

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a resource consent application by **BEKON MEDIA LIMITED** to **TASMAN DISTRICT COUNCIL** to install a single sided digital billboard at 332 Queen Street, Richmond

**OUTLINE OF LEGAL SUBMISSIONS OF COUNSEL FOR
BEKON MEDIA LIMITED**

1. INTRODUCTION

- 1.1 This is the hearing for a resource consent application to the Tasman District Council ("TDC" or "Council") by Bekon Media Limited ("Bekon" or "the Applicant") for resource consent to authorise the establishment and operation of a single-sided, landscape-oriented digital billboard ("proposed billboard" or "proposed DBB" or "DBB") at 332 Queen Street, Richmond, Nelson ("the Site").
- 1.2 Bekon has filed the following expert evidence in support of its application:
 - (a) Russ Kern – lighting effects;
 - (b) David Compton-Moen - urban design and visual / amenity effects;
 - (c) Ian Munro – visual / urban design and amenity effects;
 - (d) Andy Carr - transportation and traffic safety;
 - (e) Brett Harries - transportation and traffic safety; and
 - (f) Anita Collie - planning issues.
- 1.3 No rebuttal evidence was necessary given that no submitters filed any expert evidence.
- 1.4 Bekon is grateful to Commissioner Chrystal for the advice that witnesses can attend the hearing via videolink. On that basis, Messrs Kern, Munro and Harries will participate in that manner.
- 1.5 In considering these submissions, Counsel refer to:
 - (a) The amendments to the Bekon proposal submitted on 8 October 2024, including a letter from Counsel, statements from Mr Compton-Moen, Mr Carr and Ms Collie; and

- (b) The memorandum of counsel filed with the Applicant's evidence in chief on 18 October 2024 which traverses the evidence filed for the Applicant and sets out the key propositions of Bekon's case.

Purpose and scope of submissions

- 1.6 The purpose of these submissions is to assist the commissioner, TDC officers / advisors and submitters by placing some context around the application in terms of the relevant legal requirements particularly in light of the amendments to the proposal that resulted in the Section 42A Addendum Report recommending that consent be granted.
- 1.7 In doing so, these submissions address:
 - (a) The current proposal (in light of proposed amendments) (Section 2).
 - (b) Preliminary and procedural matters (Section 3).
 - (c) The statutory / plan context and relevant legal principles (Section 4).
 - (d) Lighting effects (Section 5).
 - (e) Urban character and amenity effects (Section 6).
 - (f) Traffic safety effects (Section 7).
 - (g) Planning assessment (Section 8).
 - (h) Bekon's principal submission (Section 9).

Request regarding manner of presentation

- 1.8 We request that, rather than present these submissions in their entirety now and then call each witness, we would prefer to present the submissions in sections and then pause at the appropriate juncture for the relevant witness to present their summary / supplementary remarks and deal with questions. This approach has been found to be highly efficient in that it avoids repetition, deals with the relevant issues in context and, in our submission, represents a process that is "fair and appropriate in the circumstances."¹

Supporting material

- 1.9 In order to assist the presentation of its case, Bekon has collated the following supporting material:
 - (a) All images used in the evidence have been placed on a flash drive in the order in which it will be presented.
 - (b) Some key plans and visuals have been handed up with these submissions for ease of access during the hearing.
 - (c) Videos showing approaches to the DBB location.

1 RMA 1991, s 139(1)(g).

2. **THE CURRENT PROPOSAL**

- 2.1 As is apparent from the material filed on behalf of Bekon and TDC documents, the Bekon proposal has been amended significantly since it was lodged and notified to take account of issues raised in submissions or as a result of engagement with submitters, particularly New Zealand Transport Agency – Waka Kotahi (“NZTA”). The genesis of these changes are as follows.

The proposal as applied for

- 2.2 The Bekon application as originally lodged and notified sought to install a west-facing billboard measuring 7m wide by 3.5m high, totalling 24.5m² in area, to be mounted above the northwestern parapet of the PetMart building on the corner of Queen Street and Gladstone Road (SH6) in Richmond, with the top of the proposed DBB being 8.8m above ground level.

The amended proposal submitted on 8 October 2024

- 2.3 Following engagement with NZTA and having considered issues raised by submissions, Bekon has made a number of amendments to the proposal (and therefore its application) to address concerns raised. These amendments were formally communicated to TDC on 8 October 2024 and placed on TDC’s website on 9 October 2024.
- 2.4 The physical dimensions of the proposed DBB itself will remain as per the original application as will standard digital technology to respond to ambient light levels. The amendments comprised:
- (a) The re-orientation of the DBB to face a south-westerly direction so that it will be outside the viewing angle for drivers on most of Lower Queen Street, thus eliminating views to the DBB from motorists using the left-hand slip lane to exit Lower Queen Street, which was a source of concern to NZTA.
 - (b) An increase in the ‘dwell time’ of the images displayed from 8 seconds as proposed in the original application to a dwell time of 30 seconds. This reflects a highly conservative approach which will ensure that any potential traffic safety issues arising from potential driver distraction will be addressed.
 - (c) The introduction of more stringent conditions in relation to the monitoring of traffic safety, etc., than originally proposed.
 - (d) The construction of a ‘parapet’ behind the proposed DBB to address concerns in relation to potential dominance from both a traffic safety and urban amenity/visual effects perspective. The parapet shown in the drawings submitted on 8 October 2024 showed a parapet that projected part way up the DBB.
 - (e) A reduction of the nighttime maximum luminance level from 250cd/m² per the original application to 125cd/m². This amendment has been made to address concerns about lighting from the DBB, including those raised by ‘dark sky’ submitters.

Alternative ‘full height’ parapet design – Bekon’s favoured option

- 2.5 Since submitting the above amendments on 8 October 2024, discussions have occurred between Bekon’s urban design expert, David Compton-Moen, and TDC’s urban design expert, Tony Milne. Bekon has also engaged a

further urban design expert, Ian Munro, and his expertise was added into 'the mix'.

- 2.6 The upshot of this exercise was the development of a proposal for a 'full height' parapet that fully encloses the DBB. Per Mr Compton-Moen's evidence, this design addresses concerns regarding the integration of the sign with the PetMart building, in which the proposed DBB will be "visually subordinate to the building's full elevation".²

Options available

- 2.7 In essence, you have before you:

- (a) The DBB as originally applied for, with no parapet. Mr Moen-Compton could support this option due to the poor amenity of the area, but Mr Munro could not. Mr Milne³:

"...considered that the design of the proposed digital billboard accompanying the original application was not acceptable, primarily due to its poor visual integration with the existing building."

- (b) The DBB with a 'half parapet' which Mr Compton-Moen can support but which did not find favour with TDC's urban design expert, Mr Milne who considers that⁴:

"...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."

