



**RESOURCE MANAGEMENT ACT 1991**  
**DECISION OF THE TASMAN DISTRICT COUNCIL**  
**ON A RESOURCE CONSENT APPLICATION**

<b>APPLICATION REFERENCES:</b>	RM230535
<b>APPLICANT:</b>	Bekon Media Ltd
<b>SITE ADDRESS:</b>	332 Queen Street, Richmond
<b>LEGAL DESCRIPTION:</b>	Part Section 83 Waimea East Dist (NL1D/1120)
<b>PROPOSAL:</b>	To establish and operate a single-sided digital billboard for off-site advertising
<b>ZONING &amp; NOTATIONS:</b>	Central Business Zone
<b>TYPE OF ACTIVITY:</b>	Land Use
<b>DATE OF HEARING:</b>	5 November 2024
<b>HEARINGS PANEL:</b>	Commissioner Dean Chrystal
<b>APPEARANCES:</b>	<u>Applicant</u>  Mr S Berry, Counsel for the Applicant Mr S Jerard, Director of Bekon Media Ltd (the Applicant – attendance only) Mr R Kern, Lighting Engineer (via Video Link) Mr D Compton-Moen, Urban Designer Mr I Munro, Urban Designer (via Video Link) Mr A Carr, Traffic Engineer Mr B Harries, Traffic Engineer (via Video Link) Ms A Collie, Planner

Council Reporting Officers

Ms V Woodbridge, Planner

Mr T Milne, Urban and Landscape Designer (via Video Link)

Mr A Fon, Traffic Engineer

Submitters

Mr H Beard

Mr R Bradley, Chair of Top of the South Dark Sky Committee

Mr B McGurk (via Video Link)

Mr M Ferguson (via Video Link)

Mr B Struthers

Mr J Talbot, New Zealand Transport Agency, Waka Kotahi (via Video Link)

**DECISION:**

**Consent Granted**

## INTRODUCTION AND BACKGROUND

1. I was appointed by the Tasman District Council to consider and make a decision on a land use consent application lodged by Bekon Media Limited to establish a digital billboard at 332 Queen Street, Richmond.
2. As part of the application process that has evolved since lodgement, amendments have been made. In summary, the proposal at the time of the hearing involved a digital billboard as set out below:
  - Single sided and south-west directly facing the Gladstone Road (State Highway 6) leg of the intersection with Queen Street, Lower Queen Street and the Richmond Deviation (SH6).
  - A display area of up to 24.5m<sup>2</sup> and 3.5m high by 7m wide.
  - A nighttime maximum luminance level of 125 cd/m<sup>2</sup>. The display would also incorporate a lighting control sensor to automatically adjust the brightness of the display in line with ambient light levels.
  - A minimum dwell (display) time of 30 seconds per image. The following will not be displayed:
    - Live broadcast or pre-recorded video,
    - Movement or animation of images,
    - Flashing images,
    - Sequencing of consecutive advertisements,
    - Images using graphics, colours or shapes in such a way that they could cause confusion or conflict with any traffic control device, nor invite or direct a driver to undertake an action.
  - No advertisement would be installed within the signage platform that would mimic the design, shape or colour combinations of the traffic signals.
  - A parapet structure would be installed on top of the existing building in accordance with either of the following options:
    - A 'half parapet' approximately half the height of the billboard which would extend behind the billboard and around the corner and along the Richmond Deviation frontage for 2.5 metres, or

- A 'full parapet' which will extend above the height of the billboard and extend the length of the existing roof parapet along Queen Street, the corner of the building, and 16.5 metres along the Richmond Deviation frontage.
- 3. Both parapet options were pursued by the applicant at the hearing and were considered as part of my decision.
- 4. The site is located within the Central Business Zone of the Tasman Resource Management Plan (TRMP) and will be located on top of an existing single storey commercial building presently occupied and used by Pet Mart, a pet specialist store. The building is located directly on the north-eastern corner of the intersection of Gladstone Road/Richmond Deviation (SH6), Queen Street, and Lower Queen Street and is constructed to the road boundary, abutting the pedestrian footpath.
- 5. The immediate surrounding area is generally characterised by commercial buildings and activities including food and beverage outlets, a car dealership, and other retail premises. Beyond this immediate area, it contains a mixture of commercial and industrial buildings and activities including service stations, auto repair and servicing activities, car sales, and food and beverage premises. Approximately 170m to the south along Gladstone Road and 170m to the west along Lower Queen Street are the closest existing visitor accommodation (Oxford Court Motel) and residential activities.
- 6. The adjoining signalised intersection is a highly trafficked multi lane route. It comprises two through lanes in each direction along Gladstone Road with turning lanes. Right turn movements from Gladstone Road east into Queen Street are, however, prohibited. The road environment is flat, with a straight alignment and a posted speed limit of 50 km/hr.
- 7. The application was publicly notified on 13 July 2024 and submissions closed on 9 August 2024. A total of 27 submissions were received, all opposing the proposal. Key issues raised by submitters were:
  - Traffic Safety Effects
    - Safety in relation to potential distraction to motorists and road users.
    - Safety in relation to left turn movements and high crash rate at intersection.
    - Efficiency of intersection resulting in increased congestion.

- Amenity Effects
    - Obstruction of views to the hills.
    - Visual clutter and cumulative effects.
    - Luminance levels.
    - Reduction in what is already a low area of visual amenity.
    - Height and dominance above building parapet.
    - Off-site advertising.
  - Other Effects
    - Light pollution including effects on dark sky.
    - Uncontrolled nature of off-site advertising.
    - Billboards do not serve any purpose.
8. A section 42A (s42A) of the Resource Management Act (the RMA or the Act) report was provided by Ms Woodbridge on 11 October 2024 assessing the resource management issues associated with the application, including addressing submissions, and providing a recommendation. Ms Woodbridge's initial recommendation, based on the proposal prior to subsequent amendments by the applicant was that the application be declined primarily on the basis that the potential traffic safety effects i.e. distraction, particularly in relation to the Lower Queen Street intersection leg, were not acceptable.
9. Following amendments by the applicant outlined above including reorientating the proposed billboard to face directly south-west, Ms Woodbridge issued an addendum to her s42A report on 31 October 2024 to address these changes. As a result, her recommendation is now that the application could be granted subject to conditions set out in her s42A addendum report.
10. Prior to the hearing, I undertook a site visit including walking the periphery of the application site and viewing it from the surrounding roads and properties for a distance of around 200m in all directions. I also drove through the immediate and wider area to gain a greater understand the context of the area from a driving perspective.

#### **DISTRICT PLAN PROVISIONS**

11. The site is zoned Central Business Zone under the TRMP. The site is also located within the Land Disturbance Area 1 overlay, and adjacent to Designation 120 which is applies to Gladstone Road/SH6.

12. Ms Woodbridge provided a detailed outline of the applicable rules and status of the activity in paragraphs 4.1-to 4.5 of her s42A report. The proposed activity, prior to amendments, did not comply with Rules 16.1.4.1(a), 16.1.4.1(b), 16.1.4.1 (c), 16.1.4.1(e)(i) and 16.1.4.1(e)(iii) of the TRMP. These rules primarily relate to the sign being located above the parapet of the existing building, and not being related to the activities being undertaken on the site. The resultant status of the proposed billboard activity is **restricted discretionary** as set out in Rule 16.1.4.2. In paragraph 4.6 of her planning evidence, Ms Collie agrees with the rules assessment in the s42A report.
13. Following the amendments proposed by the applicant, Ms Woodbridge, in her addendum s42A report confirmed that the application status remained the same as do the relevant matters of discretion.
14. I note that due to the applicant pursuing both the 'half parapet' or 'full parapet' option, all listed rule non-compliances remain the same. Had the applicant pursued only the full parapet option, then the proposed billboard would be set into the proposed parapet rather than located or extending above it, and therefore Rules 16.1.4.1(a), 16.1.4.1(c), and 16.1.4.1(e)(iii), all of which require a sign to be located in accordance with Figure 16.1B in the TRMP i.e. not located higher than the building parapet, would comply. However, even in this full parapet scenario, Rules 16.1.4.1(b) and 16.1.4.1(e)(ii) would still not be complied with and consequently the application would retain the same restricted discretionary status and same matters of discretion.
15. The relevant matters of discretion set out under Rule 16.1.4.2 are as follows:
  - (1) Location and legibility in relation to traffic safety, and
  - (2) Any amenity effects on the surrounding area, including size and duration.

