

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11358/2021
PERMIT APPLICATION NO.TPA/52704

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987*; Floodlit and electronic major promotion sign, Monash Planning Scheme, policy that discourages promotion signage, impact on character of area; Special Use Zone; Policy: Character.

APPLICANT	Maple Media Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
REFERRAL AUTHORITY	The Head, Transport for Victoria
SUBJECT LAND	398-400 Ferntree Gully Road NOTTING HILL VIC 3168
HEARING TYPE	Hearing
DATE OF HEARING	25 February 2022
DATE OF ORDER	7 June 2022
CITATION	Maple Media Pty Ltd v Monash CC [2022] VCAT 604

ORDER

No permit granted

- 1 In application P11358/2021 the decision of the responsible authority is affirmed.
- 2 In planning permit application TPA/52704 no permit is granted.

Shiran Wickramasinghe
Member



APPEARANCES

For applicant

Melinda Sanz, development manager, Maple Media

For responsible authority

Peter English, town planner of Peter English and Associates Pty Ltd



INFORMATION

Description of proposal	Construct and put up for display a floodlit and electronic major promotion sign.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme (Planning Scheme)
Zone and overlays	Special Use Zone (SUZ6) Design and Development Overlay (DDO2) Abuts land in the Transport Zone 2 (TRZ2)
Permit requirements	Clause 37.01-5 lists signs in this zone as being Category 2 (Office and Industrial) in clause 52.05. Clause 52.05-11 – Construct and put up for display a floodlit and electronic major promotion sign
Key scheme policies and provisions	Clauses 17, 18, 21, 22.02, 37.01, 43.02 52.05 and 65



Land description

The site is located at the south-west corner of the Ferntree Gully and Blackburn Road, Notting Hill.

The site has a 12.65 metre frontage to Ferntree Gully Road (northern boundary) and a 62.05 metre sideage to Blackburn Road (east boundary). There is a 9 metre splay at the corner of Ferntree Gully and Blackburn Road and the site area is approximately 1600 square metres.

The property contains two commercial buildings with associated parking. The buildings are currently occupied by a motor repairs use and a showroom.

There are two car spaces in the south-east corner of the site, six angled spaces on the eastern side and seven additional spaces across the northern (front) boundary.

The surrounding area is commercial in nature. The properties to the south are developed with commercial buildings also used for motor repairs. The site's western boundary abuts Council's municipal depot.

Land to the north and east on the opposite side of Ferntree Gully Road and Blackburn Road is occupied by a two-storey commercial building and a number of single-storey shops, hotel and reception centre respectively.

Diagonally opposite the site on the north-east corner of Ferntree Gully Road and Blackburn Road is an Ampol Service Station.