- (c) The DBB with the 'full height' parapet which Messrs Compton-Moen and Munro consider to be the optimal solution and which, according to his supplementary report dated 23 October 2024, Mr Milne considers is appropriate subject to some comments in relation to colour and design.

- 2.8 In short, Messrs Compton-Moen, Munro and Milne all support this option over the half-parapet option from an urban design / visual amenity perspective. This is the option that Bekon wishes to proceed with and now seeks consent for, although all options remain 'on the table' if the commissioner wishes to explore them with the experts and submitters.

Outcome of the amendments – Bekon's submission

- 2.9 Bekon's submission is that this suite of amendments has resulted in a proposal which represents the optimum solution from an urban design perspective and one which addresses traffic safety issues to a level at which NZTA has decided to table its comments and not attend the hearing, and Mr Fon now considers the proposal to be acceptable.

2 Evidence of David Compton-Moen dated 17 October 2024 at 2.8.

3 RMM Landscape Architects report dated 23 October 2024, produced with the Section 42A Addendum report, page 1.

4 RMM Report dated 23 October 2024, page 1.

- 2.10 These amendments were made too late to be addressed in the Section 42A Report released on 11 October 2024 but were taken into account in the Section 42A Addendum Report issued on 31 October 2024 which now recommends that consent be granted, as discussed further below.

Amendments within original scope of application

- 2.11 Ms Woodbridge has confirmed that she considers the amendments to the proposal advised to the Council on 8 October 2024 are within the scope of the Bekon application lodged on 22 May 2024⁵. Although this issue has not been raised by TDC or any submitter, we address here, for completeness, Bekon's position that all of the amendments to the proposal fall within the scope of the application as lodged, and the basis for adopting that position.
- 2.12 The well-known line of authority that commenced with the Environment Court's decision *Darroch v Whangarei District Council*⁶ established the proposition that sensible modifications may be made to a proposal after notification and the lodging of submissions,⁷ provided that they are within the scope of the original application but that a fresh application will be necessary if the amendments have the result of:⁸

"...increasing the scale or intensity of the activity...or by significantly altering the character or effects of the proposal".

- 2.13 The extent of modifications that will be acceptable will turn on the facts and be a question of degree,⁹ with the Court considering whether the changes are:¹⁰

" ... significantly different in its scope or ambit from that originally applied for and notified (if notification was required) in terms of:

- *The scale or intensity of the proposed activity, or*
- *The altered character or effects/impacts of the proposal."*

...

Whether there might have been other submitters, had the activity as ultimately proposed to the consent authority been that applied for and notified, is a means of applying or answering the test. But it is not the test itself."

- 2.14 It is submitted that the amendments that were advised to TDC on 8 October 2024 fall within the scope of the original application – all are measures designed to mitigate potential adverse effects raised by submissions and do not materially alter the scale (in terms of the billboard), intensity or the effects of the proposal and do not engage any further provisions of the TRMP.
- 2.15 It is acknowledged that the amendments to the parapet could be seen to raise issues of "scale". However, both of the parapet options could be

5 Section 42A Addendum Report, paragraphs 2.3 and 3.1.

6 DC A018/93.

7 *Kaiuma Farm Ltd v Marlborough District Council* [2024] NZEnvC 150 at [65].

8 *Darroch*, above n 3, at 27.

9 *Kaiuma Farm Ltd*, above n 4, at [66].

10 *Atkins v Napier City Council* [2009] NZRMA 429 (HC) at [19]–[46]; endorsed by the High Court in *Collins v Northland Regional Council* [2013] NZHC 3039 at [24]–[25].

constructed as a permitted activity insofar as they comply with the permitted activity standards in Chapter 17.2.4.1 (Building Construction or Alteration in the Central Business Zone) and will not exceed the 10-metre maximum building height control.

3. PROCEDURAL / PRELIMINARY ISSUES

Consents applied for and activity status – restricted discretionary activity

3.1 The Site is located in the Central Business District Zone under the Tasman Resource Management Plan ("TRMP or "the District Plan"). The Bekon proposal requires a resource consent because it does not comply with the relevant standards in the General Rules – Outdoor Signs and Advertising under Chapter 16 of the TRMP. Under section 16.1 of Rule 16, the proposed DBB does not comply with the following conditions:

- (a) Condition 16.1.4.1(b): The proposal is for signage not related to activities being undertaken on the site, and is not of a temporary nature, and therefore does not meet Condition 16.1.3.1(b).
- (b) Condition 16.1.4.1(e): The proposed DBB will not be related solely to the activity operating within the building it is fixed to.

Assessment criteria

3.2 The application requires assessment as a restricted discretionary activity under section 16.1 of Chapter 16 (Outdoor Signs and Advertising) in accordance with Rule 16.1.4.2 of the TRMP which states:

"The erection of an outdoor sign in the Central Business, Commercial, Mixed Business, Tourist Services, Light Industrial, Heavy Industrial or Rural Industrial zone that does not comply with the conditions of rule 16.1.4.1 is a restricted discretionary activity.

A resource consent is required. Consent may be refused, or conditions imposed, only in respect of the following matters to which Council has restricted its discretion:

- (1) Location and legibility in relation to traffic safety.
- (2) Any amenity effect on the surrounding area, including size and duration."

(Emphasis ours.)

Issues in contention

3.3 A total of 27 submissions were lodged, all in opposition to the application. Collectively, the submissions raised issues in relation to a number of key themes:

- (a) Traffic safety, including:
 - (i) visibility of the DBB when using the left turn slip lane from Lower Queen Street;
 - (ii) concerns over driver distraction and potential impacts on vulnerable road users; and

- (iii) inconsistency with Waka Kotahi's Traffic Control Devices Manual: Part 3 that advertising signs should not be located within 100m of an urban intersection.
 - (b) Visual amenity, including:
 - (i) alleged non-compliance with size and location standards of the TRMP;
 - (ii) concerns that the proposed DBB will visually 'dominate' the area and obstruct the views of the nearby Richmond Hills; and
 - (iii) an adverse effect on urban amenity.
 - (c) Adverse lighting effects, particularly as regards the Wai-iti Dark Sky Park.
 - (d) Dislike of DBBs and DBB advertising content.
 - (e) Concerns that granting consent will create a negative precedent.
- 3.4 The issues raised under (a)-(c) above are all appropriate issues to raise in terms of the matters that TDC has restricted its discretion to and are addressed in detail in Bekon's evidence and in the following sections of these submissions. The issue of potential precedent effect is addressed in the following section of these submissions.

