

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1377/2022
PERMIT APPLICATION NO. TPA/54143

CATCHWORDS

Monash Planning Scheme; the construction and display of an electronic major promotion sky sign; Clause 52.05 of the Monash Planning Scheme; Clause 22.08 of the Monash Planning Scheme; major promotion sign along a landscaped Freeway.

APPLICANT	Citizen Outdoor Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
REFERRAL AUTHORITY	Head, Transport for Victoria
SUBJECT LAND	508-520 Wellington Road, Mulgrave
HEARING TYPE	Hearing
DATE OF HEARING	28 February 2023
DATE OF ORDER	28 February 2023
CITATION	Citizen Outdoor Pty Ltd v Monash CC [2023] VCAT 213

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Citizen Outdoor
 - Drawing numbers: 080722-1/9 to 080722-9/9
 - Dated: December 2022
- 2 In application P1377/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/54143 a permit is granted and directed to be issued for the land at 508-520 Wellington Road, Mulgrave in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - To construct and display an electronic major promotion sky sign

Michael Deidun

Member



APPEARANCES

For applicant	Panos Nickas, Solicitor of Nickas Legal He called the following witnesses: <ul style="list-style-type: none">• Simon Gilbertson, Town Planner of Contour• John Patrick, Landscape Architect of John Patrick Landscape Architects
For responsible authority	Peter English, Town Planner of Peter English & Associates
For referral authorities	No appearance

INFORMATION

Description of proposal	The construction and display of an electronic major promotion sky 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
Zone and overlays	Industrial 1 Zone Design and Development Overlay 1
Permit requirements	Clause 52.05-12 to construct and display an electronic major promotion sky sign
Relevant scheme policies and provisions	Clauses 15, 17, 18, 21, 22.03, 22.08, 33.01, 43.02, 52.05, 65 and 71.02.
Land description	The land is an irregular shaped allotment with a frontage on the southern side of Wellington Road of 10.15 metres, a rear abuttal to the Monash Freeway of 122 metres, and an overall area of 41,411 square metres. The land is developed for industrial purposes, and the rear of the site is undeveloped and provides a deep landscaped presentation to the Monash Freeway.
Tribunal inspection	The Tribunal inspected the site and surrounding area prior to the hearing, on 21 February, 2023.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Citizen Outdoor Pty Ltd (the ‘Applicant’) seeks to review the decision of the Monash City Council (the ‘Council’) to refuse to grant a permit for the construction and display of an electronic major promotion sky sign on land at 508-520 Wellington Road, Mulgrave (the ‘review site’).
- 2 The Council’s grounds of refusal raise concerns in relation to the impact on this landscaped freeway and the desired Garden City Character, the failure for this sign to be integrated with built form or minimise visual clutter, and the potential for the sign to be a dominant visual element from a residential area.
- 3 I have decided to set aside the Council’s decision, and direct the grant of a planning permit subject to conditions. Reasons for my decision were given orally at the conclusion of the hearing. What follows is an edited version of those oral reasons.
- 4 There is a good level of guidance from the Monash Planning Scheme to assist my decision making task. Clause 52.05-8 provides a range of decision guidelines, including the following that apply to Major promotion signs.

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 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.

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.



- 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.
- 5 In addition, Clause 22.03 contains the Council’s Industrial and Business Development and Character policy, which contains the following guidance:
- Visual clutter caused by advertising signs be minimised.
 - Advertising signs identify the business on site, not any products.
- 6 Finally, Clause 22.08 of the Monash Planning Scheme contains the Council’s Outdoor Advertising Policy. The following policy statements are particularly relevant to this proceeding.
- 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.
 - discourage the proliferation of signs along major transport routes including roadways and railways;
- 7 Performance criteria are provided for a range of sign types, with the following provided in relation to Promotion signs:
- 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.
- 8 And Major promotion signs:
- Generally inconsistent with the Garden City character
- 9 And the following performance criteria is provided for Sky signs:
- May be considered for centre identification at the major entry points of a large retail centre. The design should be integrated with the architectural features of the centre including its scale and construction detail.
- Centre identification signs may be internally illuminated or floodlit but animated signs, flashing signs, reflective signs and associated bunting signs are discouraged.
- Promotional advertising on sky signs is discouraged.
- 10 It would be fair to say that the Monash Planning Scheme takes the general position to discourage major promotion signs, particularly along arterial roads. As a result, the Council submits that a reasonably high threshold should be applied to any application, and that there is nothing about this



proposal that would warrant a departure from policy. They submit that this proposed sign would contrast with the landscaped nature absent of built form, of this section of the freeway, and it would be without precedent in this location. They further submit the following, from the written submission tendered in this proceeding.

