

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1374/2023
PERMIT APPLICATION NO.TPA/54875

CATCHWORDS

Section 77 of the *Planning & Environment Act 1987* (Vic); Monash Planning Scheme; Floodlit Major Promotion Sky Signs; Retrospective application; Repeat Appeal; Visual impact on residential areas; Illumination impacts; Scale of signs.

APPLICANT	Maple Media Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	327-329 Police Road MULGRAVE VIC 3170
HEARING TYPE	Hearing
DATE OF HEARING	5-6 September 2024
DATE OF ORDER	18 October 2024
CITATION	Maple Media Pty Ltd v Monash CC [2024] VCAT 964

ORDER

Amend permit application

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended to construct and display two floodlit major promotion sky signs.
- 2 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Maple Media
 - Drawing numbers: TP01, Revision 6 dated 23 Jan 2020 and TP03 and TP04, Revision 08 dated 31 July 2024

No permit granted

- 3 In application P1374/2023 the decision of the responsible authority is affirmed.
- 4 In planning permit application TPA/54875 no permit is granted.



Megan Carew
Member

APPEARANCES

For applicant

E Pepler, barrister instructed by Polis Legal
She called the following witnesses:

- Paul O'Shea, town planner, CS Consulting Ptd Ltd
- Scott Forbes, Lighting Engineer, Rubidium Light

For responsible authority

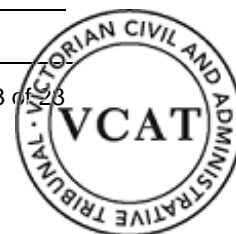
Z Teoh, solicitor, Maddocks



INFORMATION

Description of proposal	<p>Retrospective permission to construct and display development of the land for two floodlit major promotion sky signs (including support structure) over the office building at 327-329 Police Road, Mulgrave.</p> <p>The plans before me are prepared by Maple Media, TP01, Revision 6 dated 23 Jan 2020 and TP03 and TP04, Revision 08 dated 31 July 2024.</p>
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the refusal to grant a permit
Planning scheme	Monash Planning Scheme
Zone and overlays	Commercial 1 Zone ('C1Z'). Design and Development Overlay, Schedule 1 ('DDO1').
Permit requirements	Clause 52.05-2 – A permit is required to construct or put up for display a floodlit major promotion sky sign.
Relevant scheme policies and provisions	Clauses 2, 13, 15, 16, 17, 18, 19, 34.01, 52.05, 65 and 71.02.
Land description	<p>The subject site is located on the north-eastern corner of Police Road and Jacksons Road, adjacent to the Monash Freeway corridor.</p> <p>It is developed with two, four storey modern office buildings and associated carparking. The signs are located above the western building and situated towards above the northern end of on a custom steel supporting structure that suspends the signs above the host building.</p>
Tribunal inspection	<p>I inspected the site and surrounds in the daytime on 4 September 2024¹ and 7 October 2024.</p> <p>I inspected the site at night on 11 September 2024. At this time, the southeast facing sign had been repaired and displayed an advertisement.</p>

¹ On the September date, the southeast facing sign had been damaged by high winds.



REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 Maple Media Pty Ltd ('applicant') seeks a review of the decision of Monash City Council ('council') to refuse a permit for two floodlit major promotion sky signs in a 'V' shaped arrangement. The signs are designed to be viewed from the Monash Freeway travelling south-east and north-west. Each sign has a display area of 200m². They sit on a steel supporting structure that extends over and around the western office building on the review site, so that the signs are suspended above the building.
- 2 This is a new application for a permit, but the signs have already been erected on the review site (Figure 1). The background to this occurring is complex but in summary:
 - In a review of the council's decision to refuse to grant a permit, permit TPA/47966 ('2019 permit') was granted by the Tribunal in *Maple Media Pty Ltd v Monash CC* [2019] VCAT 79 ('Original Decision'). The permit allowed 'the installation and display of two major promotion signs.'
 - The 2019 permit was issued by the responsible authority on 4 February 2019. Plans were first endorsed under the permit on 14 February 2019. Subsequently, the design of the signs was amended through a secondary consent process by council. The latest set of endorsed plans in the 2019 permit were dated 2 March 2020.
 - Construction did not commence until January 2021 and was not completed until January 2023, when the signs became operational.
 - Residents raised concerns about the signs with council and following investigation council wrote to the permit holder advising that the 2019 permit had expired.
 - In November 2023 the permit holder sought a declaration under Section 149A of the *Planning and Environment Act 1987* (Vic) that the permit had not expired. The Tribunal in *Maple Media Pty Ltd v Monash CC* [2024] VCAT 399 refused to make the declaration sought.³ The permit has expired.
- 3 This application:
 - Is a fresh application for permit in circumstances where the 2019 permit has expired.