#### **SECTION 42A REPORT**

16. In her s42A report, and addendum report, Ms Woodbridge considered the following issues were the key matters of relevance to this proposal:
  - Traffic Effects
  - Amenity Effects
17. She summarised her most recent conclusions in her addendum report, taking into account the applicant's assessment and advice from their experts in traffic and urban design, along with advice from Council appointed experts as follows:

- Traffic effects – Both Half and Full Parapet options - The amendments generally mitigate the adverse effects on traffic safety and reduce 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.
  - Amenity Effects – Half Parapet option – The design is not successful at mitigating the adverse effects on visual amenity. While the reorientation of the billboard does slightly reduce its visual bulk from Lower Queen Street, there remains a lack of integration with the building which will result in adverse effects on visual amenity, in particular when viewed from Lower Queen Street. This option therefore does not sufficiently mitigate the adverse effects on amenity.
  - Amenity Effects – Full Parapet option – This design is far more successful than the half parapet design as the full parapet has the effect of making the billboard part of the building which is a positive improvement. 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 other relevant TRMP rules). This baseline is 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. The full parapet design sufficiently mitigates the adverse effects on visual amenity from the billboard.
  - Amenity Effects – Light Spill - The amendment to reduce the nighttime maximum luminance levels is supported and any adverse effects associated with light spill / pollution can be appropriately managed via conditions of consent.
18. Ms Woodbridge’s analysis of the objectives and policies of the TRMP that relate to traffic safety focused on Objective 11.1.2 and more so Policy 11.1.3.11 which seeks to ensure that signs do not detract from traffic safety by causing confusion or distraction or obstruct the views of motorists or pedestrians. Her view is that the amended application now aligns with this policy direction.
19. With regard to amenity, Ms Woodbridge referred to Objective 5.2.2 and Policy 5.2.3.11, which generally seek that signage maintains and enhances amenity values, and that signs are enabled subject to safety, access and visual considerations. Ms Woodbridge

concluded that the amendments resulting in the full parapet option address any previous concerns that adverse effects had not been avoided, remedied or mitigated and, as such, now recommended that consent could be granted subject to conditions.

## THE HEARING

20. The hearing was held on 5 November 2024. I note here that the evidence of experts from the Applicant and Council, including addendums to the s42A report, had been pre-circulated and pre-read and therefore only summaries were provided at the hearing.

### Applicant

21. **Mr Berry** commenced the hearing on behalf of the applicant and presented legal submissions which outlined the application including amendments made since lodgement and the most recent 'full parapet' amendments which were advised to Council on 8 October 2024. It was noted that this option was now Bekon's preferred option although both the half parapet and full parapet options were confirmed as remaining available to me for consideration.
22. Mr Berry then outlined the consents applied for including status and assessment criteria with emphasis on the limited discretion available. The issues or themes of contention raised in both Council's s42A report and in submissions were summarised, and the relevant statutory tests were outlined, submitting that Part II did not need to be part of my considerations. He also noted that Bekon had made an effort to engage with the Dark Sky submitters but submitted that any effects were on the surrounding area and that that didn't include a site 16km away.
23. In response to my question regarding the half parapet option, Mr Berry agreed that I would only now consider that option in response to concerns raised by submitters in response to the full parapet option.
24. The first witness, **Mr Kern**, provided a summary of his evidence with a focus on issues relevant to luminance (or brightness) and illumination. With regard to luminance, this was explained as measuring the luminous intensity per unit area of light travelling in a given direction which is measured using a luminance meter and represented in values of candela per square metre  $\text{cd}/\text{m}^2$ . Illuminance on the other hand was explained as the amount of light spill falling on a surface, measured in lux which is equal to one lumen per square metre. His evidence noted that there was no luminance limit or rule in the TRMP



while there was an illuminance limit of 8 lux, which he confirmed would be met by the proposed digital billboard. Overall, Mr Kern confirmed his view that lighting effects associated with the digital billboard would be less than minor and were able to be controlled with appropriate conditions.

25. In terms of conditions, Mr Kern discussed the original proposed nighttime luminance limit of 250 cu/m<sup>2</sup> and noted that while this limit is used by many Councils, he had recommended a lower limit of 125 cu/m<sup>2</sup> to address the 'dark sky' issues raised by some submitters. He confirmed that the maximum daytime luminance level is proposed to remain at 5000 cu/m<sup>2</sup> which is necessary to ensure legibility particularly on sunny days.
26. I questioned Mr Kern on legibility at lower luminance levels, and he confirmed that at 125 cu/m<sup>2</sup>, the digital billboard would be fully legible at night including all colours. I also enquired as to how the digital billboard measures and adjusts to changing ambient light. Mr Kern confirmed that image luminance will be automatically controlled to eliminate glare in response to changing ambient light and in effect will dim images during overcast or night conditions to reduce the obtrusiveness of the billboard. For this reason, Mr Kern was of the opinion that using defined time periods e.g. 6pm to 6am, to apply luminance limits was not appropriate and instead any condition should refer to more generic descriptions such as 'sunset' and 'sunrise' to reflect the function of the luminance sensor system. He said that the change in lighting would be slow and would be unlikely to be perceived by drivers.
27. In response to further questions, Mr Kern confirmed that ambient light conditions would continue to be dominated by streetlights rather than vehicle headlights noting that headlights are typically directly downwards toward the road surface. With regard to sudden changes in luminance, the sensor was confirmed as being located near the top of the digital billboard with any luminance adjustments expected to be generally imperceptible. Mr Kern also considered the motel on the corner of Gladstone Road and Oxford Street at an approximate distance of 170m would not be impacted by the billboard luminance.
28. Mr Kern also answered a number of questions that were directed through myself by Mr Struthers, one of the submitters in attendance. These were dealt with at the end of Mr Kern's evidence in the interest of continuity although I have summarised these under Mr Struthers submission discussion in paragraph 66 below.

29. **Mr Compton Moen** provided a brief summary of his evidence with regard to the potential impact on visual amenity. His conclusions were that the proposed digital billboard would have minor to less than minor effects on visual amenity and that while it would be highly visible, it will not be visually dominant where set into the full parapet. He also considered that the digital billboard will provide some enhancement qualities by better defining the intersection and providing a greater level of legibility.
30. With regard to the half parapet option, Mr Compton Moen's view was that this option provided sufficient integration with the form and scale of the building through the use of a stepped approach. While able to support the half parapet option, his view was that the full parapet option was preferable as it provided for greater integration with the building and gives better scale and presence to the intersection corner, while also allowing the billboard to be visually subordinate to the host buildings form.
31. While supportive of both options, when questioned further, he reiterated that the full parapet option was certainly preferred in relation to visual amenity. I also questioned Mr Compton Moen as to whether he considered the full parapet option went so far as to enhance or improve amenity from the current level of amenity. He considered that this option would improve amenity, particularly in relation to scale and therefore considered that this would be a positive effect.
32. In relation to questions around obstruction of views towards the hills, Mr Compton Moen considered that the TRMP did not protect these views and as was evident through the permitted 10m building height limit in the TRMP. With this context, he reiterated that he considered the benefit of the parapet to outweigh the loss of any views.
33. I asked Mr Compton Moen what he would consider the most dominant feature in the vicinity to be, noting the nearby McDonalds signage was highly visible. His view was that while the McDonalds sign was visually prominent, the most dominant feature was the road corridor and associated infrastructure noting the general lack of built form in close proximity to this intersection.
34. I also sought clarification as to how close Mr Compton Moen considered the current receiving environment was to reaching any sort of 'tipping point' in relation to cumulative visual effects with regard to signage. He response was that due to this location being a non-sensitive environment, any tipping point would still be some way off.

