

IN THE MATTER of the Resource Management Act 1991 ("RMA" or "the Act")

AND

IN THE MATTER of an application to **TASMAN DISTRICT COUNCIL** by **BEKON MEDIA LIMITED** under section 88 of the Act for resource consent to authorise the establishment and display of a digital billboard at 332 Queen Street, Richmond.

**MEMORANDUM OF COUNSEL FOR BEKON MEDIA LIMITED
TO ACCOMPANY EVIDENCE**

1. INTRODUCTION

- 1.1 Bekon Media Limited ("Bekon" or "the Applicant") has applied to the Tasman District Council ("TDC" or "Council") for resource consent to authorise the establishment and operation of a single-sided, landscape-orientated digital billboard ("proposed billboard" or "proposed DBB" or "DBB") at 332 Queen Street, Richmond, Nelson ("the Site").

Purpose and scope of memorandum

- 1.2 This memorandum has been prepared to accompany the evidence filed by Bekon to assist Council officers / experts and Commissioner Chrystal to understand the thrust of the case to be presented on behalf of Bekon.
- 1.3 The section 42A report addresses the planning issues arising, issues raised by submissions, etc. They will be addressed further in our legal submissions but need not be canvassed here. To that end, this memorandum:
- (a) Describes the Bekon proposal in light of amendments made since the application was lodged (Section 2).
 - (b) Briefly canvasses the procedural background in terms of submissions lodged and the section 42A report (Section 3).
 - (c) Provides an overview of the evidence filed on behalf of Bekon in the order in which we respectfully request that it be read (Section 4); and
 - (d) Provides a brief synopsis of the key propositions of Bekon's case (Section 5).

2. **THE BEKON MEDIA PROPOSAL**

The original proposal as applied for

- 2.1 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. The top of the proposed DBB will be 8.8m above the ground level.
- 2.2 The proposed DBB will feature standard digital technology to respond to ambient light levels.

The amended proposal

- 2.3 Following engagement with the New Zealand Transport Agency / Waka Kotahi ("NZTA") and having taken account of issues raised in submissions, the Applicant has amended the proposal to address a number of the issues raised. These amendments, which were formally communicated to TDC on 8 October 2024, are as follows:

- (a) The DBB has been re-orientated so that it will 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) 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 will be constructed of similar colour and materials as the cladding on the existing building and is considered to be acceptable from an urban design perspective. The parapet shown in the drawings submitted on 8 October 2024 showed a parapet that projected part way up the DBB. The Applicant has since decided to propose a parapet that fully encloses the DBB – addressed further below.
- (c) 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 the 'dark sky' submitters.
- (d) An increase in the 'dwell time' of the image 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.
- (e) The introduction of more stringent conditions in relation to monitoring of traffic safety, etc., than originally proposed.

- 2.4 The physical dimensions of the proposed DBB itself will remain as per the original application.

The alternative 'full parapet' now proposed

- 2.5 Per the amendments advised on 8 October 2024, the Applicant proposed the construction of a half-height parapet behind the proposed DBB.
- 2.6 Following discussions between Bekon's urban design expert, David Compton-Moen, and TDC's independent expert, Tony Milne, Mr Compton-Moen has

worked with a further urban design expert engaged by Bekon in a peer review capacity, Ian Munro, to work up an alternative design for a 'full parapet' that completely encloses the DBB which is the proposal that the Applicant now seeks consent for and wishes to proceed with.

- 2.7 As outlined in Mr Compton-Moen's evidence, this alternative design seeks to address 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".¹ Both Mr Compton-Moen and Mr Munro strongly support this option over the half-parapet option from an urban design / visual amenity perspective, although both options remain 'on the table' for the purpose of the hearing.