Dislike of digital advertising / billboards

- 3.5 It is obvious that a stated dislike of DBBs or their advertising content does not represent an effects-related matter that is required to be assessed. It is acknowledged that digital billboard advertising can draw strong reactions but the short point is that outdoor advertising represents a legitimate and important form of media and an important facet (and fact of) modern commercial life – indeed, they are the successors to the advertisements that were painted on the side of commercial buildings for at least 150 years.
- 3.6 While some people might not like digital billboards, it does not change the Applicant's position, supported by its evidence, that the proposed DBB is entirely appropriate in the Central Business District zone having regard to the nature of development already in the area, and what is contemplated by the TRMP and other relevant documents referenced in Mr Munro's evidence.
- 3.7 It goes without saying that the degree of local opposition is irrelevant - what is important is not the number of submissions lodged but the issues they raise. It has long been accepted that 'planning is not a numbers game'.
- 3.8 In any event, the Applicant's independent experts have taken considerable care to thoroughly review each submission and address the issues and concerns raised. This is evident in amendments made to the application (as outlined below) and the various statements of evidence filed for the Applicant which, in our submission, demonstrate that all of the issues raised are either misplaced or can be addressed by way of design or conditions.

Section 42A report and 31 October addendum

- 3.9 The Section 42A Report dated 11 October 2024 recommended that consent be declined due to:
- (a) Adverse traffic safety effects, particularly in relation to the left-hand slip lane on Lower Queen Street.
 - (b) Adverse effects on visual amenity values of the receiving environment.
- 3.10 As regards lighting effects, Ms Woodbridge appropriately concluded that the Applicant's proposed conditions will be able to mitigate any adverse effects of light spill from the proposed billboard.¹¹
- 3.11 The original Section 42A Report was not able to take account of the amendments to the proposal that were submitted to TDC on 8 October 2024. Per Commissioner Chrystal's directions in Minute #1 dated 11 October 2024, an addendum to the section 42A report was released on 31 October 2024 and, as a result of the amendments to the proposal outlined in the previous section, Ms Woodbridge now recommends that consent be granted for the following reasons:

"8.4 ...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

11 Section 42A report at 9.3.

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."*

3.12 This recommendation is obviously endorsed as appropriate.

4. **RELEVANT STATUTORY PROVISIONS AND RELEVANT LEGAL PRINCIPLES**

4.1 Bekon is applying for its resource consent under the RMA and the application needs to be determined in terms of that Act. The application was lodged on 21 May 2024, so the provisions of the RMA including the amendments introduced by the Resource Legislation Amendment Act 2017 apply.

Statutory considerations

4.2 The proposed DBB is to be assessed as an RDA under sections 104 and 104C of the RMA. You have authority to grant or refuse consent, to exercise discretion to the restricted matters outlined in the TRMP, to impose conditions (under section 108) and to consider Part 2 of the RMA to the extent that it is considered necessary and within the confines of the matters that TDC has restricted its discretion to.

Section 104 – relevant considerations

4.3 As the Commissioner will be well aware, section 104 of the RMA requires a consent authority to consider:

- (a) The actual and potential effects of the activities;
- (b) Any measure proposed or agreed to by an applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects;
- (c) The provision of any regional or district planning instruments, operative or proposed, that may be relevant to your decision;
- (d) Whether there is any other factor or consideration that is relevant and should be taken into account in making your decision; and
- (e) Part 2 – if considered necessary and as constrained by the matters to which the Council has restricted its discretion.

Part 2 of the RMA and King Salmon – basis of assessment

4.4 The previous approach to section 5(2) of the RMA in the context of resource consent applications involved an "overall broad judgement." However, the Supreme Court's decision in *King Salmon*¹² (and the subsequent decision of the Court of Appeal in *R J Davidson Family Trust v Marlborough District Council*¹³) makes clear that when there is no ambiguity or lack of coverage

12 *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC).

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

in lower-order planning documents, there is generally no need to refer back to Part 2 of the RMA.¹⁴

- 4.5 There are several 'caveats' to this general rule,¹⁵ in particular:¹⁶
- (a) Where there is a challenge to the lawfulness of a planning document, this needs to be resolved before it can be determined if a decision-maker is acting in accordance with Part 2 of the RMA;
 - (b) There may be instances where the document concerned does not "cover the field," and the decision-maker will have to consider whether Part 2 provides assistance in dealing with the matters not covered; and
 - (c) If there is uncertainty as to the meaning of particular policies, reference to Part 2 may be justified to assist in a purposive interpretation.
- 4.6 While there is no evidence to suggest the TRMP has not been competently prepared Ms Collie has, for completeness, undertaken an assessment of Part 2 of the RMA and her evidence is that the proposal is appropriate from that perspective.

Addressing potential adverse effects – section 108 – conditions

- 4.7 A fundamental tenet of the RMA is the need to appropriately "avoid, remedy or mitigate" the potential adverse effects of activities on the environment. The Commissioner is required to consider the measures that are available and proposed to address potential adverse effects. In turn, section 108 of the RMA provides that the Council may impose conditions on resource consents as the consent authority "considers appropriate."
- 4.8 Bekon has provided TDC with a draft set of conditions following without prejudice discussions with NZTA and in light of the most recent condition sets imposed on DBBs elsewhere in New Zealand. The areas of disagreement between TDC and Bekon in that context fall within a narrow compass.

Potential precedent effect

- 4.9 Several submitters have raised concerns with the potential precedent effect that may arise from granting consent to this digital billboard, should consent be granted. The Environment Court has ruled on this issue many times and the law is clear, as set out below.
- 4.10 The concept of 'precedent effect' was addressed by the Environment Court in its decision in *Dye v Auckland Council*:¹⁷

"The granting of a resource consent has no precedent effect in the strict sense... a consent authority is not formally bound by a previous decision of the same or another authority. Indeed in factual terms no two applications are ever likely to be the same; albeit one may be similar to another. The most that can be said is the granting of one consent may well have an influence on how another application should be dealt with. The

14 *Environmental Defence Society Incorporated*, above n 12, at [85].

15 At [85].

16 At [88].

17 *Dye v Auckland Council* [2001] 1 NZLR 337 (CA) at [32].

extent of that influence will depend on the extent of the similarities.”

- 4.11 Thus, although the TRMP must be consistently applied, relevant case law has established a number of principles, along the lines that:
- (a) Every application must be considered on its merits;¹⁸ and
 - (b) There is no guarantee or requirement that a consent be granted for an activity because consent was granted for a similar, earlier activity.¹⁹
- 4.12 As such, despite suggestions from submitters to the contrary, it is submitted that there is no realistic prospect that granting consent to this application would have any adverse precedent effect.
- 4.13 Ms Woodbridge agrees that applications should all be considered on their merits based on the reasoning in *Dye*.²⁰

5. **LIGHTING EFFECTS**

- 5.1 Russ Kern is a lighting expert with over 40 years’ experience in the electrical and lighting industry, with 13 years’ experience in assessing lighting effects associated with digital billboards. Mr Kern was engaged to advise on lighting issues relevant to the proposal.