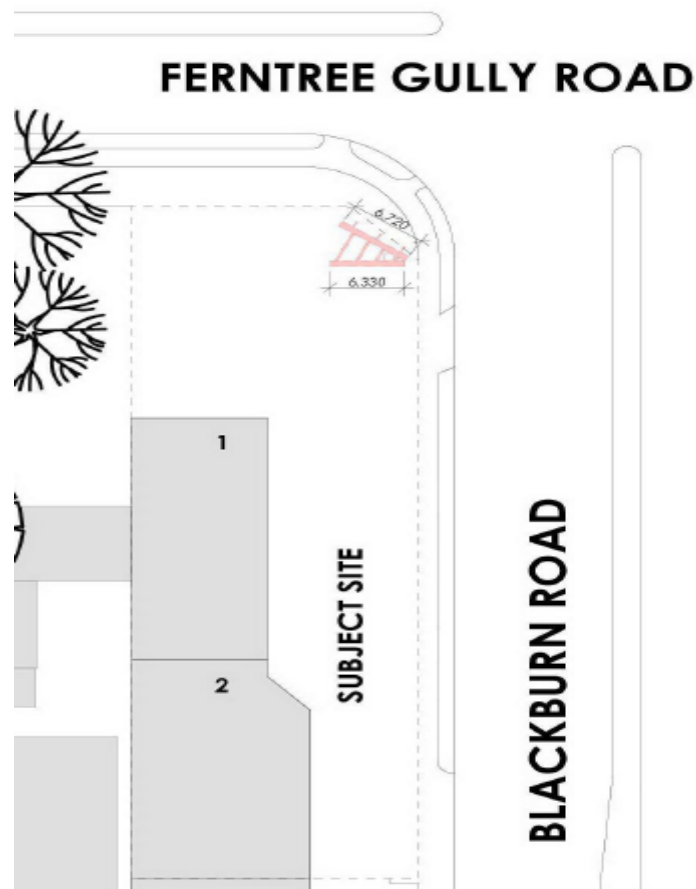
Tribunal inspection

An unaccompanied site inspection was conducted.

REASONS¹

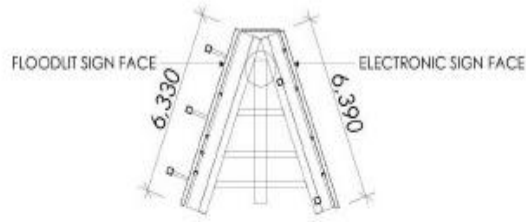
WHAT IS THIS PROCEEDING ABOUT?

- 1 Maple Media Pty Ltd (**the applicant**) proposes to construct and put up for display a floodlit and electronic major promotion sign on the subject land.
- 2 The sign is to be located in proximate to the north-east corner of the site and incorporate two faces presenting towards the north-east and the south. The sign will incorporate two faces in a 'V' formation with the floodlit sign presenting towards the north-east and the electronic sign facing south. The signs will be mounted on a 4.0 metre high pole.



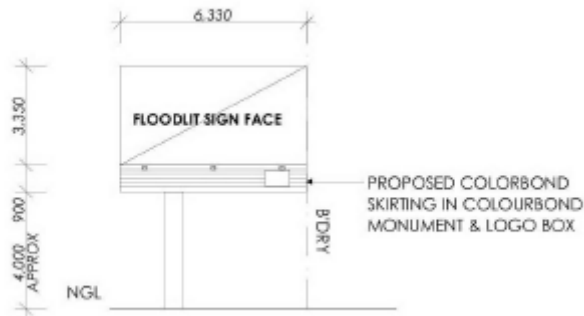
Proposed location of sign.

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

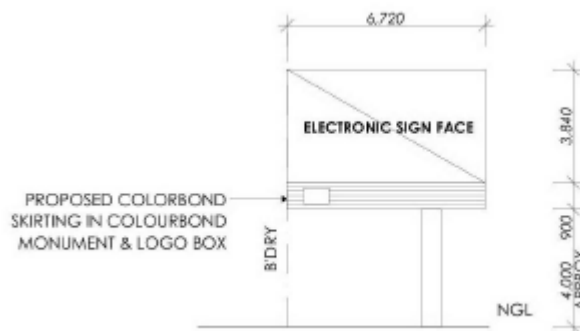


PLAN VIEW
SCALE 1 : 100

- 3 The floodlit major promotion sign will have an area of 21.2 square metres (3.35 metres x 6.33 metres) with a maximum height of 8.25 metres and a 5.6 square metres (0.9 metres x 6.33 metres) ‘skirt’ located below the advertising area.



- 4 The electronic major promotion sign will have an area of 25.8 square metres (3.84 metres x 6.72 metres) with a maximum height of 8.74 metres and a 6.0 square metres (0.9 metres x 6.72 metres) ‘skirt’ located below the advertising area.