Scope of application

- 2.8 The Applicant's position is that all of the amendments advised to the Council on 8 October 2024 fall within the original scope of the application having regard to the guidance provided by the line of authority starting with *Darroch v Whangarei District Council*.² In that case, the Environment Court held that amendments to an application may be made, provided they are within the scope of the original application. Any amendments made that go beyond that scope by "increasing the scale or intensity of the activity...or by significantly altering the character or effects of the proposal" require a fresh application.
- 2.9 These amendments have been posted on TDC's website, with no issues being raised by Council or submitters as to the issue of scope.
- 2.10 Bekon's position is also that the amended 'full parapet' design, set out in Mr Compton-Moen's evidence, also falls within the scope of the original application in terms of the above legal principles. In that regard, it is also important to note that both of the parapet options being put forward 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 and therefore do not engage the issue of scope.
- 2.11 The primary issue arising for the purpose of the hearing therefore remains the proposed DBB itself, which requires consent as an RDA.
- 2.12 Our legal submissions will address these issues in greater detail as necessary. We would welcome any questions from the hearing commissioner in that regard.

3. PROCEDURAL BACKGROUND

Submissions lodged

- 3.1 The application was publicly notified on 12 July 2024 with submissions closing on 9 August 2024. A total of 27 submissions were lodged, all in opposition to the application. The issues raised by submissions are addressed in the section 42A report and need not be in detail here. Suffice to say that the issues raised by submissions fell into the following categories:

1 Evidence of David Compton-Moen dated 17 October 2024 at 2.8.
2 DC A018/93.

- (a) Traffic safety, including: visibility of the DBB when using the left turn slip lane from Lower Queen Street; concerns over driver distraction and potential impacts on vulnerable road users; and 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: alleged non-compliance with size and location standards of the TRMP; concerns that the proposed DBB will visually 'dominate' the area and obstruct the views of the nearby Richmond Hills, and generally have an adverse effect on urban amenity.
- (c) Adverse lighting effects, particularly as regards the Wai-iti Dark Sky Park.
- (d) Dislike of DBB advertising content.
- (e) Concerns that granting consent will create a negative precedent.

Section 42A report

- 3.2 The section 42A report recommends that consent be declined on the basis that:
 - (a) Traffic safety effects are of primary concern, particularly in relation to the left-hand slip lane on Lower Queen Street, coupled with the "existing safety deficiencies and complexities at the intersection" for drivers, pedestrians and cyclists.³
 - (b) The proposed billboard will have a "minor adverse effect" on visual amenity values of the receiving environment, in which the report considers that mitigation measures as proposed by Bekon are insufficient to mitigate the visual effects of the proposed DBB in terms of its form and location.⁴
- 3.3 The report does not take any issue with lighting effects but Bekon has produced evidence from lighting expert, Russ Kern, in that regard. Bekon has sought to engage with the 'dark sky' submitters and to make Mr Kern available to them for an objective, science-based conversation, with very limited success.
- 3.4 One observation worth making about both the section 42A report and the technical reports that informed it is an apparent fixation on assessing whether the effects of the proposal are "more than minor" (or not). Given that we are dealing with an RDA and not a non-complying activity, that yardstick is inappropriate as a legal test to apply and one is left to wonder whether the conclusions reached, particularly in terms of something as subjective as amenity values, would have been the same if an appropriate legal test had been applied.
- 3.5 Bekon obviously does not agree with Ms Woodbridge's recommendation that consent be declined. Bekon's position is that there are no adverse effects that warrant consent being declined, particularly in light of its amended proposal. Therefore, on the basis of the expert analysis undertaken by a range of independent experts, Bekon does not agree with Ms Woodbridge's

³ Section 42A report at 9.5.

⁴ Section 42A report at 7.115 and 7.117.

conclusions, with the exception of lighting related effects, which Bekon agrees are acceptable.

- 3.6 As the Commissioner is well aware, the section 42A report was understandably not able to take account of the amendments to the proposal that were advised / submitted to TDC on 8 October 2024. Via Minute #1 dated 11 October 2024, Commissioner Chrystal has therefore directed that an addendum to the section 42A report be released on 31 October 2024 to account for these changes. We respectfully request that that direction be extended to the amended 'full parapet' proposal canvassed in Bekon's evidence.

4. **BEKON MEDIA'S EVIDENCE**

- 4.1 The Applicant is filing evidence in support of its application from six witnesses to address key matters arising in the context of this application, namely:

- (a) Russ Kern – lighting effects;
- (b) David Compton-Moen - visual / urban design and 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.