35. Finally, I asked Mr Compton Moen whether he thought the introduction of the Hope Bypass would make a difference to the area. His view was that while Gladstone Road might become quieter, he would not expect it to revert to a sensitive location.
36. **Mr Munro** also provided expert evidence in relation to visual effects and explained his role as being that of a peer review or second opinion for the applicant as opposed to being involved with the preparation of the application documents.
37. Mr Munro confirmed that he accepted and agreed with the evidence of Mr Compton Moen in relation to the half and full parapet options. Mr Munro did note that he also agrees with Mr Milne that the original lodged proposal, with no parapet option, was not acceptable.
38. Mr Munro, in his summary, focussed on three key points. The first of these was cumulative effects, where after outlining three spatial scales starting from the site itself and working out to around 300m along the road corridor, concluded that while there were multiple signs in the area, few of these overlapped or created significant clutter from any view angle that would constitute significant cumulative effects.
39. Secondly, he discussed visual dominance and noted that he did not necessarily consider this to be an adverse effect and that just because something is big does not make it bad particularly when considered in relation to the permitted height limit for this zone.
40. Thirdly, he discussed the impact of the Hope Bypass and considered that regardless of a potential future 'downgrade' of Gladstone Road in terms of road status, it would still remain a busy road with a similar level of amenity.
41. I asked Mr Munro similar questions to Mr Compton Moen starting with whether he supported the half parapet option or the full parapet option. His response was that he supported both but had a clear preference for the full parapet option. He also confirmed that he saw the full parapet option as an enhancement to the current building and intersection and therefore saw this as a positive effect.
42. **Mr Carr** presented a summary of his evidence in relation to traffic effects, with a focus on the potential for driver distraction as a result of the digital billboard.
43. His summary touched on key factors that overseas studies show can potentially have an impact on driver distraction and road safety. These were:

- (i) Brightness - Where signage is too bright and can dazzle motorists' vision.
  - (ii) Refresh rate – Where a slower rate provides greater time for a driver to take in an image.
  - (iii) Use of animation – Where some animation and moving images can be distracting.
  - (iv) Sequential imaging – Where images lead the viewer to a further image can unnecessarily delay or distract the motorist
  - (v) Transition method - Where a shorter transition such as the use of a 0.5 second 'dissolve' avoids the merging of images.
44. Mr Carr noted that the above factors are generally more heavily controlled in New Zealand compared to overseas countries, through the use of planning rules and/or resource consent conditions. His concluding view was that the nature and frequency of reported crashes would be unlikely to be influenced by the presence of the proposed digital billboard given the controls and measures proposed by the applicant.
45. As part of his evidence, Mr Carr presented details of his own independent research which concluded that in a New Zealand context, crash rates are not shown to increase once a billboard is installed. I asked Mr Carr whether this had been peer reviewed, to which he responded that it hadn't been published or tested in court, but at the same time had never been strongly opposed since it was produced. When asked how much weight Mr Carr felt could be afforded to this, his view was that the results of this research are not material to his conclusions which are supported by the balance of his evidence.
46. Mr Carr's evidence referred to there being no reported crashes in which distraction from a consented digital billboard was cited as the contributing factor. I questioned Mr Carr as to whether he considered drivers that are distracted by signage, or a billboard would readily admit to this being the reason. His view was that it is more likely than not that they would with examples of people using mobile phones and even staring at scenery being recorded causes for crashes.
47. In response to my question on whether the speed environment is a major factor for driver distraction, his view was that speed is of some relevance with lower speed environments generally being safer due to there being more time to avoid potential conflict. I also questioned whether there was a material difference between non-site related signage compared to site related signage. Mr Carr noted that non-site related signage is much more heavily controlled by Councils but from a traffic safety perspective, the main

difference is that non-site related signage, such as digital billboards, provided more for changes in images which is why controls around dwell time are appropriate.

48. Finally, I queried Mr Carr as to what difference might be expected as a result of the Hope Bypass proceeding. His view was that this would reduce through traffic along Gladstone Road with it generally reverting to serve a greater proportion of local traffic with greater familiarity of the local road environment and ultimately the road environment should therefore improve from a safety perspective. Mr Carr finished by clarifying some minor matters in relation to the wording of conditions, in particular querying whether having a condition in favour of approval by a Council compliance officer was appropriate. This matter is discussed further in relation to conditions later in this decision.
49. **Mr Harries** also provided expert evidence in relation to traffic effects and also explained his role as being that of a peer review or second opinion for the applicant as opposed to being involved with the preparation of the application documents. Mr Harries confirmed that following his review, he saw no traffic engineering or road safety reasons that would preclude the establishment of the amended digital billboard.
50. When asked about Mr Carr's independent research and whether he found it useful, Mr Harries replied that he did and that it cannot be ignored in terms of being of relevance and was part of the mix of information. He saw the best value in that it provided a New Zealand context which was much more relevant as opposed to comparing this context with overseas examples.
51. Mr Harries also spoke about Australian based examples and studies which he considered to be much more similar to New Zealand scenarios. He noted that because someone looks at something, this is not in itself a distraction. Rather a distraction is something that causes a change in the drivers' behaviour or performance and as far he can determine from the research, a digital billboard does not result in changes to driver behaviour that results in a deterioration that creates traffic safety effects.
52. I also questioned Mr Harries on whether all signs essentially presented similar traffic safety risks. His response was that advertising signage was a discretionary choice compared to traffic signage which was not. Therefore, motorists will always pay close attention to traffic signage but will ultimately use their discretion as to what advertising signage they choose to view. As a result, he considered that controls on the number of words or lettering heights for advertising signs are not particularly helpful and advertisers typically design their signage to be easily read and absorbed quickly in any case.

53. **Ms Collie** was the final witness called by the applicant and summarised the conclusions of her planning evidence. Ms Collie confirmed that the status of the activity and the matters of discretion had not altered as a result of the amendments to the application.
54. Ms Collie confirmed that her view was that the TRMP is enabling of signage in commercial areas. She noted that there are no non-complying signage rules, even for off-site signage, and the matters of discretion are very limited.
55. With regard to Policy 11.3.1.11, I questioned Ms Collie as to whether she considered this policy, which uses the words 'do not detract' in terms of traffic safety should be read as an avoid policy. Her response was that the wording is not equivalent to an avoid policy and that it provides quite specific direction in the balance of the policy as to what needs to be considered in terms of traffic safety. Her view was that this policy therefore provides a consenting pathway provided the matters listed in the policy are met.
56. In terms of the options discussed, Ms Collie considered that from a traffic perspective, it was immaterial as to which option is preferable. From an urban design perspective, she considered the full parapet was the ideal solution although there is no requirement under the RMA to find a perfect solution and the half parapet or full parapet are both acceptable. She noted however, that the full parapet option had greater positive effects and lesser adverse effects and therefore represented a superior amenity outcome particularly in terms of bringing greater structure and legibility to the corner site.
57. I also sought some minor clarifications from Ms Collie on conditions which are discussed and addressed in more detail later in this decision.

#### Submitters

58. **Mr Beard** spoke to his submission, noting his experience as a driving instructor, and reiterated his primary concerns were around the adjoining busy intersection being a high risk for accidents and the potential for the digital billboard to distract drivers. In this context he noted that driving was a complex task.
59. I asked Mr Beard whether he considered the most recent amendments by the applicant to reorientate the billboard altered his view. He response was that it did not with distraction still considered the primary issue.
60. **Mr Bradley**, Chair of Top of the South Dark Sky Committee, spoke to his submission which was centred on concerns in relation to increased light pollution and the impact this would have on the ability of the committee to protect the night sky which he considers can be

affected by light sources up to 25km away. When asked to provide more detail on the Dark Sky Park, Mr Bradley confirmed that it is an internationally accredited dark sky park, located approximately 16 km away in Wai-iti. He noted that the Wai-iti Dark Sky Park has been subject to increases in light spill in recent years and that if this continues to occur, they risk losing their accreditation which is based around maintaining at least 21 pixels per arc second of light.