² 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.

³ I understand that this is under appeal to the Supreme Court.



- It is also an application seeking retrospective permission in circumstances where the signs have been constructed.
- It is also a repeat appeal, and I must determine the appropriate weight to be given to the Original Decision in the merits assessment.



Figure 1: Existing signs from the freeway reserve. Source: Evidence of Mr O'Shea.

- 4 The applicant accepts that this is a new application for permit but says it is essentially the same as that previously approved in the Original Decision. The applicant submits that there have been no changes in circumstances that would warrant a refusal of the application. The applicant relies on the evidence of Mr O'Shea in respect to planning and Mr Forbes in respect to lighting impacts.
- 5 Council says that since the erection of the signs, concerns have been raised by residents in the areas near the review site. These concerns primarily relate to the visual impact of the signs and the effect of illumination on residential amenity. Council says that this is reflected in the objections received to the permit application.⁴ Council submits that these objections,

⁴ There were no statements of grounds received by the Tribunal and no objectors sought to become a party to this proceeding.

combined with the fact that the signs have now been erected, are significant changes relevant to the merits assessment.

- 6 Having considered the submissions and evidence before me, inspected the site in the day and night periods and considered the Monash Planning Scheme ('scheme'), I have determined to affirm the decision of the responsible authority. My reasons follow.

WHAT IS PROPOSED?

- 7 The signs are detailed in the amended plans substituted in this proceeding. The plans are identified as TP01, Revision 6 dated 23 Jan 2020 and TP03 and TP04, Revision 08 dated 31 July 2024. Each sign is single sided and shown as having a display area of 10m high by 20m wide with additional skirting (Figure 2).

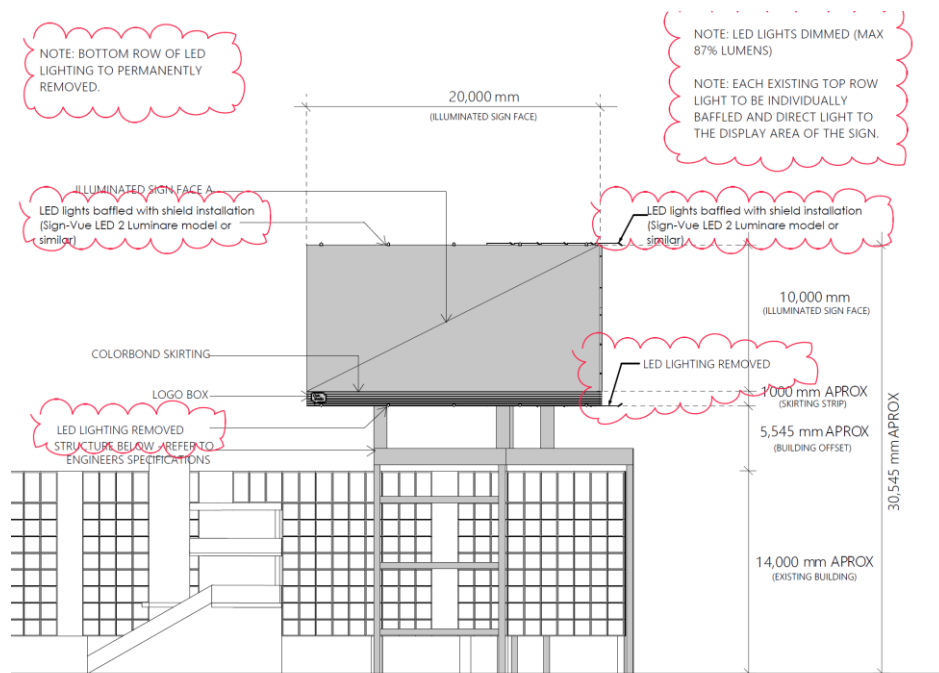


Figure 2: Extract of plans as amended.