- 4.2 Brief summaries of the evidence filed follows.

Russ Kern – lighting

- 4.3 Mr Kern's evidence is presented first given that the following urban design witnesses need to take account of his lighting evidence in addressing urban amenity effects associated with the proposed billboard.

- 4.4 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. Mr Kern's evidence also includes two letters to counsel to address issues raised which were sent to the 'dark sky' submitters.

- 4.5 Mr Kern's evidence makes the following conclusion in the summary of his evidence:⁵

"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*

5 Statement of evidence of Russ Kern dated 17 October 2024 at 2.20.

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.*

4.6 As noted, the section 42A report agrees with these findings in which the proposed DBB does not raise any lighting-related effects.

David Compton-Moen – urban design / amenity effects

4.7 Given that various concerns regarding visual amenity have been raised in both the section 42A report and by submitters, Bekon has engaged two highly qualified independent urban designers to produce evidence.

4.8 Mr Compton-Moen is the director of DCM Urban Design Limited (“DCM”) and has 25 years’ experience in urban design and planning. Mr Compton-Moen has worked on urban development, planning and transportation projects in New Zealand and Hong Kong.

4.9 Mr Compton-Moen was engaged to provide expert advice in relation to urban design and visual amenity effects arising from the proposed billboard. Mr Compton-Moen is the author of the urban design and visual impact assessment (dated 11 April 2024) and the addendum to the assessment (dated 21 May 2024) (“DCM Assessment”) that was submitted as part of the application.

4.10 Mr Munro was engaged to undertake a peer review role in relation to Mr Compton-Moen and Mr Milne’s work. Mr Compton-Moen and Mr Munro have worked closely together to develop the ‘full parapet’ proposal referred to above and both consider that this represents a superior outcome from an urban design perspective.

4.11 Mr Compton-Moen’s overall conclusion is as follows:

“9.1 In summary, the proposed billboard is considered to have low to very low (or minor to less than minor) effects on the visual amenity and urban character of the site and surrounding environment. The proposed billboard is located on the edge of the Central Business District Zone but surrounded by commercial development where signage of this nature exists and is expected. The proposal will be highly visible but it will not be visually dominant with the installation of the full parapet. The nearest residential property is 170m away (73 Oxford Street – Oxford Court Motel) and views of the

proposed DBB are screened by the intervening NPD Service Station.

- 9.2 *The proposed full parapet will have some enhancement qualities, assisting with defining the intersection and providing a greater level of legibility.*
- 9.3 *While the LED billboard will emit light, this will not be particularly obvious during the day in comparison to a static sign, with effects considered indiscernible during the day. The effects of an LED billboard may be more noticeable at night, depending on the luminance levels of the display. To avoid any significant adverse visual effects, the billboard will be adjusted at night and the illumination of the billboard be automatically adjusted to suit the surrounding ambient lighting conditions throughout the day and night.*
- 9.4 *The digital billboard will contain non-animated / still displays only, which will change no more than every 30 seconds and there will be no moving displays. The digital display does not directly face any residential dwellings and is located within a commercial area where signage of this nature often occurs. The proposal fits within the existing character along this section of Gladstone Road/Queen Street, which includes existing signage.*
- 9.4 *Overall, I consider that there is no reason from an urban design or visual effects perspective to withhold consent to this application."*

Ian Munro – urban design / amenity effects

- 4.12 Mr Munro has 23 years' experience as an urban planning and design consultant. Mr Munro has experience in the management of large signs in centre, mixed-use and employment area contexts.
- 4.13 The Applicant engaged Mr Munro to provide an independent peer review of the urban design aspects of the application, including a review of the reports and evidence prepared by Mr Compton-Moen, Mr Milne and the submissions lodged. As noted, Mr Munro worked with Mr Compton-Moen in developing the 'full parapet' option.
- 4.14 Mr Munro has produced a comprehensive and thoughtful piece of evidence, placing the current proposal not only in the TRMP and Richmond context, but having regard to relevant principles of urban design and urban planning. The evidence is worthy of a close read but Mr Munro's conclusions are set out in his summary as follows:
 - "2.5 *The existing context of the sign is of a busy, vehicle-orientated state highway and this will not change as far as I can foresee. The existing environment exhibits few preferred urban design outcomes, but is fairly typical of busy commercial arterial road corridors. Its amenity, which includes a visual prevalence of commercial signage mounted above the street level on parapets, is much less sensitive to the effects of a sign such as is proposed than would be the case if the Site's setting was a residential zone*

