcomings of the lodged proposal, and I did not find favour with it."*



6.5 I agree with Mr Milne and consider that the design is not successful at mitigating the adverse effects on visual amenity which I raised in my Section 42A report. Whilst I agree with Mr Compton-Moen that the reorientation of the billboard does slightly reduce its visual bulk from Lower Queen Street I still have concerns that the billboard will result in adverse effects on the visual amenity of the area.

### **Evidence Design**

6.6 This amended design is shown in Figure 2.

6.7 Mr Milne is more supportive of this amended design and states that it is a "*well-considered design solution that results in the billboard being visually integrated into the form and shape of the extended parapet of the building. It now no longer appears as a 'tack-on' sitting atop a one storey building.*"

6.8 I agree with Mr Milne that this design is far more successful than the amended application design as I consider that the parapet has the effect of making the billboard part of the building which is a positive improvement.

6.9 Although the parapet does increase the overall bulk of the building, the permitted baseline is relevant insofar as the building height could be increased to 10 metres without requiring a resource consent (subject to compliance with all other relevant TRMP rules). This baseline is, in my opinion, an important consideration as it sets out what should be expected within the receiving environment and speaks to the anticipated amenity values of the location in terms of built form and bulk.

6.10 Mr Milne has raised a matter in relation to the appearance of the parapet and suggested that greater articulation could be explored to result in a more visually pleasing outcome. I would certainly support this and acknowledge that the proposed parapet does include a modest design feature which is preferable to a blank elevation.

6.11 I would also recommend that the parapet is finished in the same colour as the remainder of the building, which is shown on the graphic attachment provided with the amended application. Whilst colour is not normally a matter that would be controlled within this environment I consider that given the purpose of the parapet is to integrate the billboard into the building ensuring it visually appears part of the building is important and a consistent colour finish would, in my view, assist with this.

6.12 Overall, I consider that the reorientation of the billboard combined with the full parapet design provided within Mr Compton-Moen's evidence sufficiently mitigates the adverse effects on visual amenity from the billboard and therefore addresses the concerns I raised in my Section 42A report.

## Light Spill

- 6.13 I support the amendment to reduce the nighttime maximum luminance levels as this aligns with my recommended condition of consent attached to my Section 42A report. I accept the expert advice of Russ Kern and maintain my Section 42A position that any adverse effects associated with light spill / pollution can be appropriately managed via conditions of consent.

## 7 Recommended Conditions of Consent

- 7.1 Ms Collie has provided comment<sup>8</sup> on some of the recommended conditions of consent attached to my Section 42A report.
- 7.2 I agree with Ms Collie's comments on condition 3, 7 and 9 as the amendments she has suggested either correct technical errors or align with the amended application.
- 7.3 In response to Ms Collie's comment on condition 6 I disagree that the condition should just refer to daytime and nighttime because these are not defined times. The intention of including specific hours rather than a general reference to daytime and nighttime was to ensure that the condition is clear and easy to monitor and enforce. Without defining what constitutes daytime or nighttime it may be subject to dispute or disparities in interpretation. I therefore prefer the condition as recommended in my s42A report as I consider this is clear and avoids any ambiguity or potential confusion.
- 7.4 In relation to condition 11b I agree with the point Ms Collie makes regarding a non-expert opinion, however, even without the reference to "in the opinion of Council's Team Leader – Compliance & Investigation (Land and Air)" whomever is monitoring the condition will interpret and make a judgement about whether graphics, colours or shapes resemble or cause confusion with a traffic control. The wording in the condition therefore sets out who's makes this judgement. However, if the issue is that the person identified is a non-expert then the wording could be amended to require the expert opinion of a Traffic Engineer, although this could be a more onerous requirement with additional cost to the Consent Holder if Council's internal staff were not able to undertake this work. I therefore recommend the wording remains as proposed.
- 7.5 In relation to condition 16 I acknowledge the point Ms Collie makes and I have conferred with Mr Fon on this matter. Taking account of the issue with timing for publishing crash data I have proposed that the requirement for a 6 month review is deleted.

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<sup>8</sup> Statement of Evidence of Anita Collie, Section 12, page 29

- 7.6 I consider condition 25 is appropriate to be retained as a condition as it is a requirement rather than advice to allow for it to be enforceable and monitorable.
- 7.7 I prefer condition 26 as drafted in my Section 42A report as I think it is more appropriate to allow for a review of conditions relating to traffic effects more generally than narrow the scope as per the condition drafted by Ms Collie.
- 7.8 I have recommended a number of additional conditions as shown in Attachment 1 to this Addendum report, these conditions require construction of the parapet prior to the installation of the billboard, control the height and colour finish of the parapet and incorporate the conditions suggested within the NZTA hearing statement.
- 7.9 I consider these conditions are appropriate to ensure the parapet appropriately mitigates adverse visual effects and the specific details are monitorable and enforceable rather than relying solely on condition 1. The condition relating to minimum letter height will assist in mitigating adverse effects on traffic safety and is therefore appropriate in my view. My Fon is also supportive of the inclusion of this condition.

## 8 Summary of key issues and recommendations

- 8.1 I summarised the key issues and my recommendations on the original application at section 9 of my Section 42A report.
- 8.2 As the purpose of this addendum is to consider the amendments to the application, my assessment has focused on whether the amendments have altered my assessment and recommendation.
- 8.3 Overall, as noted in section 6 I do not consider the partial parapet put forward in the amended application addresses the concerns I raised in my Section 42A report relating to visual amenity and as such does not sufficiently mitigate the adverse effects on visual amenity.
- 8.4 However, I consider that the full parapet design proposed by Mr Compton-Moen in his evidence, which is supported by Mr Munro and Mr Milne does address the concerns I had in relation to integration with the building and adverse effects on visual amenity. I consider this design to be far more successful in mitigating the visual effects of the billboard.
- 8.5 In relation to light spill / pollution I previously considered that conditions of consent could adequately manage the effects of light spill / pollution. The amended luminance levels are consistent with the conditions I recommended in my Section 42A report and therefore, I maintain my Section 42A position that light spill effects can be appropriately mitigated.

- 8.6 In relation to traffic effects, in my Section 42A I concluded that the billboard would adversely affect traffic safety to a more than minor degree, particularly in relation to the Lower Queen Street leg of the intersection and the free left hand turn lane. The concerns I raised have generally been addressed by the reorientation of the billboard, increased dwell time and full parapet design. Although as noted in Section 5 I have some residual concerns about the presence of the billboard at an intersection with existing safety deficiencies, I consider that the amendments largely mitigate the adverse effects I identified as being more than minor in my Section 42A report.
- 8.7 In reaching this conclusion I acknowledge that the TRMP does have a relatively enabling framework for signage, particularly where traffic safety is not adversely affected. I have also taken account of the expert advice provided to me from Mr Fon.
- 8.8 In summary, for the reasons given above, I am satisfied that the amendments to the application address my previous concerns that adverse effects had not been avoided, remedied or mitigated and as such I now recommend that consent is **GRANTED**.
- 8.9 I recommend some amendments to the draft conditions of consent attached to my Section 42A report. An updated set of recommended draft conditions are provided in Attachment 1 with track changes to show where amendments are recommended.
- 8.10 I consider these conditions of consent are important to ensure that adverse effects associated with the billboard are appropriately mitigated and my recommendation to grant is subject to these conditions.