Submitter concerns

- 5.2 Of the 27 submissions lodged in opposition to the proposed DBB, 10 mention lighting or illuminance, with several others referring to adverse visual effects which could be interpreted as expressing concerns about the lighting element of the proposed DBB.
- 5.3 The submitters concerns relate to general concerns over brightness, as well as light pollution and the impact the proposed DBB may have on Wai-iti Dark Sky Park.

General brightness and light pollution concerns

- 5.4 Mr Kern disagrees with the assertions that the proposed DBB will be bright and add to light pollution. His evidence is that:
- (a) The proposed DBB will have an automated luminance (brightness) control system, in which spill light would be minimal. Provided that the proposed DBB is controlled correctly, it will not appear bright during the day or night.
 - (b) Light pollution will be negligible; spill light illuminance at night will be very low in comparison to the ambient light from street lighting, commercial floodlighting, traditional floodlit billboards and vehicle headlights.
 - (c) There are no luminance limit standards in the TRMP; however, the proposed limits are routinely applied to many digital billboards in New Zealand and have been proven to meet Council imposed lighting parameters throughout New Zealand.

18 *Berry v Gisborne District Council* [2010] NZEnvC 71 at [24].

19 *Feron v Central Otago District Council* ENC Christchurch C075/09, 11 September 2009.

20 Section 42A Addendum Report at 5.12.

'Dark sky' submissions

- 5.5 Bekon went to some effort to address issues raised by 'dark sky' submitters who were concerned about the effects the proposed DBB will have on Wai-iti Dark Sky Park,²¹ despite the fact that potential effect on that park do not represent an "amenity effect on the surrounding area" in terms of the assessment criteria in Rule 16.1.4.2 of the TRMP.
- 5.6 In response to the 'dark sky' issues, Mr Kern prepared two separate letters²² to specifically address issues raised to 'dark sky' submitters. The first was provided with a specific invitation to engage on an objective, science-based basis – only Mr Struthers responded in any meaningful way but in the end no direct engagement occurred.
- 5.7 By way of summary, Mr Kern's response was as follows:
- (a) The proposed DBB will have a built in 'eyebrow' above each individual light source to reduce upward light spill and will incorporate an ambient light sensor to automatically adjust the LED. The outcome being, that the proposed DBB will not appear bright.
 - (b) The International Dark-Sky Association ("IDSA") "Guidance for Electronic Message Centres", which was relied upon by submitters, has no legal standing in New Zealand. Lighting experts in New Zealand apply the Standard AS/NZS 4282 "Control of the obtrusive effects of outdoor lighting". While the IDSA's guidance would require a maximum nighttime luminance of 80cd/m², Mr Kern has recommended a limit set at 125cd/m². This is close to the IDSA's maximum limit but is more appropriate for the area, given that existing signage in the area has a luminance reading ranging from 152cd/m² to 960cd/m².
 - (c) The effects of the proposed DBB will be negligible given there is a 20km separation between the proposed DBB and Wai-iti Dark Sky Park.
 - (d) Mr Kern has proposed a condition of consent to require the consent holder to submit, within 30 days of the display becoming operational, a certification report from an appropriately qualified lighting designer/engineer confirming compliance with luminance requirements.

Effect of variable images

- 5.8 As referenced above, Bekon has volunteered to increase the dwell time from 8-seconds to 30-seconds to address traffic safety concerns. Given that NZTA recommends a minimum of a 5-second dwell time per the Traffic Control Devices Manual 3 - Advertising Signs ("TCDM3"), Mr Kern can support this change in dwell time from a lighting perspective with a high degree of confidence.

Compliance with TRMP section 17.3.2.1(h)

- 5.9 Mr Kern has recommended that spill light should be reduced from 10 lux to 8 lux measured 1.5m above ground level to align with TRMP Section

21 Submitters comprising Bruce Struthers (#8), Ralph Bradley (#12), Thomas Wilson (#16) and Jenny Pollock (#20).

22 On 18 September 2024 and 14 October 2024. These are attached to Russ Kern's statement of evidence.

17.3.2.1(h) for lighting and glare limits. Bekon has accepted this recommendation, as reflected in its proposed conditions.

5.10 Mr Kern concluded that:

"2.20 Overall, I consider that lighting effects of the proposed billboard will be acceptable (less than minor) for motorists, cyclists, pedestrians, residents and nearby commercial workers, and visitors to the Wai-iti Dark Sky Park, on the basis that:

- (a) Billboard luminance will be controlled to eliminate glare.*
- (b) Billboard luminance will be limited to a lower value than originally proposed so it will not adversely affect any dwelling within a residential, recreation or rural activity area at night.*
- (c) An automated ambient light sensor and control system will reduce luminance on overcast and cloudy days.*
- (d) Nighttime billboard luminance will 'blend in' with existing Richmond commercial, street and flood lighting so it will not be dominant when viewed from the nearest residential properties or surrounding hills.*
- (e) Nighttime effects from the billboard will not be noticeable from the Dark Sky Park due to the geographical shielding effect of hills, valleys, separation distance and the low luminance settings."*

Section 42A report and Addendum

5.11 Even with a maximum nighttime luminance at 250 cd/m², Ms Woodbridge's section 42A report did not take any issue with lighting effects. Ms Woodbridge's Addendum Report states:

"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."

Bekon's submission

5.12 In light of the analysis above, and in the absence of any TDC evidence to the contrary, the commissioner can be satisfied in finding that the proposed DBB will generate an acceptable level of lighting effects on the surrounding area.

5.13 Given that this issue appears to have been satisfactorily addressed, Bekon has requested Mr Kern to present his evidence via videolink rather than attending the hearing in person.

6. URBAN CHARACTER AND AMENITY EFFECTS

6.1 Messrs David Compton-Moen of DCM Urban and Ian Munro have undertaken a careful review of the Site and surrounding environment from an urban design / visual effects perspective.

6.2 The key issues in contention relate to:

- (a) Alleged non-compliance with size and location standards of the TRMP.
- (b) Concerns that the proposed DBB will 'dominate' the area.
- (c) Adverse lighting effects.
- (d) The proposed DBB will obstruct the views of the nearby Richmond Hills.
- (e) The proposed DBB will have a negative impact on the amenity of the town.

Character of the surrounding area

6.3 Mr Compton-Moen characterises the environment surrounding the Site as including:²³

- (a) Commercial buildings, petrol stations, carparking, restaurants and office spaces within the immediate area.
- (b) Commercial buildings of varying scales and architectural styles.
- (c) Existing signs for both traffic and commercial purposes – including free-standing, wall-mounted signs and billboards advertising onsite activities. The signs all vary in size, colour, type and setback from road.
- (d) Queen Street has a moderate to high level of traffic movement and is a key route through Richmond for vehicles pedestrians and cyclists. There is high to heavy traffic movement through Gladstone Road (SH6) for cars, trucks and commercial vehicles.