The proposed sign which has a maximum height of 18.2 metres would be the highest structure visible along this part of the freeway when viewed from either direction. In Council's view, the proposed sign would sit in isolation, and form a dominant visual element that is out of context with its surrounds when viewed from the freeway. Further, this is an area where there is no established theme of promotional signs, and in particular, signs of the scale and type proposed. Given the freestanding nature of the sign, there is no ability to integrate the sign with the architecture of an existing building, nor would its dominance be minimised as would be the case if there were a backdrop of larger buildings.

- 11 The Council submits that the context of this proposed sign contrasts with that approved in the Tribunal decision of *Maple Media Pty Ltd v Monash CC [2019] VCAT 79*, which the Council describes in the following manner:

...the sign being situated in a Commercial 1 Zone on an existing commercial building, in an area with a reasonably strong commercial built form character where there was no established pattern of landscaping adjacent to the freeway.

- 12 Instead, the Council in part relies on the findings of the Tribunal in the decision of *Drive By Developments Pty Ltd v Monash CC [2017] VCAT 1889*, which refused to grant a permit for an electronic major promotion sign on land backing onto the Monash Freeway some 1.5km from the review site in this proceeding. The Tribunal in that decision concluded as follows:

[28] I consider the proposed electronic sky sign at a height of 13.5m, to sit at the highest point beside the Freeway reservation, will be the most dominant element, when seen against the expansive skyline in this location. I consider the signing in this location will be visually intrusive, and given its separation from the built form of the shopping centre itself, would be at odds with the requirement for such signs to be integrated into the built form of commercial and industrial developments.

- 13 The Council also in part relies on other recent Tribunal decisions in *Drive By Developments Pty Ltd v Port Phillip CC [2020] VCAT 629* and *Citizen Outdoor Pty Ltd v Kingston CC [2022] VCAT 259*, both of which I have considered in my assessment.

- 14 Finally, the Council also submits the following:

With respect to surrounding residential areas, Council acknowledges that the closest residential properties are approximately 90 to 100 metres from the site on the opposite side of the freeway.



Clause 52.05 discourages major promotion signs where they will form a dominant visual element from residential areas.

While it is acknowledged that there is some separation from the closest residential properties, it is considered that as a result of the dominating elements of the signage discussed above, the proposed signage would introduce a structure which would provide for an unreasonable impact on the surrounding residential area. Any impacts would also be exacerbated as a result of the illuminated nature of the signage.

- 15 I am not persuaded by these submissions, and instead find that the proposed sign is appropriately designed and located, and is an acceptable insertion into this physical context. I make this finding for the following reasons.
- 16 It is clear that the Monash Planning Scheme strongly discourages the erection of major promotion signs throughout the Municipality, particularly on arterial roads. This focus on arterial roads is curious, given that arterial roads provide the most natural habitat for a major promotion sign, given the extent of traffic that passes along such roads, the often robust nature of arterial road environments, and the width of many arterial road reserves is such as to enable the erection of a large sign. While a policy can strongly discourage such signs, such discouragement cannot be taken to be a prohibition. In any urban municipality, including Monash, it must be accepted that there will be appropriate locations for major promotion signs, and there will be appropriate designs for major promotion signs. It is the role of policy to guide decision making around whether a particular context and design is appropriate.
- 17 Both the decision guidelines at Clause 52.05-8 and the policies quoted above discourage major promotion signs along landscaped freeways. While the proposed sign is to be located on a landscape section of the freeway, it has been designed in a manner to integrate with, and indeed add to the landscape character of this freeway, while providing a polite insertion of advertising space. As such, I find the proposed sign to be an appropriate proposal for this landscaped section of the Monash Freeway. I make this finding for the following reasons:
 - a. The proposed sign is to be positioned amongst a group of canopy trees, with the largest of the existing canopy trees to be positioned at the rear of the sign and thus filtering views to the rear of the sign.
 - b. The advertising component of the proposed sign has been designed to be positioned just above existing vegetation, so that it does not become a dominant element, but rather integrates with the landscape, and enables existing vegetation to remain the most striking visual feature of this part of the Monash Freeway.
 - c. The advertising component of the proposed sign is modest in scale at an area of 64 square metres. This contrasts with the size of the signs approved nearby in Police Road in the decision of *Maple*



Media Pty Ltd v Monash CC [2019] VCAT 79, which I am informed has two signs, each with an area of advertising of 167 square metres. The modest size of the sign that is before me in this proceeding, limits its impact on both the landscaped character of this section of the Monash Freeway, as well as the potential impact on the nearby residential area.