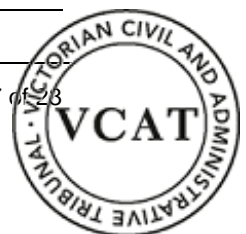
- 8 The plans before me are generally based on the latest set of endorsed plans in the 2019 permit with the following changes:
- The removal of the first endorsed sheet 1 of 1 ('new sign location').
 - The removal of the bottom row of LED lights from each sign.
 - A notation indicating that the top row of lights will be baffled and dimmed (to 87% lumens).
- 9 The applicant contends that the purpose of the application seeks to allow the 'as built' signs on the review site with the above amendments that seek to address the concerns about illumination raised by residents.

- 10 I am concerned that the decision plans do not reflect the signs erected on the site (or the March 2020 endorsed plans in the 2019 Permit) for the following reasons:
- There has been no survey of the height of the host building or the as-built signs.
 - Many dimensions are annotated as ‘Aprox’ which I take to mean ‘approximately’
 - The plans before me show the signs with an overall height of 16.545m ‘Aprox’ above the roof of the existing building. The applicant provided part of a set endorsed building plans (PLP building Surveyors and Consultants Pty Ltd dated 23 December 2020) that show the signs with an overall height of 15.35m above the existing top of the roof parapet.
 - There is no logo box or Colorbond skirting provided to the as-built sign but this is shown on the endorsed plans and plans before me.
 - The number, angle and location of the upper floodlights to be retained is not clearly detailed. There are five current lights at the top of each and these protrude on angled arms that extend up and above the height of the sign (as opposed to directly in line with the top of the sign).
- 11 The applicant sought leave to amend the application to reflect the ‘as built’ conditions. In the absence of a set of plans, the parties agreed that this would need to be achieved via permit conditions should a permit be granted. I find that it is unacceptable that the plans do not accurately reflect what the applicant seeks a permit for and continue to rely on dimensions as ‘Aprox’ including the location of the sign on the rooftop, the height of the building, the overall height of the sign and the offset of the sign to the roof.
- 12 However, for the purposes of determining this review, I have proceeded on the basis that the stated intention is to approve the signs ‘as built’ with some changes to the lighting. I have relied on the existing conditions and the fact that the height of the host building is a fixed element that I am able to view on site.

RETROSPECTIVE NATURE OF APPLICATION

- 13 In determining whether to grant a permit that would authorise the commencement of a use or a development that has been constructed, the Tribunal has consistently found that the permit applicant ought not be put at a disadvantage but nor should an advantage be derived from this circumstance.⁵ The presence of such use or development can assist in understanding the impact it would have if permitted. I have assessed the merits of this proposal with these principles in mind. The parties agreed that

⁵ *Knox City Council v Tulcany Pty Ltd* [2004] VSC 375.



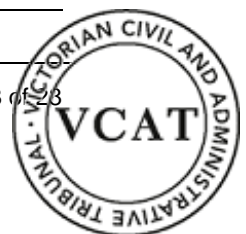
the presence of the signs is relevant to my decision and that being able to view the sign is of benefit to my determination of this proceeding. This is particularly important given my concerns about the accuracy of the plans that I have detailed above.

- 14 As the signs have been erected, I understand that the applicant has gone to some significant cost and entered into contracts for leasing of the display area and the like. This was mentioned several times by the permit applicant in submission in the context of fairness. However, it has been found at this time that the permit has expired.⁶ This is unfortunate, but it is the permit holder's responsibility to ensure that its permissions are in order. The personal circumstances of the permit applicant are not relevant to the planning merits of the decision before me.
- 15 The applicant submitted that what has occurred leading up to this proceeding should be treated as one would an application to extend time of a permit. I am not persuaded by these submissions. The permit has expired and this is not an application to extend the time of the permit, but a fresh application.