6.4 Mr Compton-Moen considers that the receiving environment is not a sensitive location, with the overall visual quality reduced by the variation of both retail and commercial buildings that lack a cohesive design.²⁴

Urban character and visual effects assessment

6.5 As regards urban character, Mr Compton-Moen's opinion is that:²⁵

"The scale design, colour, location and nature of the proposed billboard will not, in my opinion, have an adverse effect on existing architectural integrity, amenity values, character, visual coherence or heritage values of the area due to the surrounding environment being light industrial / commercial in nature. The full parapet option will have positive effects, providing more built definition

23 Evidence of David Compton-Moen dated 17 October 2024 at 4.

24 Evidence of David Compton-Moen dated 17 October 2024 at 4.4.

25 Evidence of David Compton-Moen dated 17 October 2024 at 5.3.

to the corner site and improving legibility. At present the built form around the intersection lacks definition."

(Emphasis ours.)

- 6.6 Mr Compton-Moen considers that the proposed DBB will successfully integrate with the existing commercial character of the receiving environment and will not adversely affect the visual amenity of the receiving environment.²⁶
- 6.7 Mr Munro supports the full height parapet now proposed as representing the optimum outcome from an urban design perspective. We refer to the lengthy passage from Mr Munro's summary contained in our legal memorandum and only repeat the following paragraphs for completeness:

"2.10 *The (amended) proposal has been assessed on behalf of the Applicant by Mr. Compton-Moen and I refer to his evidence, which I record I agree with. In my opinion, his evidence is sound. I consider his conclusions have been reasonably and justifiably arrived at, and I agree with him that the amended 'full parapet' proposal is acceptable.*

2.11 *In reaching my own conclusion on the amended proposal, I note that I agree with Mr. Milne that the proposal as lodged was not acceptable in terms of its poor visual integration with the existing building. But the amended proposal, with its parapet (designed to integrate into the form and shape of the existing lower parapet and provide visual interest of its own by way of a pattern of vertical openings), will in my opinion acceptably integrate the sign into the existing building and mitigate adverse amenity effects. I consider consent could be granted to that."*

Section 42A Report and Addendum

- 6.8 The section 42A report initially raised concerns that the proposed billboard would not "appropriately integrate with the building due to its placement on the parapet" and considered that "adverse effects on visual amenity are minor and are not able to be mitigated to lower the adverse effects".²⁷
- 6.9 The genesis of the 'full parapet' now proposed has been fully addressed above. The evidence of Messrs Compton-Moen and Munro indicate that a full-height parapet will address concerns regarding the integration of the sign into the existing built form of the building, with the sign becoming visually subordinate to what will emulate a two-storey building.
- 6.10 Of fundamental importance, Mr Milne now considers that the urban design effects are appropriate subject to some comments in relation to colour and design, stating:

"In my opinion, this is a well-considered design solution that results in the billboard being visually integrated into the form and shape of the extend parapet of the building. It now no longer appears as a 'tack - on' sitting atop a one storey building.

26 Evidence of David Compton-Moen dated 17 October 2024 at 5.16 and 5.19.
27 Section 42A report at 9.4.

...

In principle I support this approach. However, a matter of detail that could be further explored, is a greater articulation of the appearance of the parapet. This is not a fundamental concern, rather an opportunity for further design consideration that would potentially result a more visually pleasing outcome.

Conclusion

Overall, and having reviewed the Evidence of both Mr Compton-Moen and Mr Munro and considered this against the relevant provisions of the TRMP, I am satisfied my original concerns regarding the lack of integration and the ensuing level of adverse effects have generally been addressed by the amended proposal."

- 6.11 An important consequence of Mr Milne's change of position is that Ms Woodbridge has now reached the following conclusion in the Section 42A Addendum Report:²⁸

"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."

Submitters' concerns

Alleged non-compliance with size and location standards of the TRMP

- 6.12 Mr Compton-Moen is of the opinion that the addition of a parapet will negate the size of the proposed billboard "to a large degree".²⁹ Given that the TRMP allows for signs of a size up to 30% of a wall, the proposed DBB comfortably fits within this size requirement as it covers 18.4% of the parapet.³⁰

Adverse lighting effects

- 6.13 This issue has been addressed by Mr Kern.

Alleged dominance

- 6.14 Bekon's position is that the full height parapet addresses concerns in relation to potential dominance from an urban amenity/visual effects perspective.

The proposed billboard will obstruct the views of the nearby Richmond Hills

- 6.15 Mr Compton-Moen considers that the proposed billboard will only block a small section of the hills from a limited series of viewpoints. Therefore, views of the Richmond Hills will be possible from the majority of locations.³¹

28 Section 42A Addendum Report at 6.12.

29 Evidence of David Compton-Moen dated 17 October 2024 at 7.2.

30 Evidence of David Compton-Moen dated 17 October 2024 at 7.2.

31 Evidence of David Compton-Moen dated 17 October 2024 at 7.5.

- 6.16 It is also relevant to note that the TRMP does not afford any protection to these views and both parapet options can be established as permitted activities.

The proposed billboard will have a negative impact on the amenity of the town

- 6.17 In response to this concern, Mr Compton-Moen states:

7.6 *As outlined above, the receiving environment has a low-level of visual amenity. There is limited visual cohesion with varying setbacks, no consistent architecture form or style and large amount of surface carparking and display yards in the streetscape 'catchment'. The proposal, with the full parapet, will anchor the built form on the intersection corner, which from an urban design perspective is considered a positive outcome.*

Bekon's submission

- 6.18 In light of the above, Bekon submits that when the application is objectively assessed in light of the urban character and visual amenity of the surrounding environment, the Commissioner can safely and confidently conclude that these effects are acceptable.

7. TRAFFIC SAFETY EFFECTS

- 7.1 Traffic safety is a key issue raised by NZTA and submitters. The key concerns raised in these submissions focussed on:
- (a) Pedestrians using the zebra crossing to cross the left-turn slip lane at the end of Lower Queen Street being put at risk as a result of distraction created by the DBB;
 - (b) The proposed DBB causing general driver distraction in the "busiest intersection in the region"; and
 - (c) Inconsistency with NZTA's TCDM3.