- d. The sign has been designed to face a single direction of traffic, and will provide a green vegetated artificial panel to the rear of the sign, facilitating a further reduction on the impact of the sign on this vegetated component of the Monash Freeway, and enabling the rear of the sign to integrate with the surrounding landscaping. This is depicted in the montage below.



- 18 I also am not persuaded by the Council's submissions that this sign will be out of context with its surroundings, for the following reasons. While this relatively short component of the Monash Freeway might be heavily vegetated, the Monash Freeway is not a country drive amongst a pristine or open landscape. Rather, the context of this part of the Monash Freeway is a robust urban environment, with built form evident on both sides of the Freeway both before, and after, this landscaped section. The proposed sign will therefore simply be read as a continuation of this urban environment, integrated in a clever and thoughtful way into a landscaped section of the Freeway.
- 19 The Council says that the absence of other visible built form along this part of the freeway, and that this sign is without precedent, are further reasons to support its refusal. In contrast, I consider that the absence of other visible built form will ensure that this sign on its own does not imbalance the dominance of the landscaping along this part of the freeway. This is evident in the montage of the proposed sign set out below.



- 20 Further, I regard the fact that this sign will be without precedent, as put by the Council, will ensure that this sign does not create visual clutter. Rather, the sign will be read as a single element of advertising, integrated with the surrounding landscaping, and as a minor element in the surrounding landscape. For these reasons I cannot agree with the Council's submissions that the proposed sign will be a dominant visual element.
- 21 For these reasons, I do not regard the proposed sign as being a departure from policy, as is submitted by Council. Rather, for the reasons set out above I regard the proposed sign as being consistent with the design outcomes encouraged by policy as set out below:
- a. As the proposed sign will be read absent of any other built form or advertising, it will not result in visual clutter, consistent with the policy at Clause 22.03 of the Monash Planning Scheme.
 - b. The proposed sign will not result in a proliferation of signs consistent with policy at Clause 22.08 of the Monash Planning Scheme, as it will be the only sign along this landscaped section of the Monash Freeway.
 - c. The proposed sign will provide for the retention of existing trees, and is to be complemented by the planting of a wide range of new landscaping, as informed by the landscape plan prepared by Mr Patrick. Therefore, as this major promotion sign has been designed to integrate with and add to the landscape, it will not be inconsistent with the Garden City character, as sought by policy at Clause 22.08 of the Monash Planning Scheme. I make this finding noting that the Garden City Character policy is not about having landscape in the absence of buildings and structures, but rather it is about having a landscaped setting for buildings and structures. That is precisely what will be achieved in relation to the proposal that is before me.

- d. The proposal will not adversely impact the amenity of a residential area, as encouraged by policy at Clause 22.08 of the Monash Planning Scheme. While a residential area exists on the opposite side of the Monash Freeway from the location of the proposed sign, these lots have a limited view towards the sign due to the height and siting of acoustic fencing, and intervening landscaping. Further, the limited view is at a perpendicular distance of around 90 metres from the proposed sign location, or around 125 metres on an angle that might allow a view of the face of the sign. In this intervening distance are tall lights for the Freeway, providing a level of illumination. Further, a Lighting Impact Assessment (Electro Light, 26 July 2022) has confirmed that the proposal complies with the relevant Australian Standard, and will not result in an unreasonable level of illumination of the nearby dwellings. It is important to note that this assessment is undertaken absent of the additional screening or filtering provided by the acoustic fencing and the existing vegetation.

This limited view that is available from the residential area is depicted in the image below, which indicates that only the roofs of dwellings, and not their rear areas of secluded private open space or habitable room windows, can be viewed from the height and position of the proposed sign. This limited view is also confirmed by a photo provided by Council of one of the nearby rear yards, which in my view demonstrates that it is unlikely that a view to the proposed sign will be gained from that pictured location. Finally, this limited view was also confirmed by my site inspection, where I stood in various locations along Tiverton Drive, and observed the rear spaces between dwellings. This has allowed me to gain an understanding of the possible sightlines between vegetation and above the acoustic fencing.



- 22 For these reasons I will set aside the Council’s decision, and direct the grant of a planning permit subject to conditions. I will broadly adopt the conditions as drafted by Council and circulated prior to the hearing, but with the following key changes:
- a. I will amend Condition 1 to stipulate the plans that are to be endorsed include the development plans as well as the landscape plan, and to ensure that Council’s permission is required to alter the extent of vegetation that is retained around the siting of the proposed sign.
 - b. I will add a new condition (Condition 2) to require the landscaping depicted in the landscape plan to be undertaken within 6 months of the erection of the sign, and thereafter maintained.
 - c. I will amend Condition 9 to allow the permit expiry date to be amended with the written consent of the Responsible Authority, so that an entirely new planning permit is not necessary.

