

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P1317/2018  
PERMIT APPLICATION NO. TPA/47966

**CATCHWORDS**

Section 77 of the Planning & Environment Act 1987; Monash Planning Scheme;  
Major Promotion Signs - Monash Freeway Corridor

<b>APPLICANT</b>	Maple Media Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>REFERRAL AUTHORITY</b>	VicRoads
<b>SUBJECT LAND</b>	327-329 Police Road, Mulgrave
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Tracy Watson, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	13 December, 2018
<b>DATE OF ORDER</b>	17 January, 2019
<b>CITATION</b>	Maple Media Pty Ltd v Monash CC [2019] VCAT 79

**ORDER**

- 1 The decision of the Responsible Authority is set aside.
- 2 In permit application TPA/47966 a permit is granted and directed to be issued for the land at 327-329 Police Road, Mulgrave in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
  - The installation and display of two major promotion signs.

Tracy Watson  
**Member**



## APPEARANCES

For Applicant	Adam Whitford, in person
For Responsible Authority	Gerard Gilfedder, town planner
VicRoads	No appearance

## INFORMATION

Description of Proposal	It is proposed to display two major promotion signs mounted on top of an existing office building. It is proposed to mount the signs on the northern end of the building's roof, one angled facing northwards, and the other facing eastwards.
Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act 1987</i> .
Zone and Overlay	Clause 34.01 – Commercial 1 Zone. Clause 43.02 – Design and Development Overlay, Schedule 1 (Industrial and Commercial Design and Development Area).
Permit Requirements	Clause 52.05 – Category 1 (Minimum limitation). I note that the DDO1 defers to Clause 52.05.
Relevant Scheme policies and provisions	Includes Clauses 15, 21.01, 22.03, 22.08, 34.01, 52.05, 65 and 71.02.
Land Description	The subject site is located on the north-eastern corner of Police Road and Jacksons Road, adjacent to the Monash Freeway corridor. The subject site has a frontage of 47.5 metres to Police Road and 53.4 metres to Jacksons Road, and is developed with two, four storey high office buildings and associated carparking. It is proposed to mount the signs on the office building which is located in the western portion of the subject site.
Tribunal Inspection	31 December 2018

## REASONS<sup>1</sup>

### What is this proceeding about?

- 1 In May 2018, the Monash City Council issued a Notice of Decision to Refuse to Grant a Permit for the proposed signage. It is a decision that the permit applicant has requested be reviewed by the Tribunal.
- 2 I consider that the key question for determination is whether the proposed signage is appropriate in this location given its physical context.
- 3 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the Responsible Authority. My reasons follow.

### Are the proposed signs appropriate in this location/ context?

- 4 The Council's position was that the proposed major promotion signs are discouraged by local policy and are inconsistent with both the garden city character of the municipality generally, and more specifically the existing streetscape and amenity of this particular area.
- 5 The general stance of the Council is to discourage any major promotion signage, although Mr Gilfedder rightly acknowledged that these signs do however need to be considered on their merits.
- 6 The Outdoor Advertising local policy at Clause 22.08 of the planning scheme includes a blanket statement that major promotion signs are, "generally inconsistent with the Garden City image." The strong emphasis of this local policy is to limit signage to that which is for business identification purposes. The subject site is identified as being within an 'Other Business and Industrial Area' under Clause 22.08, where the objective is:

To promote the orderly display of signs having regard to the need for identification of business premises and respect for environmental context.
- 7 This local policy includes the following additional, applicable key policy statement:

To limit the location and extent of signage for businesses outside retail precincts to that which identifies the business and provides necessary directional information.
- 8 The role of local policy is to provide guidance in the exercise of discretion, and it should not be applied in a rigid, blanket fashion as a defacto prohibition of any major promotion signage.

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<sup>1</sup> I have considered all submissions and exhibits presented by the parties although I do not recite all of the contents in these reasons. The Tribunal did not receive any statements of grounds following the advertising of the application.

- 9 In contrast to the intent of the Clause 22.08 local policy, the applicable purpose for commercial areas (such as this one) pursuant to Clause 52.05-11 of the planning scheme is, “To provide for identification and promotion signs and signs that add vitality and colour to commercial areas.” [My underlining]
- 10 Clause 52.05-8 of the planning scheme includes a series of decision guidelines, the overall import of which is that the suitability of major promotion signs needs to be determined based on their physical context. Put another way, as the very purpose of major promotion signs is to be visually prominent, I need to decide if the subject site is in an appropriate location for such signage.
- 11 The Clause 52.05-8 decision guidelines, include specific guidelines relating to major promotion signs as follows:

The effect of the proposed major promotion sign on:

- Significant streetscapes, buildings and skylines.
- The visual appearance of a significant view corridor, viewline, gateway location or landmark site identified in a framework plan or local policy.
- Residential areas and heritage places.
- Open space and waterways.

When determining the effect of a proposed major promotion sign, the following locational principles must be taken into account:

- Major promotion signs are encouraged in commercial and industrial locations in a manner which complements or enhances the character of the area.
- Major promotion signs are discouraged along forest and tourist roads, scenic routes or landscaped sections of freeways.
- Major promotion signs are discouraged within open space reserves or corridors and around waterways.
- Major promotion signs are discouraged where they will form a dominant visual element from residential areas, within a heritage place or where they will obstruct significant viewlines.
- In areas with a strong built form character, major promotion signs are encouraged only where they are not a dominant element in the streetscape and except for transparent feature signs (such as neon signs), are discouraged from being erected on the roof of a building.