THE ORIGINAL DECISION

- 16 The Original Decision granted a permit for the 'installation and display of two major promotion signs' subject to conditions. The Tribunal's reasons are set out at paragraphs 4-17. It is useful to set out the findings from paragraph 12 in full:
 - 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

⁶ Noting that this remains in dispute in a Supreme Court review.



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.



- 17 The parties agreed that I am not bound by the Original Decision and that I must determine the application before me on the planning merits. However, they also agreed that this proceeding is a form of repeat appeal and as such there are additional considerations.

REPEAT APPEAL PRINCIPLES

- 18 The starting point for a repeat appeal is that the previous decision should be given weight, and that the Tribunal should act with great caution when considering whether a previous decision should be reversed.⁷ The weight to be given is a matter for the Tribunal as set out in *Zumpano v Banyule CC* [2016] VSC 420 (*'Zumpano'*):

26 Repeat applications can come in many forms. Approval may be sought of the same use and development as was sought in a previous application. They may contain one or more correcting features, or seek approval for a development entirely different from that for which approval was sought in an earlier application.

- 27 In *Rozen v Macedon Ranges Shire Council* [2010] VSC 583 the Court concluded:

The weight to be given to the various considerations which may be relevant on the one hand, and to particular facts bearing on those considerations on the other hand, is not fixed by the planning scheme but is essentially a matter for the decision maker.

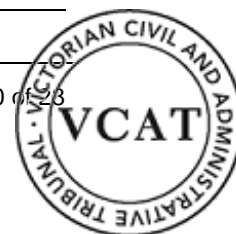
- 28 This passage confirms that the weight to be given to the relevant considerations, and to the particular facts bearing on those considerations, is essentially a matter for the Council and the Tribunal.

- 29 This applies equally in the case of repeat applications. Planning decisions in earlier applications affecting the subject or surrounding land are often relevant considerations in the assessment of a later application. They will almost certainly be relevant when the same use and development of the same land is sought in both the earlier and later applications. It is for the later decision-maker to determine what weight should be given to the earlier decision. Assessment of the significance of correcting features in the context of a proposed use and development is pre-eminently a planning and not a legal matter.

- 19 In *Zumpano* it was noted that there are long established principles regarding repeat appeals. These included the principles referred to the decision of *Reichert v Banyule City Council* [1996] VCAT 44 (*'Reichert'*):

- Significant changes to the application itself;

⁷ *Amoco Australia Limited v City of Berwick* 1983 1 PABR.



- Changes in the circumstances of the land and its surrounds;
 - Changes in planning policy; and/or
 - Changes in the interpretation of the facts or law relevant to the Tribunal's consideration.
 - This is consistent with the findings of the Tribunal in *Caption v Kingston CC* [2011] VCAT 799. In that proceeding the Tribunal also considered a fresh application for a sign where a previous permit had expired:
- 4 Ms Forsyth submitted that substantial weight should be given to the fact that the Tribunal has previously approved this sign. She submitted that as such the renewal assessment should focus on any change substantial change in circumstances since the issue of the permit in March 2000 not on an assessment of the merits of the sign from first principles. Regardless of this, she also provided evidence of Mr McGurn based on first principles.
- 5 I agree with Ms Forsyth to the extent that as with the case of a repeat appeal, any change in approach by the Tribunal needs to be based on either changes in the application, a change in circumstances or a change in the interpretation of the facts or law relevant to the case.

20 I accept that the task before me is to consider whether there has been a change from what was before the previous Tribunal that warrants a different decision. In identifying the changes that have occurred, I note that while there may have been changes, not all changes are significant. The parties agreed that:

- There were no significant changes that had occurred in the surrounding physical context since the Original Decision that would impact on this proposal. There has been limited change to the nature of land use or development on the review site or within its immediate surrounds. Two new permits for signs nearby were referred to but I agree that these are sufficiently removed in viewsheds relative to the review site.⁸
- Although there have been changes to the scheme policy, these are generally not material to this proceeding. Amendment C166 to the scheme on 15 May 2024 replaced the Local Planning Policy Framework (Clauses 21 and 22) with a new Clause 2 Municipal Planning Strategy ('MPS') and local provisions at Clauses 11-19 of the planning policy framework. This resulted in the deletion of the previous Clause 22.08- Outdoor Advertising local policy. The appendix to the applicant's submission and the evidence of Mr O'Shea took me to these changes in detail. I find that the policy framework is

⁸ *Perpetual Corporate Trust Ltd v Monash CC* [2024] VCAT 105 and *Citizen Outdoor Pty Ltd v Monash CC* [2023] VCAT 213.



not significantly different than that before the previous Tribunal, the impact of the changes is address in my merits assessment below.