or a premium pedestrian-oriented shopping area (like the Richmond main street further south-east along Queen Street). The size of the sign is also appropriate in terms of the scale of the immediate intersection in front of it (SH6 is five-travel lanes wide at the Queen St intersection, making it very large by any measure).

- 2.6 *The proposal will comply with Central Business Zone built form standards and this has been a very important factor in my assessment of the potential adverse amenity effects of the billboard and parapet. I understand that the parapet now proposed is itself fully permitted under the TRMP. It has the effect of also removing any need for consent for a sign sitting higher than a parapet, leaving only the need for consent for a sign displaying off-site advertising. This has also been factored into my assessment.*
- 2.7 *The proposal will be visible south-west along SH6 and in the immediate vicinity of the Queen Street / SH6 intersection, but have no practical (i.e., measurable) urban design effects further north, west or east of the Site or in terms of the wider environment. My assessment is that beyond a distance of approximately 75m from the sign, it will not form a materially relevant or dominant part of the view looking north-eastwards along SH6 (i.e., would have very low adverse effects).*
- 2.8 *The key issues raised by submissions that are relevant from an urban design perspective are visual amenity / clutter; loss of hill views (east); and the height and scale of the sign relative to the existing building and its parapet.*
- 2.9 ...
- 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 *... 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."*

Andy Carr – traffic safety

- 4.15 Bekon is calling evidence from two highly qualified independent traffic engineers, both of whom have significant billboard-related experience.
- 4.16 Mr Carr is the founder and director of Carriageway Consulting Limited with 35 years' experience in traffic engineering and has been involved in assessing the road safety effects of around 100 large digital billboard and

small-format screens applications across New Zealand as both a peer reviewer for the Council receiving the application and also providing supporting reports for applicants. Mr Carr authored the traffic safety assessment of the application (dated 21 May 2024) that accompanied the AEE.

- 4.17 Mr Carr's approach has been to carefully review the transportation environment around the site, the particular characteristics of digital billboards and the way that they are operated in New Zealand, and then to assess whether the proposed digital billboard is likely to have adverse road safety effects in this location. Having undertaken that analysis, his evidence, in essence is to the effect that:
- (a) From a transportation perspective, the parapet will not materially change the road safety effects of the proposed billboard.
 - (b) There is no evidence to suggest the proposed DBB would have influenced the 21 historic crashes recorded within the proximity of the Site over the past five years.
 - (c) There is no evidence from New Zealand crash records within the vicinity of digital billboards to suggest that the installation of a digital billboard causes crashes.
 - (d) 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.
 - (e) With the reorientation of the DBB so that it is not visible from the left turn slip lane, the proposed DBB will not present any particular road safety concerns, provided that suitable controls (via conditions of consent) are put in place.
 - (f) The proposed conditions of consent are aligned with the available research and will ensure that the DBB meets best practice and will not cause driver confusion or distraction.

Brett Harries – traffic safety

- 4.18 Brett Harries is a Director of Harries Transportation Engineers with 42 years postgraduate experience as a practising specialist traffic and transportation engineer. He has vast experience of DBBs dating back to the first DBB authorised in New Zealand in 2012, and has undertaken formal assessments of over 350 large-format and small format DBBs since then.
- 4.19 The Applicant engaged Mr Harries to provide an independent peer review of the transportation aspects of the application, including a review of the reports prepared by Mr Carr, Mr Ari Fon (engaged by TDC as an independent traffic consultant) and the submissions lodged. Mr Harries has also reviewed the statement of evidence prepared by Mr Carr and provided responses to the Section 42A Report.
- 4.20 The key conclusions to be drawn from Mr Harries' evidence are neatly captured in his summary as follows:

"2.7 *My examination of the specifics of this proposal reveals that, subject to the conditions of consent proposed by the Applicant as appended to the evidence of Ms Collie, the establishment of the proposed digital billboard would be unlikely to generate additional distractive effects to motorists to the extent that such effects would*

result in any measurable deterioration to the safety, function, or performance of the local traffic environment.