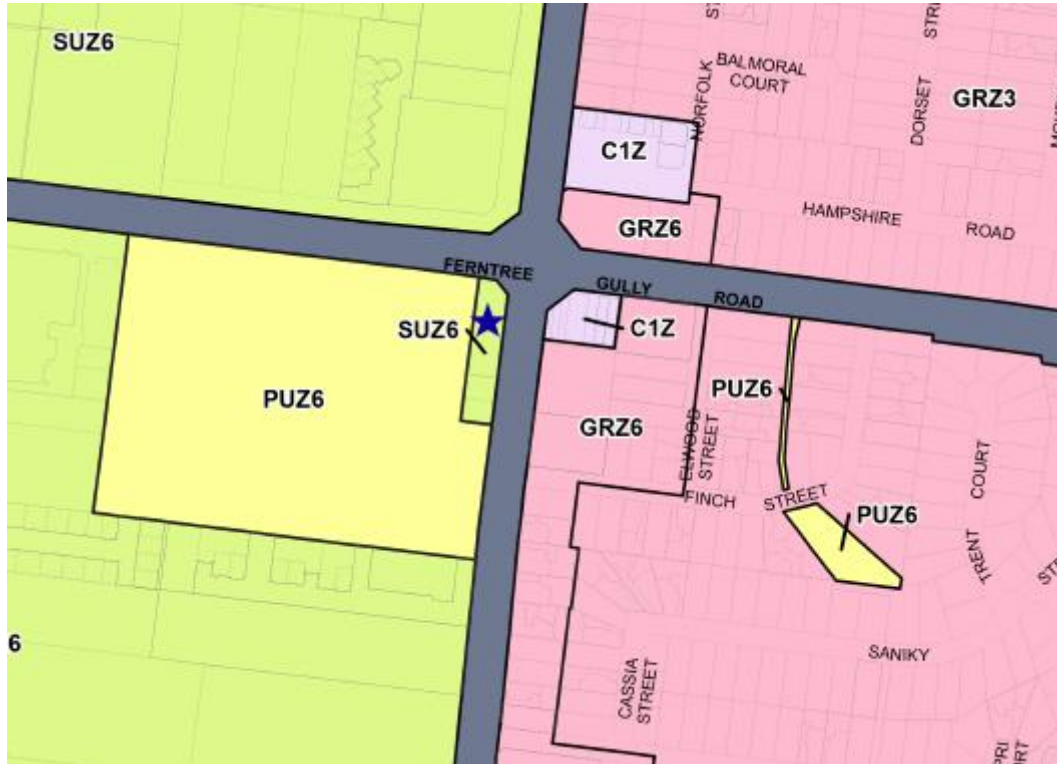
- 5 The applicant has lodged a review of Monash City Council's (**the Council**) decision to refuse a planning permit on the following grounds²:
1. The proposal fails to comply with Clause 52.05-8 and Clause 22.08 as the proposed sign fails to integrate appropriately with the existing buildings; and it will result in a safety hazard for motor vehicles given the location of the sign within a major intersection.
 2. The proposal has the potential to negatively impact on the safety and efficiency of the arterial road network.
 3. The sign fails to meet the objectives of Clause 22.03 and Clause 22.08 which discourages major promotional signage in low scale business and industrial areas.
 4. The sign fails to satisfy the objectives of Clause 22.08 which discourages electronic signs to be located outside of entertainment precincts.
 5. The sign will form a dominant visual element from the nearby residents and become a dominant element in the streetscape.
 6. The sign will create visual disorder and clutter.
- 6 The applicant submits the Council has assessed the proposal from a negative rather than neutral point of view and has failed to consider the strategic context and designation of the site. The applicant also states the signs comply with the provisions of clause 52.05 of the Planning Scheme, will not cause visual clutter or disorder and will not result in a safety hazard for motor vehicles.
- 7 The land abuts a road in TRZ2, and the application was referred to the Head, Transport for Victoria pursuant to clause 52.29-4, who has no objection to the proposal subject to specific conditions being included on any permit that may issue.
- 8 A number of Tribunal decisions were referred to by the parties in support of their respective positions. I have taken them into account.
- 9 I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions presented, the relevant policies and provisions of the Planning Scheme, and inspected the site and surrounding area, I have decided to refuse a permit. My reasons follow.

² At the hearing Council did not pursue grounds 2, 3 (with respect clause 22.03) and 4.



WHAT IS THE RELEVANT PLANNING CONTEXT?

- 10 The site is located in SUZ6 and abutting land is zoned Public Use Zone 6. To the south, north, and east there is a mix of zones including Special Use Zone 6, Commercial 1 Zone and General Residential Zone 6 as shown below.