61. Mr Bradley also noted that there is a Memorandum of Understanding (MoU) with the Council in relation to the dark sky park, which is based around putting in place measures such as lighting management plans to help protect the park although the Council have not made any progress in this regard. He also acknowledged that there were no District Plan provisions protecting the Dark Sky Park. He remained opposed to the proposal including the most recent amendments made by the applicant including lowering the maximum nighttime luminance level of 125 cu/m<sup>2</sup>. His view was that a maximum of 80 cu/m<sup>2</sup> is in line with the Dark Sky International recommendation for 'L3 lighting'.
62. **Mr McGurk** spoke to his submission via video link and reiterated his concerns in relation to the crash rate at the adjacent intersection with the presence of the billboard adding to the distraction risk, despite the most recent amendments by the applicant.
63. From an amenity perspective, Mr McGurk was concerned with the views toward the Richmond Ranges being obstructed along with the currently degraded amenity in this location being dominated and further degraded by the digital billboard. Mr McGurk also noted that the only other similar billboard in the wider Nelson and Tasman area was located near Nelson Airport and that they are not otherwise common in the region. When questioned on the permitted baseline in terms of building height, this was acknowledged although his concerns remained with regard to traffic safety and visual dominance in relation to open space, although he acknowledged the proposed changes were an improvement.
64. **Mr Ferguson** appeared via video link and spoke to his submission. He noted that he owns the adjoining property/premises directly to the east with his primary concerns being that the billboard would be detrimental aesthetically i.e. would not enhance the area and be a distraction to drivers and pedestrians negotiating the busy intersection and crossing points. He also noted that he considered there was an element of unfairness to the proposal with the billboard dominating businesses signage next door and not providing an even playing field.

65. Mr Ferguson was asked whether his concerns that the billboard was designed to attract attention effectively applied to any sign. He considered that the use of transitional images used by the billboard is a notable difference compared to static signs given its ability to attract or distract. Mr Ferguson was also asked to describe the local amenity in the area and acknowledged that it was not high and was more reflective of its purpose as a commercial/business area. However, he considered that a lower amenity was no reason to make the amenity worse which in his view would occur with the introduction of a billboard.
66. **Mr Struthers** spoke to his submission, which initially began by directing a small number of questions through myself which were then relayed to Mr Kern (the applicant's lighting expert) and Mr Jerard (on behalf of Bekon), who responded. These primarily included seeking clarifications around the functioning of the billboard and its luminance sensor during rain, whether it would be affected by dust or other material like bird droppings, and how luminance would be monitored at night when other signs are switched off during business closure hours. It was confirmed by Mr Jerard that the luminance sensor is recessed or set into housing to protect it from the elements and any other factors that would otherwise require special maintenance or cleaning. It was also confirmed by Mr Kern that luminance levels would continually adjust in relation to the ambient lighting and that even with lit signage in the area being turned off, the ambient lighting in the immediate area would continue to be dominated by street lighting and therefore other 'lit signage' would be expected to make little difference.
67. The balance of Mr Struthers presentation included speaking to a number of photos and images in relation to views of the dark sky from the Mapua area where he lives and the risk from aggregation of light spill, along with concerns in relation to amenity and traffic effects related to driver distraction. These matters were canvassed in a similar manner to those raised by prior submitters. Mr Struthers also emphasised the burden of monitoring the billboard would fall to the Council.
68. I note that Mr Struthers also raised concern in relation to the ability for software used in digital billboards to track the identity of information or persons in the area. I outlined to Mr Struthers that this was not a matter that was relevant to the limited discretion available in considering this application and could not be taken further.
69. **Mr Talbot**, on behalf of New Zealand Transport Agency / Waka Kotahi then appeared via video link noting that NZTA did not have anything specific to present and were no longer opposed to the proposal now that the applicant had amended the application to



reorientate the billboard to the south-west only. Mr Talbots remaining concern was in regard to any agreed conditions, and he wished to ensure that should there be any further changes, that NZTA could consider and respond to those.

Council Officers

70. **Mr Milne**, via video link, confirmed that he had reviewed the visual assessments of the applicant on behalf of the Council including the original design, the half parapet option, and most recently the full parapet option. He was not supportive of the original design nor the half parapet option noting that he considered the latter did very little to further mitigate his concerns with regard to the visual effects. These concerns primarily centred on the billboard having poor integration with the building (original proposal) and physically and visually presenting more edge and corner to the skyline due to the stepped nature of the parapet (half parapet option).
71. For the full parapet option, Mr Milne considered that this represented a well-designed solution that would visually integrate into the form and shape of the existing parapet/roof line of the building and would no longer appear as a 'tack on' to the one storey building. He confirmed that he supported this option and that it would result in a more visually pleasing outcome.
72. I questioned Mr Milne as to what level of amenity he considered the area to hold. His view was that the amenity was not particularly high, particularly compared to the town centre and was generally a varied and busy location. Mr Milne also confirmed that he considered that the full parapet option as one that would ultimately increase amenity in the immediate area.
73. **Mr Fon**, who reviewed the application on behalf of Council from a traffic perspective, made some minor clarifications to his earlier review including confirming the adjoining intersection was in fact the second highest intersection in terms of crashes for a posted speed limit of 60km/hr or less as opposed to being the highest. However, he confirmed that the adjoining intersection still sits in the upper 30% of comparable intersections nationally in terms of crashes.
74. Mr Fon also clarified that the use of the word 'poor observation' in his assessment was a term from the CAS database rather than his own term.
75. In response to questions, Mr Fon confirmed that views from Queen Street toward the billboard would be very limited and most likely would be limited to the first 2-3 cars in the traffic queue in terms of being able to view it.

76. With regard to my question on what the referenced existing safety deficiencies at the intersection were, Mr Fon confirmed that they are only apparent in terms of the reported crash history. The only physical work that has occurred in the last 5 years that he was aware of was some changes to light phasing. He noted that the intersection is very busy, which in itself is not a definitive factor, but the crash history is an indication that motorists are struggling with it and making poor choices which is difficult to rectify.
77. I asked Mr Fon whether he would have expected the CAS Crash data to start showing a trend, if there was one, as a result of distraction from signage or advertising. He considered that a trend should have begun to emerge by now given the database has existed since 2012. When questioned as to whether drivers would admit to crashing as a result of distraction from signage, Mr Fon responded by saying that there was no reason why someone would not admit to the reason given other distractions are often recorded.
78. Finally, in terms of the amended application Mr Fon confirmed he was now comfortable with the proposal from a traffic safety perspective, particularly as his main concern was with the Lower Queen Street approach which has been rectified by the reorientation of the billboard to the south-west and the increase in dwell time.
79. **Ms Woodbridge** appeared on behalf of the Council and prepared the section 42A report with subsequent addendum. In terms of Policy 11.1.3.11, Ms Woodbridge agreed that this was not a true avoid policy which if it were, would typically be expected to equate to a discretionary or non-complying status.
80. In relation to the risk of driver distraction, and the evidential basis of the various traffic experts, Ms Woodbridge also accepted that distraction in itself did not necessarily lead to a safety issue.
81. With regard to the 'tipping point' being reached with regard to cumulative effects, Ms Woodbridge confirmed that her earlier view, based on the original proposal without the parapet, was that there was a more prominent effect on the immediate surroundings. However, with the greater integration into the parapet now proposed, this has addressed her earlier concerns.

#### Post Hearing

82. I adjourned the hearing to enable the applicant to provide a written right of reply. The hearing was formally closed on the 18 November 2024 upon receipt of correspondence including the right of reply, updated conditions and supplementary statement from the applicant's planner, Ms Collie.

Applicant's Right of Reply

83. Mr Berry provided the substantive reply and an updated set of draft conditions which had been reviewed by the applicant, Council and NZTA with a view to providing one consistent set of agreed conditions. Of the draft conditions provided, two remained in minor contention between Ms Collie and Ms Woodbridge, with regard to the wording recommended. A short secondary planning statement was provided by Ms Collie to provide her reasoning with regard to these two conditions. A copy of communications from Mr Talbot, NZTA / Waka Kotahi was also provided which confirmed that they were comfortable with all updated conditions and had no particular interest in the two conditions where wording remained in contention.