Amendments to the proposal to address traffic safety concerns

- 7.2 Productive engagement with NZTA has resulted in amendments to the proposal that has satisfied the concerns held by that agency. These amendments comprise:
- (a) Re-orientating the proposed DBB to not be visible from the left-hand slip lane and to reduce views from Lower Queen Street;
 - (b) The increase in proposed dwell time from 8 seconds to 30 seconds; and
 - (c) A new condition requiring minimum letter heights.
- 7.3 The proposed condition imposing minimum requirements in terms of letter sizes took some time to work up due to the need to distinguish between the text that needs to be legible to a driver and text that forms part of an image which is displayed (which in many cases is illegible). The outcome of that exercise was the following wording:

- X. *The minimum size of the letters used in the messages on the billboard must be as follows:*
- (a) *The letters used in the primary message must not be less than a height of 150mm. For the purpose of this condition the 'primary message' is the largest text displayed on the billboard.*
 - (b) *Subject to Condition Y hereof, the letters used in any other text must not be less than 75mm in height.*
- Y. *The requirements of Condition X(a) and (b) do not apply to text within logos, text within images, disclaimers, terms and conditions or any other text legally required to be displayed.*
- Z. *The images displayed on the billboard must not include QR codes or other codes scannable by an electronic device.*

Advice note: The purpose of Conditions X – Y is to ensure that the lettering of the words comprising the main messages on the billboard are of a sufficient size to be reasonably legible to drivers who are able to view the billboard.

Bekon's evidence in relation to key traffic safety issues

- 7.4 Mr Carr and Mr Harries have both produced comprehensive but complementary evidence. Their evidence in relation to the key issues raised / arising can be summarised as follows.

Left-hand slip lane concerns

- 7.5 Traffic safety concerns had been raised regarding the left-hand slip lane from Lower Queen Street to the Richmond Deviation. In light of these concerns, Bekon has re-orientated the proposed DBB so that it can only be viewed from the Gladstone Road northbound intersection approach, thus eliminating views from motorists using the left-hand slip lane to exit Lower Queen Street.
- 7.6 Mr Carr confirms that any drivers travelling in the left-hand slip lane will not be able to view the proposed DBB. Views of the proposed billboard will also be reduced from Lower Queen Street. While Mr Carr considers that the traffic effects were already less than minor, he supports the re-orientation of the proposed DBB to minimise any adverse effects on Lower Queen Street.

Potential driver distraction

- 7.7 As regards general concerns raised by submitters on the potential for driver distraction from the proposed DBB, Messrs Carr and Harries disagree with these concerns on the basis that it has been conclusively demonstrated that digital billboards as they are operated in New Zealand do not compromise traffic safety.

- 7.8 Mr Carr’s opinion is clear that there is no evidence:³²
- (a) To suggest the proposed DBB would have influenced the 21 historic crashes recorded within the proximity of the Site over the past five years.
 - (b) From New Zealand crash records within the vicinity of digital billboards to suggest that the installation of a digital billboard causes crashes.

7.9 Mr Harries’ evidence notes that there are now over 1,000 digital billboards in New Zealand and not once has it been shown that a digital billboard has contributed to a crash.

7.10 Mr Harries responds that:

- (a) There is a common misconception that digital billboards are “so inherently distracting to road users that they will inevitably lead to crashes”.³³
- (b) There is no available probative evidence to support the findings that digital billboards materially distract drivers:³⁴

“In this regard, there is no evidence that I am aware of to suggest that driver behaviour / driving performance responses to advertising signs are materially different to those that might routinely be expected to occur with any other aspect of the driving environment such as scenery, people, animals, buildings, construction sites, roadworks, and so on. Rather, based both on CAS crash statistics and before-and-after road safety studies at particular digital billboard sites, digital billboards are clearly not featuring as potential sources of crashes.”

- (c) Research suggests that although drivers may glance at the digital billboard, it will not be of a duration that would create any identifiable adverse road safety effects. Australian research has further highlighted that drivers are able to self-regulate and prioritise their attention to the driving tasks at hand while disregarding matters that are unnecessary to that task (i.e., digital billboards).³⁵

Inconsistency with NZTA’s Traffic Control Devices Manual: Part 3

7.11 Mr Carr notes that:

- (a) The proposed DBB complies (or has the ability to comply) with the majority of Waka Kotahi recommendations through putting in place suitable conditions of consent:
- (b) The TCDM3 recommends:³⁶
 - (i) A 100m separation between a billboard and any permanent regulatory/warning signs and any intersections to ensure that

32 Evidence of Andy Carr dated 17 October 2024 at 2.
33 Evidence of Brett Harries dated 17 October 2024 at 9.2.
34 Evidence of Brett Harries dated 17 October 2024 at 9.3.
35 Evidence of Brett Harries dated 17 October 2024 at 2.3(a).
36 Evidence of Andy Carr dated 17 October 2024 at 6.

the billboard does not obscure the traffic sign or otherwise detract from the effectiveness of the traffic sign; and

- (ii) A 50m minimum separation between roadside advertising signs.

7.12 Mr Carr acknowledges that the 100m separation distance is not achieved; however, he notes that as the proposed billboard is elevated, it cannot obstruct the visibility of the road signs.³⁷ Mr Carr further points out that there are numerous billboards within New Zealand located within 100m of an intersection or other signage where no adverse safety effects have arisen.³⁸ Of the 14 sites Mr Carr has reviewed as part of his own study into road safety effects near billboards, 10 of these were adjacent to intersections.³⁹

7.13 With respect to the 50m separation distance between roadside advertising signs, Mr Carr makes the following comment:⁴⁰

"In this instance, I note that there are numerous existing on-premise advertising signs on this part of the roading network where this separation distance is already not achieved, and I therefore consider that, in this respect, the proposed digital billboard does not introduce any new safety risk into the prevailing environment."

7.14 Mr Harries concurs with the conclusions reached by Mr Carr, further pointing out that TCDM3 itself acknowledges the fact the 50m separation distance "may not be achievable in many circumstances, such as those in lower speed, urban areas (e.g., 60km/h or less)."⁴¹

Dwell time

7.15 While Bekon proposed a dwell time of 8-seconds in its original application, it has since volunteered to amend the dwell time to 30-seconds, in which Messrs Carr and Harries supports. Mr Carr considers that a 12-24 second dwell-time can be supported, with a 30-second dwell time representing a conservative approach in which only 5% of drivers will observe a change in image.⁴²

7.16 Mr Harries considers that the proposed adoption of a minimum 30-second dwell time for image displays is appropriate in the context of the particular traffic environment in order to ensure the safe and acceptable operation of the proposed DBB.⁴³ This has also been included in the proposed set of conditions of consent.

NZTA amended position

7.17 Counsel refers to the advice contained in in the NZTA's letter to Mr Doole of TDC dated 25 October 2024 advising:

"Due to our primary issues having now been addressed by the applicant in the amended application and proposed draft conditions (appended to the evidence of

37 Evidence of Andy Carr dated 17 October 2024 at 6.5

38 Evidence of Andy Carr dated 17 October 2024 at 6.6.

39 Evidence of Andy Carr dated 17 October 2024 at 6.6.

40 Evidence of Andy Carr dated 17 October 2024 at 6.9.

41 Evidence of Brett Harries dated 17 October 2024 at 8.5, citing TCDM3 Section 5.4, Page 5-4, as a footnote to Table 5.3.