- 11 At clause 37.01, the purpose of the SUZ 6 is:
- To implement the Municipal Planning Strategy and the Planning Policy Framework.
 - To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone.
- 12 Clause 37.01-5 notes that the zone is in Category 3 for the purpose of signage unless the schedule specifies otherwise. In this instance, the schedule specifies that the site is in Category 2 (Office and industrial) for the purpose of the advertising requirements at clause 52.05. The purpose of this category is:
- To provide for adequate identification signs and signs that are appropriate to office and industrial areas.
- 13 No permit is required for the signs pursuant to the provisions of DDO2.

- 14 Clause 22.02 - Monash Technology Precinct Policy. This policy applies to land in Schedule 6 to the Special Use Zone, as shown on the map which forms part of the policy, titled Monash Technology Precinct.

Relevant objectives include:

- To achieve high quality design outcomes for the development of sites.
- To encourage high quality built form and streetscape throughout the Precinct so as to ensure a quality environment for activities pursued in the Precinct. This is regarded as a critical component in attracting new business investment to the Precinct.
- To promote a high level of amenity in streetscape and built form that reinforces the Precinct's significance on a local, regional, national and international scale.

There is nothing specific in the related policy section of the clause relevant to signage.

- 15 The Outdoor Advertising Policy at Clause 22.08 provides guidance in relation to the location of outdoor advertising signage. The site is identified as being within 'other business and industrial areas' which seeks *to promote the orderly display of signs having regard to the need for identification of business premises and respect for environmental context.*

General objectives seek:

- To facilitate advertising signs that provide appropriate and effective identification of businesses and other land uses.
- To ensure that outdoor advertising is sited and designed in a manner that is complementary to the built form and landscape characteristics of the locality and supports the Garden City objectives of the municipality.
- To identify signage types appropriate to different land use and development circumstances.
- To achieve outdoor advertising outcomes appropriate to the hierarchy of business centres in the municipality and to encourage a consistent theme for business identification signs within each centre.
- To provide for identification signs that add vitality and colour to high order shopping centres in accordance with this policy.
- To ensure that the amenity of residential areas is not adversely affected by the provision of outdoor signage for non-residential uses, particularly along non-arterial roads.

- 16 The specific objective relevant to the Monash technology precinct is:

- To foster the Garden City image of the city by promoting clear, modern corporate identification and maintain spatial relationships.

- 17 Clause 22.08 relevantly includes the following policy:
- encourage the type, scale and location of signs to be respectful of their environment including the business centre's role in the activity centre hierarchy (where appropriate);
 - limit the location and extent of signage for businesses outside retail precincts to that which identifies the business and provides necessary directional information;
 - ensure that signage in residential neighbourhoods is unobtrusive;
 - ensure that the amenity and area character contribution made by landscaped setbacks is not eroded by signage;
 - discourage the proliferation of signs along major transport routes including roadways and railways.
- 18 Decision guidelines include:
- whether the signage is required for the identification of the business or other use on the site.
- 19 Additional guidelines are provided for particular types of signage in the form of Performance criteria. Those relevant to this application are:
- Floodlit sign
- These signs should not interfere with the effective operation of traffic or other public signage and be baffled to avoid amenity reducing light spill.
- Major promotion sign.
- Generally inconsistent with the Garden City image
- Promotion sign
- Strongly discourage promotion signs particularly along arterial roads, including freeways. They should be visually distinct from business identification signs.
 - Dedicated space for changeable seasonal promotions may be appropriate.
- 20 An Electronic sign is not specified at clause 22.08.
- 21 Clause 52.05 details the provisions relating to signs. The purpose is:
- To regulate the development of land for signs and associated structures.
 - To ensure signs are compatible with the amenity and visual appearance of an area, including the existing or desired future character.

- To ensure signs do not contribute to excessive visual clutter or visual disorder.
 - To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.
- 22 Clause 52.05-8 provides decision guidelines for all signs and more specifically major promotion signs that must be considered when deciding on an application. The specific considerations include:
- The effect of the proposed major promotion sign on:
 - Significant streetscapes, buildings and skylines.
 - The visual appearance of a significant view corridor, view-line, 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 that 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 view-lines.
 - 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.