84. In his right of reply, Mr Berry addressed a number of questions including:

Does the full parapet option 'significantly alter' the character of the proposal?

85. In relation to the issue of scope for the change now proposed Mr Berry submitted that the addition of the full height parapet had not changed to the extent that a digital billboard of the same character and dimensions is still applied for, and that the parapet matter is addressed by the permitted baseline established by the TRMP which enables the parapet to be established as a permitted activity. Mr Berry considers that the amended proposal meets the tests established in the *Darroch v Whangarei DC* case.

Are there any Environment Court decisions in which the issue of 'precedent' was addressed in the context of an RDA application?

86. Mr Berry cited *Campbell v Napier City Council* and *Kirton v Napier City Council* noting that there are observations from the judges around the concept of precedent as it relates to restricted discretionary activities and that where precedent is not raised as a matter of discretion in the District Plan, there is no power to refuse consent arising out of precedent concerns.

87. Mr Berry submitted that there is sufficient authority to conclude that there is no jurisdiction, in the context of Bekon's application, to consider the issue of 'precedent' (or related issues relating to plan integrity etc) because this potential effect has not been specified as one of the two matters of discretion (traffic safety and local amenity) that needs to be addressed under Rule 16.1.4.2.

Whether positive effects can be considered in the context of an RDA application?

88. Mr Berry provided commentary including reference to the definition of the term 'effect' under the RMA which includes 'any positive or adverse effect'. He submitted that the restricted discretionary activity status is simply a mechanism by which a consent authority restricts the matters it can consider when assessing an application of that status and that there is nothing in section 87(3) that suggests, or context created by the applicable rules that suggests or implies that the consent authority is restricted only to assessing potential adverse effects.

Is it lawful to have a condition relating to approval by a Council monitoring officer on resemblance to a traffic light or signal?

89. This matter was in relation to the portion of the proposed condition as follows:

*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 or cause confusion with a traffic control device in the opinion of Council's Team Leader – Compliance and Investigation (Land and Air).*

*(c)...*

90. The issue I raised was in relation to whether it was lawful for a Council team leader or traffic expert to make the judgement as to whether an image complies with this requirement or not. The agreement now reached between the applicant and Council is that the condition is important and should remain but with the words 'in the opinion of Council's Team Leader – Compliance and Investigation (Land and Air)' removed. NZTA/Waka Kotahi are also satisfied with this approach.

Other Issues – Right of Reply

91. In addition to addressing the above questions, Mr Berry also provided commentary in relation to specific matters raised by submitters. These are summarised briefly below.

Lighting – Right of Reply

92. In response to submitter concerns with regard to impacts on the 'dark sky'. Mr Berry set out the TRMP matter of discretion related to amenity as 'any amenity effect on the surrounding area, including size and duration. Mr Berry submitted that the surrounding area could be defined as 'that is near or around something' and that impacts on the dark sky raised by submitters will not extend to the area where these submitters live or, in the

case of Wai-iti Dark Sky Park, is more a matter that requires the Council to take action in accordance with an MOU it holds with the Wai-iti Dark Sky Park. Regardless, he said that it is the view of the applicant that matters related to luminance and impacts on the night sky have been addressed by Mr Kern.

93. Mr Berry submitted that other lighting matters had also been addressed including agreed amendments to the condition related to the monitoring of daytime and nighttime maximum luminance levels. This agreement has removed the reference to a specific timeframe for what constitutes 'daytime' and 'nighttime' and rather refers to 'sunset' and 'sunrise' noting that luminance will be controlled by sensors that continually adjust rather than change based on a set time of the day.

#### Urban Design – Right of Reply

94. Mr Berry outlined that matters with regard to visual amenity and urban design were well canvassed at the hearing and that there were no further issues raised by submitters that required specific attention. He reiterated that in response to my questioning, both Mr Munro and Ms Collie considered that the full parapet option would generate positive effects on amenity in the area.
95. With regard to the half vs full parapet option, Mr Berry set out that the full parapet is the preferred option on the basis of traffic safety and urban design evidence. He submitted however that the half parapet option was preferred by the applicant as it will have significantly less financial implications and therefore this option has also been requested to remain in consideration for approval noting that it was ultimately supported by Mr Compton-Moen and Mr Munro whereas Mr Milne remained opposed.
96. Reference was made to the responses provided by Mr Munro with regard to whether a cumulative effects 'tipping point' has been reached in this area. It was noted that Mr Munro was of the view that this scenario has not been approached by this proposal and that Ms Woodbridge was asked the same question and agreed with Mr Munro. A response was also made with regard to views to the Richmond Hills noting that they are not protected under the TRMP and that they could be obscured further by buildings that were established as permitted activities.
97. Finally, with regard to what impact the Hope Bypass could be expected to have on the area, Mr Berry noted that Mr Munro and Mr Carr both stated that while a reduction in through traffic could be expected, little change to the sensitivity of this location would be expected to occur.

Traffic Safety – Right of Reply

98. Mr Berry submitted that there was no traffic evidence to contradict the expert evidence and opinions of Mr Carr, Mr Harries, and Mr Fon and that all three traffic experts agreed that the potential traffic safety effects generated by the proposed digital billboard, will be acceptable.
99. Reference and acknowledgement were made to Mr Beard's experience as a driving instructor of 24 years but also to Mr Harries who has specialist training as a crash investigator and his experience and assessment of over 350 digital signs and billboards throughout New Zealand.
100. In response to issues raised by some submitters, including Mr Struthers and Mr Beard, in relation to the poor safety record of the adjacent intersection and the potential for driver distraction, Mr Berry outlined that while billboards are designed to attract attention to pass information to drivers and pedestrians who view it, this does not mean it is a source of distraction and therefore a traffic hazard. He submitted that there are a range of different objects or features e.g. interesting buildings, historic or geological features, that while visible are not traffic hazards.

Planning Considerations – Right of Reply

101. Mr Berry confirmed that there were no substantive outstanding issues remaining between the planning experts for the applicant and Council. With regard to the conditions, reference was made to the supplementary planning statement of Ms Collie which seeks to address the two conditions where there is not full agreement with Ms Woodbridge on wording. These are discussed further in paragraphs 137 – 145 of this decision.
102. Mr Berry concluded that given the high degree of agreement between the planning experts and absence of evidence to the contrary, that the proposed digital billboard is consistent with the intent of the TRMP and sound planning principles.

**DISCUSSION**

Statutory Context

103. The application is a restricted discretionary activity and therefore I am limited to considering only the matters of discretion, in this case being:

- (1) Location and legibility in relation to traffic safety, and

- (2) Any amenity effects on the surrounding area, including size and duration.
104. I am required to consider the matters set out in sections 104(1) (subject to Part 2) and 104C, given the restricted discretionary status, of the Act. This involves an assessment of the actual and potential effects on the environment of allowing the activity based on the matters of discretion identified above, an assessment of the relevant plan provisions of the District Plan and any other matters. In making my decision, I am able to impose conditions under s.108 should I decide that consent can be granted.
105. In undertaking my assessments, I must disregard any adverse effects on those parties who have provided their written consent in accordance with s.104(3)(a)(ii). No written consents from any person have been obtained by the applicant.
106. I may also disregard any adverse effect of an activity on the environment if the TRMP permits an activity with that effect in accordance with s.104(2) of the RMA (known as the 'permitted baseline').
107. In this regard, Ms Collie, Mr Compton Moen, and Mr Munro for the applicant along with Ms Woodbridge and Mr Milne for Council all have recognised and placed some reliance on the permitted baseline in their assessments. All are in agreement that the 10m permitted building height for any building within the Central Business Zone is relevant. I note that both the half parapet and full parapet options are lower than this 10m height limit, with the full parapet option being up to 9.3m to the top of the parapet structure.
108. I accept the respective positions of the planning and urban design experts that the permitted baseline is relevant and should be taken into account, particularly in consideration of amenity effects in relation to the size and appearance of the full parapet and the potential of the proposed digital billboard and parapet structure to obstruct current views toward the Richmond Hills.
109. Finally, I accept that I do not need to separately consider Part 2 of the Act in the context of this application. In this regard I note that the Environment Court in *Blueskin Energy Limited v Dunedin City Council*<sup>1</sup> addressed this matter comprehensively stating:

*"It appears, following the High Court decision of R J Davidson, that s 104(1) provides for the consideration of Part 2 in a particular way. The consent authority may have recourse to Part 2 when considering the application and submissions under s 104(1); but not afterwards as a separate exercise as per the "overall judgment approach". We*

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<sup>1</sup> [2017] NZEnvC 150

*suggest [an] inherent risk under the overall judgment approach is that the decision-maker may take into account an irrelevant matter - or more likely fail to take into account a relevant matter- including in particular the weighted findings under s104(1)(a), (b) and (c).*

*The circumstances where there may be recourse to Part 2 is where there is invalidity, incomplete coverage or uncertainty of meaning within the planning instruments. ...”*

110. Given that I was not provided with any argument to the contrary, I am satisfied that there is no invalidity, incomplete coverage or uncertainty of meaning within the TRMP nor are there any higher order instruments of relevance to this case. I therefore accept that I do not need to directly address Part 2 when considering this proposal.

#### **Actual and Potential Effects on the Environment**

111. The key effects of the proposal I consider are aligned to those outlined by the applicant and Council being traffic safety and visual amenity as set out in the relevant assessment matters above. I have discussed these in turn below.

##### Traffic Safety

112. Dealing with the traffic safety of the proposed sign itself, the evidence behalf of the applicant (Mr Carr) including a review by Mr Harries, and the review on behalf the Council (Mr Fon) all agreed that any adverse effects with regard to traffic safety and the potential for driver distraction have now been suitably addressed regardless of which parapet option is chosen. This consensus has been achieved through the reorientation of the billboard from its original position at an angle to the adjacent intersection, to its amended position facing directly south-west and with amendments to increase dwell time and reduce the maximum luminance levels during nighttime conditions.
113. While I acknowledge that a number of submitters had concerns about the impact of the proposed billboard on traffic safety particularly in regard to driver distraction the evidence simply does not support this assumption and I agree with the three traffic experts that given the amendments to the original application, any effects on traffic safety will be no more than minor.

##### Amenity

114. Dealing with amenity in a general sense first, I agree with Mr Berry that matters with regard to visual amenity and urban design were well canvassed at the hearing and there were no further issues raised by submitters that required specific attention beyond those addressed at the hearing. The primary amenity theme that arose was with regard to the



ability for the digital billboard to integrate to an acceptable level with the building on which it is proposed to be located and also within the surrounding area.

115. I note that all urban design experts were in agreement with regard to the effects of the full parapet option. However, for the half parapet option, the applicant's urban designers (Mr Compton Moen and Mr Munro) and planning expert (Ms Collie) considered that this was an acceptable outcome while the Council urban design (Mr Milne) and planning expert (Ms Woodbridge) did not consider that this option sufficiently mitigated the effects of the proposal.
116. In considering the half parapet option, I have considered the evidence raised and am minded to agree with the opinions of Mr Milne and Ms Woodbridge that the half parapet option will not result in a well-integrated outcome and would ultimately result in a disjointed feature from the architecture of the building, or as Mr Milne set out in his review, would appear as an obvious 'tack on' feature to the one storey building. I also note that the protrusion of the digital billboard above the building parapet that would occur with the half parapet option does trigger additional rules within the TRMP compared to the full parapet option. Therefore, I am of the view that there is some direction provided within the TRMP that a scenario such as the half parapet option would represent a less desirable outcome.
117. As for the full parapet option, Mr Milne considered that this represented a well-designed solution that would visually integrate into the form and shape of the existing parapet/roof line of the building. He confirmed that he supported this approach and that it would result in a more visually pleasing outcome. I agree with his assessment and the aligning assessments of Mr Compton Moen and Mr Munro in relation to the full parapet option.
118. I am also mindful of the permitted baseline as it relates to bulk and location in the Central Business zone which provides for 100% site coverage, a height of 10m, and no setbacks from other Central Business zoned land. Therefore, the full parapet option (minus the billboard) could be constructed as a permitted activity in its own right.
119. In my opinion the full parapet option would result in a more integrated outcome, helps better define the built form of this strategic corner and has a more positive effect on the amenity of the area. While I acknowledge there is increased costs to the applicant of the full parapet option, in my view the greater level of amenity and appearance provided by this option which importantly includes the billboard being 'built into' the parapet overrides that concern in terms of meeting the relevant matter of discretion in this case.

120. Turning to lighting impacts, I acknowledge that this was a specific concern of a number of submitters particularly in relation to potential impacts on the dark sky. However, I am aware that there are no specific overlays or provisions within the TRMP that recognise or provide for the Wai-iti Dark Sky Park or specifically restrict luminance in relation to this matter within the Central Business Zone. While there may be an MoU in place between the Wai-iti Dark Sky Park and Council as raised by Mr Bradley, and that this is also referenced in Council's Moutere Waimea Reserve Management Plan, there is limited, if any, reference or standing within the TRMP given the limited discretion available for this application.
121. I also note that under Clause 16.1.20 which lists out the principal reasons for signage rules, for 'illumination after dark' is aimed at minimising conflict with living environments while for 'light focussing' this is aimed as managing misdirected external lighting which has the potential to compromise living and traffic environments. Therefore, there is no reference to managing effects on the Wai-iti Dark Sky Park in the TRMP. In my view a private or Council initiated Plan Change or future District Plan Review Process would be required to address this matter. As it currently stands, I agree that the 'surrounding area' reference in the matter of discretion is limited in its context to the area in the relative vicinity of the proposed billboard and could not be construed as being up to 16km away.
122. With the above said, I do consider that as the applicant has amended their originally proposed nighttime luminance limit of 250 cu/m<sup>2</sup> to a lower limit of 125 cu/m<sup>2</sup>, this will assist with addressing the 'dark sky' and other glare effects concerns raised by some submitters. On this basis, I accept the evidence of Mr Kern that effects will be less than minor and that lighting effects will be controlled to acceptable values in keeping with ambient light conditions.

#### Positive Effects

123. While discretion is limited, I agree with Mr Berry that positive effects can be considered particularly in relation to amenity effects. I note that all expert urban designers and planners agreed on some level that the full parapet option, unlike the half parapet option, would result in enhanced amenity compared to the existing environment and therefore result in positive effects on this corner of the intersection. These effects were primarily explained as being a result of greater integration with the building and greater presence of the building frontage being achieved.

124. I accept this position and agree that some positive effects will result from the full parapet option.

**Overall Conclusion on Effects**

Half parapet option

125. I consider the proposed half parapet option will have less than minor traffic effects but more than minor effects on visual amenity. Given this conclusion and the initial preference of the applicant for the full parapet option, notwithstanding the economic reasons for the half parapet option raised in the right of reply, I have not taken consideration of this option further in this decision.

Full parapet option

126. I consider that the full parapet proposal will have less than minor traffic effects and no more than minor visual amenity effects, while some positive visual amenity effects will be generated in relation to improved integration with the existing building and visual presence on this corner site.

**Objectives and Policies**

127. Ms Woodbridge detailed a small suite of objectives and policies of the TRMP she considered of relevance in her s42A report. I have focussed on those which I consider to be of most relevance.
128. With regard traffic matters, the key provisions are Objective 11.1.2 and Policy 11.1.3.11. Objective 11.1.2 broadly seeks a safe and efficient transport system where any adverse effects of subdivision, use and or development of land on the transport system are avoided, remedied, or mitigated. Policy 11.1.3.11 is more direct in relation to signage and seeks that signs do not detract from traffic safety by causing confusion, or distraction to, or obstructing the view of, motorists or pedestrians.
129. My earlier conclusions considered that any adverse effects associated with traffic effects, particularly the potential for driver distraction to impact on traffic safety, will be less than minor taking into account the amendments now proposed by the applicant along with associated conditions to control effects with regard to luminance and image dwell time. Consequently, I consider that the proposal will not detract from traffic safety through either distraction or obstruction of views for motorists or pedestrians. I therefore consider the proposal is generally consistent with this traffic related objective and policy.