42 Evidence of Andy Carr dated 17 October 2024 at 9.20.

43 Evidence of Brett Harries dated 17 October 2024 at 2.9(d).

Ms Collie), as well as conditions X, Y, and Z proposed by the applicant above, NZTA consider that the billboard will have acceptable effects on the safe and efficient functioning of the state highway. For the record NZTA does not have a preference for either parapet design put forward by the applicant.

Based on the proposal having acceptable effects NZTA do not oppose the amended application and will not be submitting evidence for the hearing."

Section 42A Report and Addendum

- 7.18 In light of the amendments made to the proposal outlined above, TDC's expert traffic consultant, Mr Fon, has modified his position as follows:⁴⁴

"The changes made in the amended application, particularly the reorientation of the billboard to face a south-east direction, will minimise the potential for adverse traffic safety effects on Lower Queen Street. The reorientation of the billboard has also eliminated the visual overlap that would have occurred for the primary signal head on Lower Queen Street with the previous billboard orientation.

In comparison to the initial application and billboard positioning, the proportion of drivers through the intersection with the opportunity to view the reoriented billboard is reduced.

As a result of the amendments, any potential for adverse traffic safety effects as a result of the billboard installation is largely confined to just the Gladstone Road approach, which is a much simpler arrangement than Lower Queen Street as traffic can only (legally) travel straight through or turn left and the left turn lane is stood up to the signals.

The increase of the dwell time to 30 seconds will limit the opportunity for approaching drivers to see two or more images when travelling outside of peak times. This in turn reduces the likelihood of any potential driver distraction caused by the billboard.

While we still note the underlying safety record of the intersection, in our opinion the amended application largely mitigates the potential for adverse traffic safety effects raised in the previous Affirm NZ review as well as the Waka Kotahi submission."

- 7.19 As a consequence, Ms Woodbridge has also altered her position in relation to traffic safety effects and now states:

"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."

⁴⁴ Affirm NZ Ltd report dated 30 October 2024, Section 10 Summary.

Bekon's submission

- 7.20 Messrs Carr and Harries both agree that potential traffic safety effects generated by the proposed DBB will be acceptable.
- 7.21 It is evident that the Applicant has been receptive to the traffic safety concerns raised by NZTA and submitters. This has been demonstrated through its amended proposal to mitigate these concerns, namely, through the 30-second dwell time, the re-orientation of the proposed DBB to not be visible from the left-hand slip lane and to reduce views from Lower Queen Street, and the requirement for minimum letter heights. As noted, NZTA has accepted these changes and have advised TDC that they will no longer be attending the hearing or submitting any expert evidence.

8. PLANNING ASSESSMENT AND PROPOSED CONDITIONS

- 8.1 Ms Collie has carefully considered the proposal in light of all relevant statutory and plan provisions, particularly the TRMP, in light of all the evidence and concurs with Ms Woodbridge's recommendation per the Section 42A Addendum Report.

Planning assessment

- 8.2 The 'planning issues' that arise in the context of this application are relatively straightforward and are canvassed in full in Ms Collie's evidence and Ms Woodbridge's two reports - Ms Collie's evidence and Ms Woodbridge's Addendum Report both confirm that, in light of all the matters so far addressed in these submissions, a grant of consent is appropriate. In that regard, Ms Collie's overall conclusion is:

"14.1 My overall assessment is that the effects on the environment can be appropriately mitigated by conditions to an acceptable level, such that those effects are no more than minor. For the reasons set out above, I find that the proposal overall is consistent with the relevant objectives and policies of the TRMP.

14.2 For the reasons discussed above, I consider the application can be granted, subject to the proposed conditions set out in Attachment [A]."

- 8.3 Ms Woodbridge is clear, however, that the imposition and effectiveness of conditions is important. In that regard, there is broad agreement between Bekon and TDC in relation to the consent conditions proposed by Bekon, but a few areas of disagreement remain.

Proposed consent conditions

- 8.4 A full set of proposed consent conditions have been included as Attachment A1 (to distinguish it from Attachment A as attached to Ms Collie's evidence). These were developed by reference to other digital billboard consents and with input from Bekon's experts and legal counsel, and to that extent, reflect "best current practice".⁴⁵
- 8.5 It is apparent from a comparison of the conditions attached to Ms Collie's and the set attached to the Section 42A Addendum Report that there is a large measure of agreement between the two sets of conditions. Indeed, the

45 Evidence of Anita Collie dated 17 October at 12.1.

only material differences between the two sets relate to Conditions 6, 11(b), 18 and 19, 25, and 26.

- 8.6 These differences are addressed in Ms Collie's evidence. It is not proposed to address these in any detail other than to note the following.

Condition 6 – the setting of timing for luminance controls

- 8.7 Condition 6 relates to the setting the setting of daytime / nighttime hours for luminance controls.

- 8.8 The condition proposed by Ms Collie is as follows:

12. *The daytime and nighttime luminance of the signage shall not exceed:*
- a. *5,000 cd/m² during daytime (between sunrise and sunset).*
 - b. *125 cd/m² during nighttime (between sunset and sunrise).*

- 8.9 Ms Woodbridge does not favour this formulation on the following basis:⁴⁶

"...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."

- 8.10 The condition that Ms Woodbridge recommends reads as follows:

6. *Notwithstanding condition 5, the display shall not exceed the following luminance values:*
- a. *5,000 cd/m² between the hours of 7.30am - 5.30pm during autumn and winter, and between the hours of 6.30 am - 9.00pm during spring and summer.*
 - b. *125 cd/m² during hours outside the above times.*

- 8.11 Bekon opposes this condition for the reasons outlined by Mr Kern who states the following in his evidence:⁴⁷

"10.5 I consider that setting times such as these is not appropriate, and that the wording contained should be changed to refer to "daytime" and "nighttime" as proposed in the applicant's draft conditions. This will ensure that the automated light sensor can limit luminance as ambient light changes across the seasons and is not defined

⁴⁶ Section 42A Addendum Report at 7.4.

⁴⁷ Evidence of Russ Kern dated 17 September 2024 at 10.5.

by a set time. Allowing a luminance of up to 5,000cd/m2 at 7.30am in autumn may be too high for example."

- 8.12 Given that this is the only evidence before the hearing from a qualified lighting expert, it is submitted that the condition proposed by Bekon is to be preferred. The fact that luminance is automatically controlled by a sensor, Ms Woodbridge's concerns are somewhat doctrinaire - conditions of the nature proposed by Bekon are commonplace and have not been a cause for concern in terms of certainty or monitoring.

Condition 11(b) – potential confusion with traffic control devices

- 8.13 The issue that arises in the context of Condition 11(b) is whether it is appropriate for a TDC officer to form an opinion regarding potential confusion with traffic control devices.