Michael Deidun

Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/54143
LAND	508-520 Wellington Road, Mulgrave

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- To construct and display an electronic major promotion sky sign

CONDITIONS

- 1 The location and details of signs shown on the endorsed plans (prepared by Citizen Outdoor Drawing Nos 080722-1/9 to 080722-9/9 dated December 2022 and landscape plan prepared by John Patrick Landscape Architects Drawing No TP01 dated February 2023), as well as the trees which are to be retained around the siting of the signs, must not be altered without the written consent of the responsible Authority.
- 2 Within 6 months of the erection of the sign allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and thereafter maintained to the satisfaction of the Responsible Authority.
- 3 Signs must not contain any flashing light.
- 4 The sign must be located wholly within the boundary of the land.
- 5 The sign must be constructed and maintained to the satisfaction of the Responsible Authority.
- 6 The sign must not distract drivers due to its colouring, be mistaken for a traffic signal, be able to be mistaken as an instruction to drivers or constitute a road safety hazard in any way.
- 7 The sign must not obstruct the view of motorists, obscure traffic signals or constitute a road safety hazard in any way.
- 8 The intensity of the light in 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.
- 9 Without the further written consent of the Responsible Authority, this permit will expire 15 years from the date of issue of this permit.
- 10 Without the written consent of the Responsible Authority, this permit will expire unless the approved sign is displayed within 2 years of the issue date of this permit.



In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

Department of Transport conditions

- 11 No image may be displayed on the electronic sign for less than 30 continuous seconds for the sign.
- 12 The luminance of the advertising sign must be such that it does not give a veiling luminance to the driver, of greater than 0.25 cd/m², throughout the driver's approach to the advertising sign.
- 13 The display of any electronic advertising images must be in accordance with the supplied Lighting Impact Assessment Report dated 26/07/2022 from Electrolight Pty. Ltd. (which is acceptable to the Department of Transport) which was provided to the Department of Transport and the Responsible Authority, together with a Traffic Engineering Assessment dated Aug 2022, from Traffix Group. The Lighting report must:
 - (a) form part of any permit issued by the responsible authority;
 - (b) be prepared by a suitably qualified lighting consultant;
 - (c) describe the sign location, design and operational settings and functionality of the electronic sign (including dimming/control functionality);
 - (d) include a certification signed by the lighting consultant, stating that the design and operational settings will comply with the maximum average luminance and threshold increment standards and other requirements specified by the Department of Transport in the permit conditions;
- 14 The electronic sign is to be dimmable and have a suitable control system to enable maximum lighting levels to be set or adjusted if deemed necessary by the Responsible Authority or the Department of Transport.
- 15 Where illuminated during the day, the signage is to be fitted with Photocell/s (light sensor/s) that measure the ambient light and control system technology that enables the luminance of the signage to automatically adjust relative to the measured ambient light level.
- 16 For digital/electronic signage, any change to brightness levels must only be applied during an image transition, not while an image is being displayed.
- 17 The transition between images must be instantaneous.
- 18 The advertising content of the sign must not:
 - (a) Consist of more than one static image at a time.
 - (b) Contain any animation.



- (c) Consist of a sequence of images giving the illusion of movement from one image to the next.
 - (d) Contain or consist of images which are capable of being interpreted as projections beyond the face of the advertising screen, such as through the use of 3D technology.
 - (e) Contain or consist of video, movie or television broadcasts.
 - (f) Contain or consist of present-time or other contemporary update information such as relating to news, weather or time.
 - (g) Contain any flashing, blinking, brightening or fading elements that create the illusion of movement or change.
 - (h) Be capable of being mistaken for a traffic signal or a traffic control device. This includes the use of red, amber or green circles, octagons, crosses or triangles.
 - (i) 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.
- 19 The advertising area must not be split into 2 screens (horizontally or vertically) with different messages.
- 20 The sign and advertising content must not dazzle or distract road users' due to its colouring or content.
- 21 The sign and any displayed advertisement must not include ancillary extension, embellishment or accessorisation within or outside the permitted advertising area, unless Head, Transport for Victoria has agreed in writing, prior to installation.
- 22 The use of sound or motion to activate the sign is not permitted.
- 23 The use of sound to interact with any road user is not permitted.
- 24 The advertising sign must shut down and cease any form of visual display (and must remain in shut down mode until the issues are resolved), in the event of:
- (a) an attack by a computer hacker, virus or similar resulting in the unauthorised display of visual images or messages.
 - (b) any malfunction of the advertising sign.

– End of conditions –