- 23 More general decision guidelines relevant to this application include:
- The character of the area
 - Impacts on views and vistas
 - The relationship to the streetscape, setting or landscape
 - The relationship to the site and building
 - The impact of structures associated with the sign
 - The impact of any logo box associated with the sign
 - The need for identification and the opportunities for adequate identification on the site or locality
 - The impact on road safety
- 24 There are several mandatory conditions required to be included on any permit that may issue. There are also conditions required by the Head, Transport for Victoria in the event a permit is issued.
- 25 Signage definitions are provided at Clause 73.02 as follows:
- An electronic sign is defined as *a sign that can be updated electronically. It includes screens broadcasting still or moving images.*
 - A Floodlit sign is defined as *a sign illuminated by external lighting provided for that purpose.*
 - A Major promotion sign is defined as *a sign which is 18 square metres or greater that promotes goods, services, an event or any other matter, whether or not provided, undertaken or sold or for hire on the land or in the building on which the sign is sited.*

DOES THE PROPOSED SIGN APPROPRIATELY RESPOND TO THE PLANNING POLICY CONTEXT?

- 26 State planning policy and the provisions of the Planning Scheme recognise that major promotion signs are a permissible form of advertising sign. They are explicitly provided for at Clause 52.05 of the Planning Scheme.
- 27 At a local policy level, Clause 22.08 specifically discourages major promotion signs in the municipality. The policy states that major promotion signs are ‘Generally inconsistent with the Garden City image’.
- 28 The applicant submits that:
- The provisions at Clause 52.05-6 encourage major promotional signage in commercial and industrial locations in a manner which complements or enhances the character of the area. As the area is commercial in nature the sign will not result in unreasonable visual disorder.



The applicant contends that the proposed sign is located in exactly the type of area a major promotional sign would be expected to be seen and should be located due to its visibility.

The Australian Pocket Dictionary has several definition versions for 'disorder' and includes the words 'confusion', 'tumult', 'disarrange', 'untidy' and 'ill-disciplined'. The openness of the site coupled with the lack of major promotional signs and signs of a similar size enables the sign to be clearly visible and different from any surrounding signs. The sign can not result in visual disorder if there can be no confusion as to what the sign is and what it is displaying.

The local planning policy is prohibitive in nature in regards to major promotional signage which runs against state planning policy. There is discretion to grant a permit even though the sign is promotional in nature and is not a business identification sign.

- 29 The applicant referred to a number of decisions including *Adspace Pty Ltd v Melbourne CC* [2006] VCAT 602 in which the Tribunal stated:

It is important in assessing outdoor advertising sign cases not to bring a prejudiced mind to the task, assuming that certain types of signs, or any signs at all, or for that matter any increase in the number of signs, must necessarily be a bad thing. An assessment must be made in relation to the proposed characteristics and position of the sign intended, but also of the context in which it is proposed to be erected and displayed.

- 30 I acknowledge the findings of the Tribunal that policies should not be interpreted as a blanket discouragement. When considering an application for a major promotion sign, regard must be given to the site's physical context and the design response against the provisions of the Planning Scheme.
- 31 The submissions referred to and addressed a comprehensive array of policy and statutory controls that apply. In this context consideration of this proposal must be informed by a balanced application of those Planning Scheme policies and provisions.