130. With regard to amenity, the key objective is Objective 5.2.2 which seeks to maintain and enhance amenity values on sites and within communities throughout the District. The relevant directive policies in terms of signs are Policy 5.2.3.9 which seeks to avoid, remedy or mitigate the adverse effects of signs on amenity values, and Policy 5.2.3.11 which seeks to enable a range of signs in commercial areas, subject to safety and access needs and visual considerations.
131. As per my earlier conclusions, I consider that the full parapet option will sufficiently mitigate any adverse effects on amenity values and result in a well-integrated outcome in this location. Any effects in relation to lighting will be managed through appropriate conditions while the enabling function of Policy 5.2.3.11 will be met noting that it provides for a 'range of signs in commercial areas' such as the application site.
132. Overall, I am satisfied that the proposal is generally consistent with the above objectives and policies.

#### **Other Matters**

133. The issue of precedent was touched on by both Ms Collie and Ms Woodbridge in response to some submitters who raised this as a concern. Ms Collie's view was that precedent was not an issue as (i) any other application would have to be assessed on its own merits and the specific issues arising from that process would need to be properly evaluated at that time and (ii) the proposal is not at odds with the relevant policy such that approval would create an unexpected outcome.
134. Ms Woodbridge in her section 42A addendum generally agreed with Ms Collie on this matter but did note that she considered that the traffic research could 'lean into' precedent effect if it were held up in other locations in lieu of a site-specific traffic assessment. Following questioning on this, Ms Woodbridge did confirm that this approach may not readily sit under precedent but that her key point was that the research should be considered alongside a site-specific assessment rather than in isolation.
135. Overall, I am less inclined to consider that precedent is a relevant factor for this application. Firstly, precedent is not listed as a specified matter of discretion under Clause 16.1.4.2 of the TRMP. Secondly, the status of the application as a restricted discretionary activity places emphasis that the activity is, at least, broadly anticipated by the District Plan, otherwise the status would more likely be non-complying or at least discretionary. Thirdly, the proposal is considered to be generally consistent with the relevant objectives and policies of the TRMP and therefore cannot be seen as undermining its integrity.

### **Overall Conclusion**

136. Overall, I have concluded that the actual and potential effects on the environment associated with the proposal, subject to conditions being met, will be no more than minor and that it is generally consistent with the relevant objectives and policies of the District Plan and in this context meets the requirements of Part II of the Act.

### **Conditions**

137. An updated set of draft conditions was provided with the applicant's right of reply. These have been reviewed by the applicant, Council and NZTA with a view to providing one consistent set of agreed conditions. Of the draft conditions provided, only two remain in minor contention between Council and the Applicant with regard to the wording recommended. NZTA / Waka Kotahi have also confirmed they are comfortable with all updated conditions and had no further interest in the two conditions where wording remained in contention.

138. Turning to the conditions that remain in contention, they concern proposed Condition 5 in relation to the reference to the height of the parapet structure and proposed Condition 31 in relation to the review condition wording.

139. The draft wording of proposed Condition 5 is set out below:

*(5) The parapet shall not increase the overall height of the building to more 9.3 metres, measured above the ground level. Height shall be measured in accordance with the definition in Chapter 2 of the Tasman Resource Management Plan, quoted below: ...*

140. Ms Woodbridge has commented that this condition is preferred to reflect a standard approach from TDC although she does acknowledge that the general 'Condition 1' will require construction in accordance with the approved plan regardless. Mr Collie's preference is to not include this condition as it will be covered by Condition 1, and it will remove compliance uncertainty if the building owner wished to put on a second storey or construct to the permitted height in the future.

141. I consider that Condition 1 will provide the required coverage in terms of the parapet height in relation to ground level and that Condition 5 does not add any real benefit while also potentially introducing some uncertainty for potential future scenarios as highlighted by Ms Collie. I have therefore removed proposed Condition 5 from the condition set and renumbered the balance of conditions accordingly.

142. Turning to proposed Condition 31, this concerns the general 'review' condition. The structure of the review condition is largely the same under both versions with the key difference being in clause (b). The wording sought by Ms Collie, which is more directly focussed on dwell times of the image, on behalf of the applicant is as follows:

*(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.*

143. The wording sought by Ms Woodbridge on behalf of Council, which reflects the more standard wording used by TDC, is as follows:

*(b) to address the effects from the sign on the safe and efficient operation of the local road network including effects on vehicles, pedestrians, cyclists and other traffic.*

144. I have considered both options and am of the view that the wording proposed by Ms Woodbridge is preferable as I consider that there is a wider ambit of discretion in the traffic safety matters and associated conditions that could be applicable in the unlikely event of a review being initiated.

145. I have reviewed the remaining conditions and have no further comments or amendments to make.

#### **DECISION**

146. For the foregoing reasons, land use consent RM230535 to establish and operate a single-sided digital billboard for off-site advertising at 332 Queen Street Richmond is **granted** pursuant to sections 104C of the Act subject to the conditions set out in Appendix 1 below.



**DATED THIS 4<sup>TH</sup> DAY OF DECEMBER 2024**

**DEAN CHRYSTAL**

**COMMISSIONER**

**LAND USE CONSENT – RM230535 - CONDITIONS**

**General**

1. The activity shall be in accordance with the application dated 21 May 2024 and as shown on approved Plan A RM230535 [Sheet 3 of DCM Urban Design and Visual Impact Assessment Graphic Attachment, Revision O dated 17 October 2024]. Where there is any apparent conflict between the information provided within the application and condition of this consent, the conditions shall prevail.

***Advice Note:***

*For the avoidance of doubt Plan A RM230535 includes a full parapet design which was not included within the application dated 21 May 2024. The Plan therefore supersedes the application in respect of the building parapet.*

2. The consent holder shall advise the Council's Team Leader - Compliance & Investigation (Land and Air) (via [info@tasman.govt.nz](mailto:info@tasman.govt.nz)) of the date of the commencement of the operation of the billboard.

**Parapet**

3. Prior to the erection of the billboard the Consent Holder shall construct the parapet shown on approved Plan A RM230535.
4. The parapet shall be finished in a colour to closely match the existing building and shall be permanently maintained in the same colour as the existing building.

***Advice Note:***

*For the avoidance of doubt the parapet does not need to remain the colour shown on the approved plans but should be maintained as the same colour as the remainder of the building, i.e. if the building is repainted the parapet will be repainted in the same colour.*

**Sign size**

5. The sign shall be no greater than 24.5 square metres in area.
6. The digital display shall be no more than 3.5m in height and 7m in width. The top of the digital display shall be no more than 8.8 metres above ground level.

***Advice Note:***

*For the avoidance of doubt, ground level is defined in the Tasman Resource Management Plan as follows:*

*Ground Level – means the natural ground level, or where that has been altered by subdivision, means the actual finished ground level when all works associated with the subdivision of the land are completed, and excludes any excavation or filling associated with the building activity.*

7. The digital sign shall be single sided only.

Lighting

8. The digital billboard shall be designed and operated to avoid any back spill lighting. For the purposes of this condition, "back spill lighting" shall refer to any light spilling from the back or to the rear of the billboard.
9. Sign materials shall be non-reflective to prevent any sunlight or headlight reflection.
10. The digital billboard shall use LED technology.
11. The luminance level of the LED display during daylight hours shall vary to be consistent with the level of ambient light and to ensure that the LED display is not significantly brighter than the ambient light level and is only illuminated to the extent necessary to ensure that it is legible. To achieve this, the brightness of the LEDs shall be automatically controlled with an in-built detector/sensor.
12. The daytime and nighttime luminance of the signage shall not exceed:
  - a. 5,000 cd/m<sup>2</sup> during daytime (between sunrise and sunset).
  - b. 125 cd/m<sup>2</sup> during nighttime (between sunset and sunrise).
13. The signage shall not result in light spill greater than 8 lux (horizontally or vertically) measured at a height of 1.5 metres above the ground at each boundary of the site.
14. Within 30 working days of the commencement of the display of images, the consent holder shall submit to the Council a certification report from an appropriately qualified lighting designer/engineer confirming compliance with Conditions 11, 12 and 13. The report shall include at least three luminance readings of the billboard, including:
  - a. One recording at midday;
  - b. One recording during the hours of darkness; and
  - c. One recording during morning or early evening.

