



2 July 2024

Ms Victoria Woodbridge
The Property Group
4 Akersten Street
Port Nelson, Nelson
7010

Email: vwoodbridge@propertygroup.co.nz

Dear Ms Woodbridge

RM230535 - BEKON MEDIA - NOTIFICATION FOR PROPOSED BILLBOARD AT 332 QUEEN STREET, RICHMOND

Introduction

1. As you are aware, we act for Bekon Media Limited ("Bekon") in support of its application (RM230535) to the Tasman District Council ("Council" or "TDC") to establish and operate a single-sided digital billboard ("DBB") at 332 Queen Street, Richmond.
2. We refer to your telephone conversation with Anita Collie on 26 June 2024 in which she advised that we would be preparing a letter in support of the limited notification of the application only to New Zealand Transport Agency / Waka Kotahi ("WK"). Thank you for agreeing to delay issuing your section 95 recommendation report (which we understand is currently recommending public notification) to Council pending receipt and consideration of this letter; we are grateful for that opportunity.
3. As a preliminary matter, we are also grateful for your offer to facilitate a meeting between traffic experts engaged by Bekon, WK, and TDC to discuss traffic safety / notification issues; however, based on our advice to Bekon, we have been instructed not to take up the offer of a meeting - in light of relevant correspondence and our long experience of WK, we consider that a meeting with WK is unlikely to result in any meaningful progress in addressing their concerns.

Issues relevant to limited notification

4. As far as notification is concerned, we understand that:
 - (a) Your position is "neutral" as regards potential adverse amenity effects of the DBB.

- (b) You are concerned about potentially adverse traffic safety effects of the proposed DBB based on:
 - (i) The Affirm NZ Ltd’s Review of Traffic Effects dated 20 June 2024; and
 - (ii) An email to you from WK dated 19 June 2024 following Mr High’s transportation review.
 - (c) On that basis, your currently proposed recommendation to Council is to publicly notify the application, presumably on the basis that the proposal is likely to have more than minor adverse effects in terms of traffic safety.
5. Despite that, we consider that there is a sound basis for processing this application as limited notified only to WK per section 95B of the Resource Management Act 1991 (“RMA”) rather than publicly notified, for the following main reasons:
- (a) Without prejudice to Bekon’s position that any potentially adverse traffic safety effects will be no more than minor, it is accepted that in light of the advice received and your concerns in that regard, it is appropriate for the application to be limited notified to WK under section 95B of the RMA.
 - (b) Assuming that WK lodges a submission and that a hearing becomes necessary, TDC can, as consenting authority, be fully involved in the technical discussions relating to the application, including filing statements of evidence in support of the section 42A report. In other words, a full airing of traffic safety issues will occur before independent hearing commissioners.
 - (c) Members of the public are unlikely to take any interest in a DBB at this location. Even if they did, they are unlikely to bring any ‘expertise’ to the table in terms of traffic safety that Bekon, WK or TDC’s traffic experts do not have.
6. Against that background, we now set out the rationale (beyond the reasons in the preceding paragraph) for our request that the Bekon application be limited notified having regard to the relevant statutory tests for limited notification.

Section 95B – statutory tests for limited notification

7. Section 95B establishes a four-step process for determining whether an application should be notified to people in the vicinity who may be adversely affected (limited notified), involving an inquiry as to whether:
- (a) Certain affected persons, e.g., protected customary rights groups (amongst others) must be notified (Step 1).
 - (b) Limited notification is precluded (Step 2).
 - (c) Limited notification is required (Step 3).
 - (d) There are special circumstances that warrant limited notification (Step 4).
8. We address each in turn.

Step 1 - customary rights

9. In terms of Step (1), there are no affected protected customary rights or customary marine title groups in terms of Subclause (2), nor is the proposed activity on or adjacent to, or may affect land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11 in terms of Subclause (3).

Step 2 - rule or national environment standard

10. In terms of Step (2), the application is not subject to a rule or national environment standard that precludes limited notification and is not for a controlled activity that required resource consent under a district plan. As a result, none of the circumstances in Subsection (5) that would preclude limited notification apply.

11. Step 3 – potentially affected parties

12. Step (3) requires the consent authority to determine, in accordance with section 95E, whether there are any affected parties. As you well know, section 95E states that a person is an “affected person” if the consent authority decides that the potential adverse effects of the proposed activity on that person are minor or more than minor (but are not less than minor).
13. Given that WK has voiced its concerns in relation to traffic safety (with which TDC’s traffic experts agree), we accept that TDC is entitled to regard WK as a potentially affected party for the purpose of notifying WK in relation to the application given that Gladstone Road forms part of State Highway 6. Excluding WK, we do not consider that any other parties to be an “affected person”, given that traffic safety is the Council’s main concern.

Step 4 – special circumstances

14. In terms of Step (4), we consider, having regard to relevant case law (which we can expand on if necessary) that no special circumstances exist that warrant notification of the application to any other persons not already determined to be eligible for limited notification.

Recent examples of limited notification to WK

15. In support of the proposition that it would be appropriate for this application to be limited notified only to WK, we note it is common practice for WK to request that local authorities notify DBB applications to WK and that it is common for WK to be involved in DBB applications on State Highways in urban contexts (such as this one), either prior to notification (as a result of contact with the relevant council) or via limited notification of the applications to WK. In the past two years, the writer has been personally involved in three applications that were limited notified to WK, namely:
 - (a) 251 Victoria St, Wellington – notified on 30 May 2022.
 - (b) 180 Hilton Highway, Timaru – notified on 11 August 2022.

(c) 5-7 Fairy Springs Road, Rotorua – notified on 23 February 2023¹.

Bekon's request

16. To conclude, on the basis of the above analysis, we consider that:
 - (a) It would be safe and appropriate for you to recommend to TDC, and for TDC to determine, that this application be processed on the basis of limited notification to WK; and
 - (b) Little, if anything, would be gained by publicly notifying the application, at least in relation to traffic safety issues.
17. On that basis, we respectfully request that TDC determine that the application is processed on that basis.
18. We look forward to your response and would be happy to discuss at your convenience.
19. For completeness, we also note, for the record, that we have been instructed by Bekon to request, pursuant to section 100A(2) of the RMA, that TDC delegates its powers, functions and duties to hear and decide the Bekon application to independent hearing commissioners who are not members of TDC in accordance with section 100A(4).

Yours sincerely



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1 In all cases, consent was granted – In the first two cases, consent was granted in the face of significant opposition by WK. In the third, WK did not attend the hearing. Copies of the relevant decisions can be provided upon request.