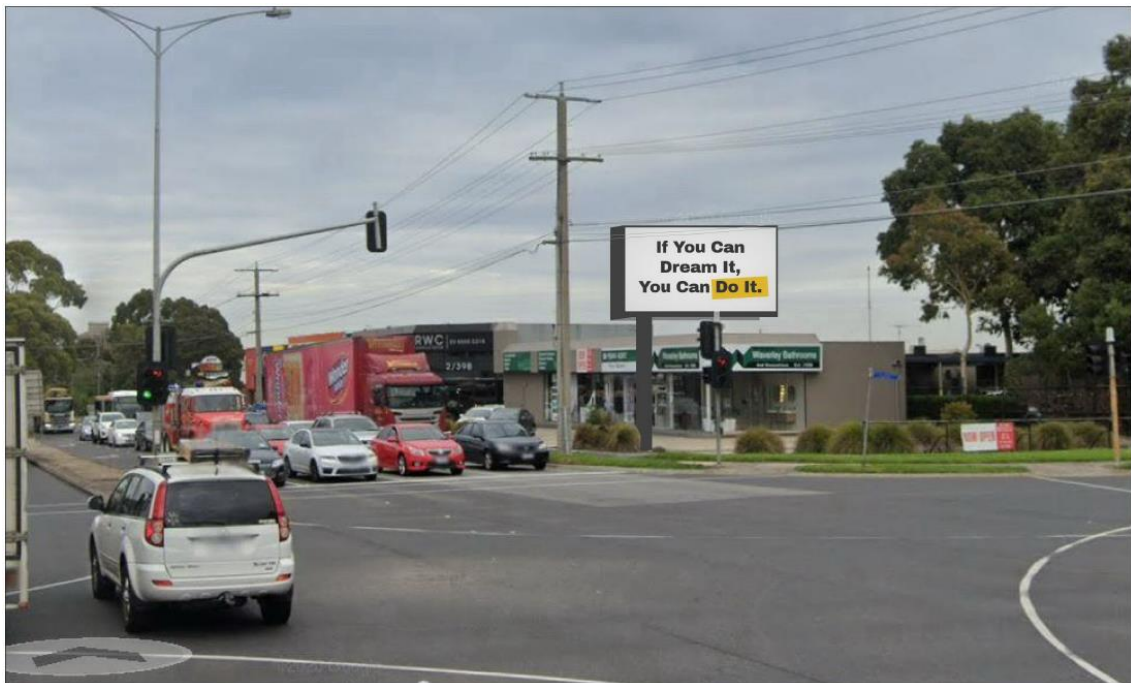
WILL THE PROPOSAL ADVERSELY AFFECT THE VISUAL AMENITY OF THE AREA?

- 32 I consider the key issue in this proceeding is whether the signs have an unacceptable visual impact on the site and its surrounds. This includes whether they sit comfortably on the review site and in context with nearby built form and the streetscape.
- 33 Having regard to the planning policies that apply, the site and its context, I find the signs will not complement or enhance the character of the area and would have an unacceptable impact on the streetscape.

- 34 With respect to the character of development in the area, the site contains single-storey low-scale development that is set back from the Ferntree Gully Road and Blackburn Road abuttals. Land to the north on the opposite side of Ferntree Gully Road contains a two-level commercial building set back from the Blackburn Road and Ferntree Gully Road Street frontages.
- 35 On the east side of Blackburn Road opposite the site is a group of single-storey shops that are built to their street frontages. Diagonally opposite to the north-east is a Ampol service station with associated signage.
- 36 All corners of the intersection apart from the one abutting the review site have a slip lane which has the effect of setting back development further from the actual intersection.
- 37 In this context the Council is not supportive of the proposal as it will be situated on a prominent corner with minimal setback, not recessive, taller than the existing buildings on the site and will not integrate with existing built form.
- 38 The applicant in support of the proposal says:
- The height of the proposed sign is appropriate to its purpose and sits comfortably with other large scale-built elements in the skyline i.e. the electrical poles and buildings alongside the road corridor, and indeed other signage in the area.
- The architectural design of the pole and sign is neat, clean and engineered to be fit for purpose. Its appearance will blend with the commercial backdrop and fulfill this performance guideline.
- The construction and display of the proposed signage will not result in visual clutter and will be contextual to the area. The signage will not have an unreasonable impact on the visual appearance of the area. The scale of built form of the area is commercial in nature. Within this context, the signage will sit comfortably, and will not appear as an inappropriate intrusion.
- 39 The common theme of advertising in the locality relates to business identification signage predominantly displayed on the facade of buildings. Whilst policy at clause 22.08 discourages major promotional signs, they remain permissible subject to assessment against the provisions of the Planning Scheme.
- 40 Clause 52.05 sets out location principles for major promotion signs. The relevant principles encourage major promotion signs in commercial and industrial locations in a manner which complements or enhances the character of the area and in areas with a strong built form character, 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.
- 41 The site is located on the west side of Blackburn Road and the signs are oriented so that the primary view-lines are from the south and north along