- 12 Apart from the general description of the garden-city character of this municipality, the subject site is not located within or proximate to any identified significant or valued place, building or area. Indeed, the subject site is a stand alone, commercial pocket of land. The subject site is visually separated from its surrounds by the major road network which abuts all its

edges (being either Jacksons Road, Police Road or the Monash Freeway). Furthermore, the proposed signs are positioned to visually relate to the Monash Freeway corridor, and they do not have a direct visual relationship with either the Jacksons Road or Police Road streetscapes. In other words, the proposed signs are not designed and sited to be a part of the surrounding neighbourhood.

- 13 It is also noteworthy that the Council accepted that the proposed signs do not impact on any existing residential areas. Lastly, this is not a case where either visual clutter or signage proliferation is an issue, as there are no existing signs in the immediate vicinity of the 'host' building.
- 14 It is important that the proposed signs are not sited and designed to be part of, or be seen from within, the Jacksons Road or Police Road streetscapes. As I have already highlighted, they are designed to be seen from within the Monash Freeway corridor. This distinguishes the proposed signs from the two Tribunal decisions referred to by Council where major promotion signs were not supported by the Tribunal. These cases are: *Australian Leisure and Hospitality Group Pty Ltd v Monash CC* [2015] VCAT 1353 (at 657-673 Warrigal Road, Chadstone); and *Australian Leisure and Hospitality Group Pty Ltd v Monash CC* [2015] VCAT 1034 (at 539-559 Springvale Road). In both of these cases the proposed signs were intended to be integrated within the streetscape of a major road, rather than the more physically isolated freeway corridor as proposed here.
- 15 There was one Tribunal case referred to by Council which was for a major promotion sign designed to be read from within the Monash Freeway corridor (*Drive By Developments Pty Ltd v Monash CC* [2017] VCAT 1889). This case related to the nearby Waverley Gardens shopping centre (located on the north-west corner of Jacksons Road and Police Road). In contrast to the proceeding before me, VicRoads opposed the Waverley Gardens signage on safety grounds and called an expert traffic engineer to give evidence who supported VicRoads' position. It is also relevant that the Tribunal in this case, agreed that, in principle, freeway corridors are generally appropriate locales for major promotion signs.
- 16 In this case, VicRoads do not object to the proposed signs, and the Council's case does not have the benefit of any expert traffic evidence. I therefore consider that the proposed signs will not have any detrimental impact on driver safety.
- 17 The Clause 52.05-8 decision guidelines do require a consideration of any visual impact on 'landscaped sections of freeways'. None of the other locations identified in the Clause 52.05-8 major promotion signs decision guidelines (such as scenic routes, open space reserves, heritage places, areas with a 'strong built form character', etc.) are relevant to the subject site and surrounds. Currently the subject site (including the 'host' building) abuts a grassed section forming part of the Monash Freeway corridor. The freeway corridor in this location is part of the Monash Freeway Upgrade Project

Stage 2. As part of this project it is currently proposed to plant some additional 'large native trees' in the existing grassed buffer area. The proposed tree copse is located approximately 30 metres north of the 'host' building. A proposed landscape plan prepared for VicRoads showing this additional planting was tabled by Mr Gilfedder. I do not consider this proposed planting to be a reason to reject the proposed signage. In any event, the permit has a 15-year permit expiry, beyond which the potential impact of any future landscaping can be appropriately assessed.

## **Conclusion**

- 18 For the reasons outlined above, I have determined to set aside the decision of the Responsible Authority.

Tracy Watson  
**Member**

## APPENDIX A

<b>PERMIT APPLICATION NO:</b>	TPA/47966
<b>LAND:</b>	327-329 Police Road, Mulgrave
<b>WHAT THE PERMIT ALLOWS:</b>	The permit allows: <ul style="list-style-type: none"><li>• The installation and display of two major promotion signs, in accordance with the endorsed plans.</li></ul>

## CONDITIONS

1. The location and details of the signs shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. The signs must not contain any flashing light.
3. The signs must be located wholly within the boundary of the land.
4. The signs must be constructed and maintained to the satisfaction of the Responsible Authority.

### **VicRoads Conditions**

5. The signs must not be electronic or animated.
6. The advertising content of the signs must not:
  - a) Be a traffic instruction, or be capable of being mistaken as, an instruction to a road user. This includes the use of the wording 'stop', 'give way', 'slow', 'turn left' or 'turn right'.
  - b) Be predominantly green, amber or red in colour.
  - c) Contain an email and web addresses and phone numbers.
  - d) Dazzle or distract road users due to its colouring or content.

### **End VicRoads Conditions**

7. The intensity of the light on the signs must be limited so as not to cause glare or distraction to motorists or loss of amenity in the surrounding area to the satisfaction of the Responsible Authority.
8. This permit will expire fifteen (15) years after the date it is issued.

9. The signs, all supporting structures and method of illumination must be removed on expiry of the permit and the land and/or building made good to the satisfaction of the Responsible Authority.

**--- End of Conditions ---**