**Advice note:**

*In terms of the lighting conditions:*

- a. *For the purpose of defining and identifying daytime, nighttime, sunrise and sunset please refer to LINZ Astronomical Data.*
- b. *A three-to-five-minute lag in adjustment of brightness to changes in ambient levels is acceptable.*

Image display

15. Subject to any amendments to dwell time introduced pursuant to Conditions 24 and 25, the signage shall operate with a minimum dwell time of 30 seconds. For the purposes of this condition "dwell time" is the amount of time an image is displayed on the billboard before transitioning to another image.
16. The transition from one image to the next shall be via a 0.5 second cross-dissolve.



17. Each image displayed shall:

- a. Be static while being displayed, and not contain flashes, movement, scrolling, animation, or full motion video or other dynamic effect.
- b. Not use graphics, colours or shapes in combinations or in such a way that would cause the image to resemble or cause confusion with a traffic control device.
- c. Not be linked to "tell a story" across two or more sequential images (i.e., where the meaning of an image is dependent upon or encourages viewing of the immediately following image).
- d. Not invite or direct a driver to take some sort of driving action.
- e. Not display multiple advertisements in one frame.
- f. Not display a message that is personalised to individual vehicles and/or drivers passing the billboard.

18. The minimum size of the letters used in the messages on the billboard shall be as follows:

- a. The letters used in the primary message shall 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 19 hereof, the letters used in any other text shall not be less than 75mm in height.

19. The requirements of Condition 18(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.

**Advice note:**

*The purpose of Conditions 18 - 19 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.*

20. The images displayed on the billboard shall not include QR codes or other codes scannable by an electronic device.

**Billboard shut down**

21. The digital billboard shall be programmed to automatically go dark in the event of digital billboard malfunction. The consent holder shall provide an emergency (24/7) contact number and an intervention process to enable the consent holder to disable the digital billboard by manual intervention, both off and on-site, should the automatic intervention fail. These details shall be provided to the Council's Team Leader - Compliance & Investigation (Land and Air) prior to operation of the digital billboard commencing.

Monitoring

22. Once operation of the signage has commenced, the consent holder shall engage an independent chartered professional Traffic Engineer that is experienced in the preparation of safety assessments to provide the Council's Team Leader - Compliance & Investigation (Land and Air) with Traffic Safety Reports at the following frequencies:

- a. 12 months; and
- b. 24 months.

**Advice Note**

*The costs of the Traffic Safety Reports and implementation of any mitigation measures shall be met by the consent holder.*

23. The Traffic Safety Reports, including any recommended mitigation measures (if relevant), shall be submitted to the Council's Team Leader - Compliance & Investigation (Land and Air) within 30 working days of the 12-month and 24-month anniversaries of commencement of the signage operations.

24. The Traffic Safety Report shall as a minimum include:

- a. An examination of the New Zealand Transport Agency Crash Analysis System for all recorded crashes within 100m of the stop-lines of the approaches to the digital billboard from where the images on the billboard can be seen, with particular reference to any crashes with the cause factor 356: "attention diverted by advertising or signs", to establish whether there is an identifiable increase of recorded crashes with interpretation having regard to the likelihood that any such increase may be attributable to the operation of the digital billboard; and
- b. Recommendation(s) of any measures that will be undertaken to avoid, remedy or mitigate any identified effects.

**Advice note**

*The type of measures recommended in accordance this condition might include one or more of the following:*

- a. *Reductions to the daytime and/or nighttime luminance levels;*
- b. *Adjustments to the transition time;*
- c. *Increases in the image dwell time; and*
- d. *Further controls on the image content.*

25. If any of the Traffic Safety Reports required by Condition 22 identify that there is an adverse road safety effect that is likely to be attributable to the digital billboard the consent holder shall propose to the Council's Team Leader - Compliance &

Investigation (Land and Air), measures that will be undertaken to avoid, remedy or mitigate the cause of digital billboard-related crashes.

26. If the Traffic Safety Reports find that further mitigation measures are considered necessary, then these shall be implemented to the satisfaction of the Council's Team Leader – Compliance & Investigation (Land and Air), within 10 working days of the date of the recommendation unless otherwise agreed with Council's Team Leader – Compliance & Investigation (Land and Air).
27. Should any changes be required to the operation of the digital billboard as a result of the monitoring undertaken in accordance with Condition 22, then further monitoring for another two consecutive 12-month periods shall be undertaken.

#### Maintenance

28. The condition and appearance of the display shall be maintained at all times.
29. Prior to the commencement of operation, a written maintenance programme shall be prepared by the operator/provider and submitted to the Council's Team leader – Compliance & Investigation (Land and Air). As a minimum, this shall contain the following:
  - a. Contact details for the person or organisation responsible for ongoing maintenance;
  - b. Details of the timeframes for inspections;
  - c. The measures proposed if defects are identified;
  - d. The timeframes for remediation of defects; and
  - e. Whether any traffic control management may be required during works.

#### Review condition

30. In accordance with section 128 of the RMA, the Council 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; or
  - b. Are required to address the effects from the sign on the safe and efficient operation of the local road network including effects on vehicles, pedestrians, cyclists and other traffic.

## **GENERAL ADVICE NOTES**

### **Council Regulations**

1. This is not a building consent, and the Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.
2. 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.

### **Other Tasman Resource Management Plan Provisions**

3. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent or covered by the conditions shall either: 1) comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP); 2) be allowed by the Resource Management Act; or 3) be authorised by a separate resource consent.

### **Consent Holder**

4. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such land use consents "attach to the land" and accordingly may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to "Consent Holder" in the conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent as there may be conditions that are required to be complied with on an ongoing basis.

### **Monitoring**

5. Monitoring of this resource consent will be undertaken by the Council as provided for by Section 35 of the Act and a one-off fee has already been charged for this monitoring. Should the monitoring costs exceed this fee, the Council reserves the right to recover these additional costs from the Consent Holder. Costs can be minimised by consistently complying with conditions, thereby reducing the necessity and/or frequency of Council staff visits.
6. In reviewing road safety monitoring, the Council's Compliance & Investigations Officer may consult with Waka Kotahi NZ Transport Agency Environmental Planning Team via [Environmentalplanning@nzta.govt.nz](mailto:Environmentalplanning@nzta.govt.nz).

### **Interests Registered on Property Title**

7. The Consent Holder should note that this resource consent does not override any registered interest on the property title.

**Advertising Standards Authority Advertising Code of Practice and the Broadcasting Act 1989**

8. Any content displayed on the billboard should be in compliance with the Advertising Standards Authority Advertising Code of Practice and the Broadcasting Act 1989.

Plan A RM230535



A. ELEVATED PERSPECTIVE (NTS)

Parapet extension treatment:

Colour: The recommended colour is Resene 'Grey Flies' with a matt finish or an equivalent with an LRV less than 16%.  
 Code: N35-004-253  
 Light Reflectance Value: 8  
 The exact material to be used for the parapet extension and other exact materials to be confirmed in detailed design stage

DIGITAL BILLBOARD - URBAN DESIGN AND VISUAL IMPACT ASSESSMENT GRAPHIC ATTACHMENT  
**PROPOSAL - BILLBOARD ELEVATED PERSPECTIVE**  
 2023\_025\_BEKON MEDIA - 332 QUEEN STREET