Blackburn Road. The existing buildings are single-storey, low scale and sited in proximity to the west boundary of the site. The buildings step down in height in a northerly direction and their setback from the street frontage creates an 'open' streetscape to both Blackburn and Ferntree Gully Road. Aided by my inspection I find the buildings due to their height and setback from the street frontages do not present a strong built form character. Further, the 'open' streetscape is generally consistent along the west side of Blackburn Road to the north and south of the site as either landscaping or car parking is located within the front setback.

- 42 The signs are located within the car park amongst some low level landscaping. When viewed from the north, the siting enable the signs to be viewed with little impediment other than the usual street infrastructure associated with a signalised intersection. In this context the signs with a maximum height of 9.5 metres will be taller than the nearest building on-site and the separation of the signs from the existing buildings result in the structure not being 'framed' by a backdrop.
- 43 The siting combined with the height will create a dominant free-standing intrusion into the existing built form character of the site and locality that will not enhance the existing streetscape. The overall size of the sign will appear out of scale within the 'open' streetscape and car park. The car park does not provide for any immediate built form context to provide back ground to the proposed signs. The photo below shows the sign when viewed from Blackburn Road, north-east of the site.



Source: Application plans (view from north-east).

- 44 When viewed from the south, the sign once again will be dominant in the streetscape. The signs will sit prominently at the corner with the

intersection located in the background. This outcome accentuates the prominence of the signs. Once again, I find that the overall size of the sign will appear out of scale within the 'open' streetscape and the recessive built form of the most proximate commercial building.

Photo Montage, driver eye height, northbound on Blackburn Rd, 81m south of the Ferntree Gully Rd intersection stop line.



- 45 Further north of the intersection there is a two-level commercial building and associated landscaping. The applicant says the sign will blend with the commercial backdrop. With respect to the commercial buildings in the locality, the two-level building to the north is the most proximate. I do not agree with the applicant that the sign will acceptably blend with these buildings.
- 46 The closest building is located on the opposite side of Ferntree Gully Road and provides a limited angled backdrop. The limited backdrop is a consequence of the building being set back from the Blackburn Road frontage resulting in the sign aligning with the planting located in the setback and not with the building. In this context the sign will interrupt views of the landscaping rather than being framed by the building. Therefore, the sign will not 'blend' with the building and will have an unacceptable dominant impact on the streetscape.
- 47 The existing street infrastructure while evident in the streetscape, is comprised of traffic lights and power poles. These structures are typically slender in their profile with limited mass and are vertical in proportion. The proposed signs are horizontal in form and have larger mass with an area of 21.2 and 25.8 square metres. I do not find the existing street furniture to provide sufficient contextual justification to support the proposed signs.

- 48 With respect to development on the east side of Blackburn Road opposite the site there are business signs associated to the shops. These signs are typically wall mounted and integrate with their host building. Diagonally opposite on the north-east corner the Ampol service station includes two internally illuminated panel signs. At the hearing I was advised these signs were originally approved in 2009 and have approximate areas of 20.68 square metres and 18.48 square metres and an approximate height of 9.4 metres. I was also advised the signs as currently displayed vary from the approved signs.
- 49 These internally illuminated panel signs are located on a different view-line to the proposed signs being on the opposite side of Blackburn Road. Further they are set back from the corner (approximately 10 metres) that includes a right turn slip-lane and is located within the landscape setback. The siting and vertical design of these signs are notably dissimilar to the proposed signs. Therefore I do not find their existence persuades me to support the current proposal.
- 50 Accordingly, having regard to the decision guidelines at clause 52.05-8, I find the proposed signs will not complement or enhance the character of the area and would have an unacceptable impact on the streetscape.

CONCLUSION

- 51 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Shiran Wickramasinghe
Member