2.8 *My review of Mr Carr's evidence confirms that, in my opinion, he has undertaken a thorough and objective evaluation of the proposal. The descriptions and assessments that he has provided have been completed using appropriate methodologies and good engineering practice. Having undertaken my own assessments of the proposal, I am able to concur with and adopt the conclusions he reaches as summarised in Section 2 of his evidence.*

2.9 *In summary, it is my opinion that:*

(a) *Current research related to the manner in which digital billboards operate in New Zealand indicates that the proposed billboard can be compatibly and safely integrated into the traffic environment within which it will be located.*

(b) *The research shows that while some drivers can and do choose to glance at digital billboards, those glance durations are sufficiently brief to ensure that they do not become a distraction to the driving process to the extent that it could lead to adverse road safety outcomes. This finding is amply demonstrated in practice by the fact that over the past 12+ years of digital billboard operations in New Zealand, there have been no recorded crashes that suggest in any way that the presence of a digital billboard has been a contributing factor.*

(c) *In this case, the design, placement and operation of the proposed digital billboard will ensure that it can be compatibly and safely integrated into its traffic environment. In this regard, the Applicant's intention to re-orient the billboard away from Lower Queen Street to be predominantly directed at Gladstone Road, and the intention to increase dwell time to 30-seconds, should, together, on any objective analysis, address most (if not all) of the traffic-related concerns as expressed by submitters, NZTA and the TDC Traffic Review.*

(d) *The proposed adoption of a minimum 30-second dwell time for image displays as now proposed is entirely appropriate to ensure the safe and acceptable operation of the billboard within this particular traffic environment. Significantly, both international research and operational experience in New Zealand now confirms the acceptability of this dwell time. In this case there is certainly no technical*

justification for, or road safety advantage to, requiring a minimum dwell time that is greater than 30 seconds at any time of the day.

Having considered the relevant international research and applied the knowledge and experience of digital billboard operations in New Zealand, it is my opinion that there are no material traffic engineering or road safety reasons that would preclude a grant of consent for the amended digital billboard as now proposed."

Anita Collie – planning

- 4.21 Anita Collie is a principal planner at Town Planning Group ("TPG") with over 14 years' experience and authored the AEE that was filed alongside the application.
- 4.22 Ms Collies' evidence considers the evidence of Messrs Kern, Compton-Moen, Munro, Carr and Harries, the Council's section 42A Report (and accompanying reports / evidence) and the concerns raised by the submitters and concludes that:

"2.5 *In my evaluation of the proposal, I have reached the opinion that:*

- (a) *The effects on transport safety have been comprehensively assessed and peer reviewed, with appropriate regard to the relevant research in relation to the general safety of digital billboards, New Zealand guidelines and the specific characteristics of this intersection. The transport safety effects are acceptable, subject to the mitigation measures required by the proposed conditions.*
- (b) *The effects on visual amenity values are acceptable with regard to the commercial and industrial character of the receiving environment. The proposed billboard does not create an adverse cumulative effect considering the characteristics of the receiving environment and position of the proposed digital billboard.*
- (c) *Adverse effects of glare, light spill and light pollution are able to be controlled by limits specified in the proposed conditions of consent and are appropriate in the context of the ambient light levels in the receiving environment.*
- (d) *Issues raised in submissions have been assessed, and where appropriate, additional mitigation has been incorporated through refinements to the proposal and proposed conditions of consent.*