- 8.14 As recommended by Ms Woodbridge, Condition 11(b) would read:

11. *Each image displayed shall:*

a. ...

b. *Not use graphics, colours or shapes in combinations or in such a way that would cause the image to resemble, cause confusion with a traffic control device in the opinion of Council's Team Leader - Compliance & Investigation (Land and Air).*

(Emphasis ours.)

- 8.15 The formulation preferred by Bekon is the same, but without the underlined section. Ms Collie opposes the underlined section on the basis that:⁴⁸

"Incorporating a non-expert opinion in consent conditions is inherently uncertain and I recommend this part of the condition is deleted."

- 8.16 Ms Woodbridge's response to that concern per the Section 42A Addendum Report is as follows:

"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 [sic] 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."*

⁴⁸ Evidence of Anita Collie dated 27 September 2024 at 12.8.

- 8.17 Mr Carr's view is that a condition requiring a TDC Team Leader to make this assessment is problematic. He has seen a similar requirement applied elsewhere in New Zealand "where a layperson said that in their view any large area of green or red could cause confusion due to the billboard being near to traffic signals."⁴⁹
- 8.18 Mr Carr is also concerned that we do not know the extent of the qualifications of the team leader to make the assessment, so run a risk that a random decision of the nature outlined above could be made, without any means of challenging the decision, which could have significant commercial ramifications. In that regard, the requirements of the conditions will be known to the advertisers before the advertising campaign is launched and the billboard made to comply.
- 8.19 Bekon's preference is therefore that the wording remain as it is. If non-compliance with this condition is suspected, TDC still has a perfect right to raise the issue / take enforcement action.
- 8.20 You may wish to discuss these issues with Mr Carr and Ms Collie.

Conditions 18 and 19 – commencement date for traffic monitoring and reporting

- 8.21 Conditions 18 relates to the timing of when Bekon is required to undertake traffic safety assessments; Condition 19 is a complementary condition relating to the timing of the reporting of those assessments. Bekon's concern was that six months is too early to commence such assessments on the basis that traffic records may not have been updated within that time frame.
- 8.22 Ms Woodbridge's Section 42A accepts this point⁵⁰ but the six month requirement is still contained in the draft conditions. This needs to be removed.

Condition 27 - the requirement for non-RMA permissions to work in the road corridor

- 8.23 Condition 27 as recommended by Ms Woodbridge would state:

27. In the event that during installation or maintenance of the billboard equipment or machinery is required to be placed within the road corridor (including footpath) the Consent Holder shall obtain a corridor access request from Tasman District Council and / or New Zealand Transport Agency Waka Kotahi and all appropriate Traffic Control Management Procedures shall be installed for the duration of works.

- 8.24 Ms Collie's position is that this would be more appropriate as an advice note "as it relates to a non-RMA authorisation."⁵¹
- 8.25 This is a minor matter and Bekon will abide the commissioner's decision in this regard also.

⁴⁹ A Carr, pers comm, 3 November 2024.

⁵⁰ Section 42A Addendum Report at 7.5.

⁵¹ Evidence of Anita Collie dated 17 September 2024 at 12.10.

Condition 31 - the review condition

8.26 Per Ms Woodbridge's section 42A Addendum Report, the review condition would read as follows:

31. Pursuant to Section 128(1)(a) of the Resource Management Act 1991, the Consent Authority may on the first, second, third, fourth and fifth anniversary of the commencement of the consent, serve notice on the consent holder of its intention to review, in whole or in part, the conditions of this consent, to deal with any adverse effect on the environment which:

- a. May arise from the exercise of the consent and which it is appropriate to deal with at a later stage;
- b. Are required to address the effects from the sign on the safe and efficient operation of the local road network by vehicles, pedestrian, cycle and any other traffic.

8.27 For the reasons outlined in her evidence,⁵²Ms Collie would prefer that Condition 31(b) be amended to read:

- b. To review the dwell time or rate of transition of the image or the use of the screen to address potential traffic safety issues having regard to potential adverse effects on the safe and efficient use of the local road network by vehicular, pedestrian and cycle traffic.

8.28 Bekon sees this as a minor matter and will also abide the commissioner's decision in this regard.

Bekon's submission

8.29 It is clear that the issues in contention between Ms Woodbridge and Ms Collie fall within a very narrow compass and do not affect in any way whether or not consent should be granted. Thus, when all of the evidence and advice before the Commissioner is considered that there is no planning-related reason why consent to the Bekon proposal should be declined.

9. BEKON'S PRINCIPAL SUBMISSION

9.1 The Applicant acknowledges that there is a high level of public interest in this application, evidenced by the two news articles published and the number of submissions filed. That said, determining consent applications is not a 'numbers game'. While a digital billboard may not be everyone's 'cup of tea', whether consent is granted should not turn on the number of people who like or dislike the proposed DBB, but rather on whether the potential

⁵² Evidence of Anita Collie dated 17 September 2024, at 12.11.

adverse effects are acceptable and can be appropriately managed through consent conditions.

9.2 The Applicant's team has gone to great lengths to ensure that the proposal put before you reflects the Applicant's commitment to acknowledging and addressing the potential impacts that the proposed DBB may have on the surrounding environment. This has been reflected in the numerous amendments made to the proposal in response to concerns raised. In that regard, it is respectfully submitted that:

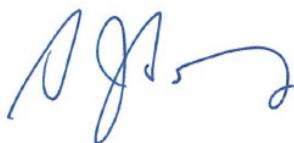
- (a) When the evidence is objectively assessed, you can safely conclude that the proposed DBB will result in an acceptable level of potential adverse effects.
- (b) Approval of the application would be consistent with and promote the sustainable management purposed of the RMA, particularly insofar as:
 - (i) There are no potential adverse effects of the proposal that cannot be avoided, remedied or mitigated through the imposition of conditions.
 - (ii) The proposed DBB has been designed and located to ensure that:
 - It can be operated in a way that will not generate unacceptable adverse traffic safety effects, including in relation to vulnerable road users.
 - Character and amenity values and the quality of the environment are maintained or enhanced.
 - It is operated in a way that appropriately manages any effects, including lighting effects, arising from the operation of the proposed DBB at night.

9.3 Bekon's submission is that, when seen in light of our commentary and the appropriate conclusions reached in the Section 42A Addendum Report, the issues raised as regards traffic safety and visual amenity do not provide any justification for withholding consent.

9.4 The Applicant and their team are grateful to TDC and NZTA representatives / advisors for adopting a constructive approach to the issues arising, and to Mr Struthers for the engagement he was prepared to engage in.

9.5 We wish you all the best for your deliberations.

DATED this 4th day of November 2024



S J Berry / B S Morris

Counsel for Bekon Media Limited