- (e) *The proposed conditions of consent include essential and conventional / well proven mitigation in the form of controls on the image content, luminance, image transition, dwell time and other matters.*
- (f) *The proposal is consistent with the objectives and policies in the TRMP.*
- (g) *The application meets the necessary tests for approval and can be granted subject to the proposed conditions included in my Attachment [A]."*

5. **SYNOPSIS OF BEKON MEDIA'S CASE**

- 5.1 At their most basic level, the key propositions of Bekon's case can be summarised as follows.
- 5.2 Bekon requires resource consent as a restricted discretionary activity. The Council's discretion under Rule 16.1.4.2 of the TRMP is limited to:
 - (a) The location and legibility of the proposed DBB in relation to traffic safety; and
 - (b) Any amenity effects on the surrounding area, including size and duration.

Traffic safety

- 5.3 Bekon has engaged two highly qualified and experienced traffic engineers in Messrs Carr and Harries. Between them, they will have advised on more DBBs than any other traffic engineers in the country. Although no evidence exists to suggest that DBBs have adverse traffic safety effects as a result of driver distraction, NZTA expressed a concern about the effects of the proposed DBB on drivers using the left-turn slip lane from Lower Queen Street. This resulted in the decision to reorientate the billboard so that views to the DBB from Lower Queen Street are so restricted as to eliminate any hazard. This addresses the concerns about the location of the proposed DBB.
- 5.4 A very conservative dwell time of 30 seconds is being proposed by the Applicant. This significantly exceeds industry standards and is offered to provide a high degree of confidence that concerns in relation to potential driver distraction are addressed.
- 5.5 The proposed conditions in relation to legibility, ongoing monitoring of traffic effects, etc., represent the third leg of the stool of traffic measures, and have been shown to be effective at dozens of locations elsewhere.
- 5.6 On that basis, the Commissioner can be satisfied that any issues in relation to traffic safety are addressed in a manner that more than meets the intent of the TRMP.

Amenity considerations

- 5.7 Bekon has engaged three highly qualified and experienced experts in relation to amenity effects – two urban designers and a lighting engineer.
- 5.8 Mr Kern's evidence makes clear that lighting associated with the proposed DBB will not have any adverse nuisance or amenity effects. In that regard, the maximum nighttime luminance level will be set at a very conservative 125cd/m². This level has been set with a view to satisfying the 'dark sky'

submitters concerned about the potential effects on the Wai-iti Dark Sky Park, even though that is not in "the surrounding area" in terms of rule 16.1.4.2 of the TRMP.

- 5.9 On that basis, the Commissioner can be satisfied that lighting associated with the proposed DBB will have no adverse amenity effects.
- 5.10 As is apparent, the impacts of the proposed DBB in terms of potential 'dominance' / urban design / visual amenity has received a great deal of attention in order to ensure that the DBB is acceptable from that perspective. Bekon wish to pursue the 'full parapet' option outlined in evidence and stakes the position that this represents the optimum urban design outcome for the proposal.
- 5.11 This parapet could be constructed as a permitted activity so that it is appropriate for the Commissioner to focus only on the DBB. Despite that, Bekon's case focusses on the 'overall package' which it submits is appropriate and could be said to enhance amenity in urban design terms.
- 5.12 On that basis, the Commissioner can be satisfied that the proposal has achieved what the TRMP is seeking to in terms of amenity effects.

General considerations

- 5.13 In terms of section 104C of the RMA, it is appropriate that consent be granted on the basis that such approval would be consistent with the relevant provisions of the TRMP and (to the extent considered relevant) will promote the sustainable management purpose of the RMA, particularly insofar as there are no potential adverse effects of the proposed DBB that cannot be avoided, remedied or mitigated through the imposition of conditions.
- 5.14 To conclude, Bekon's position is that if the propositions set out above are proven to the satisfaction of the Commissioner, a grant of consent on the basis of the conditions proposed by the Applicant should follow.
- 5.15 Once Commissioner Chrystal has reviewed the evidence, we would be grateful for advice via the Hearing Secretary if the Commissioner is happy to dispense with the appearance of any of Bekon's witnesses.

DATED 18 October 2024



S J Berry and B S Morris, Counsel for Bekon Media