- That there have been changes to the law to be applied since the time of the Original Decision, notably Amendment VC148 to the scheme clarified that a sign was both a ‘use’ and a ‘development’ of land and altered the sign provisions at Clause 52.05. This is addressed in my assessment.

- 21 The permit applicant submitted that in addition to the above, there were no other changes that would warrant a different decision. However, the applicant also relied on the evidence of Mr Forbes and Mr O’Shea that assessed the application afresh.
- 22 The applicant emphasised that this is a case where the previous decision was for approval of the signs essentially the same as what is now before me, with the same surrounds and same planning scheme considerations and as such the applicant should be able to expect the same result. The applicant submitted that there were no significant or material changes such that would warrant a different decision to the Tribunal in the Original Decision.
- 23 Council submitted that there are two key changes to the facts before me compared to the previous Tribunal that need to be considered:
- The fact that there were objections to the proposal (the previous application was not directed to be advertised to the same extent of the adjoining residential areas).
 - The fact that the signs have now been erected and as a result impacts can be better assessed:

76 This is a significant change since the *Maple Media* decision which resulted in the grant of the 2019 Permit. When the Tribunal considered the proposal subject of the 2019 Permit, it could only make an assessment based off the documents and evidence that it was presented with. Now that the signs have been constructed, the Tribunal can see what it is being asked to provide approval for. It can view the signs and understand the impact of them in the day and night times and that issues that they are currently causing, which is explained further in these submissions. These factors need to be considered by the Tribunal when determining the Permit Application and reduces the weight that should be afforded to the previous decision.

Relevance of objections

- 24 The applicant accepted that the objections are a new fact before me. The applicant noted that none of these people had either lodged a statement of grounds or sought to become a party to this proceeding. The applicant considered that these objections should not reduce the weight of the Original Decision.



- 25 Council, and the Tribunal on review must consider all objections to a permit application pursuant to Clause 60(1) of the *Planning and Environment Act 1987* (Vic). I find that the objections are a matter that I now must consider and give some weight to. I have addressed this in my merits assessment.

Relevance of erection of signs

- 26 The applicant considers the fact that the signs have been erected is not a significant change. The applicant submits that to place significant weight on this aspect would be inconsistent with repeat appeal principles:

We cannot have a system where the Tribunal approves a permit for something, then someone says now it is built and I know

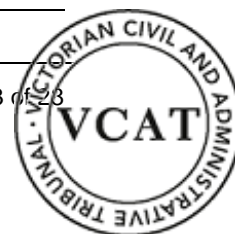
what it looks like I wouldn't approve a permit for that where there is no other change.⁹

- 27 There is some merit in this argument, but I disagree because in deciding any application, the Tribunal can only rely on the facts and material before it. I find that the fact the signs are erected is a significant change. In addition, due to the inaccuracies in the plans before me described above, I have had to place greater weight on my ability to view the signs in situ in making my assessment.

Is the proposal before me the same as before the previous Tribunal?

- 28 In this proceeding, there is a question about what the plans were as before the previous Tribunal. As a preliminary matter, I asked the parties to clarify the plans before the original Tribunal. This proved to be difficult for reasons I explain below.
- 29 Permit application TP/47966 was lodged on 8 August 2017. The application form described the proposal as 'Maple Media would like to erect a double sided roof mounted illuminated major promotion sky sign on Lot 1 on Title Plan 850588'. The parties agreed that the original permit application plans were the Revision A plans (dated 2 July 2017). These show the signs sitting directly on the roof of the host building with an overall height above the roof of the building at 11.045m 'Approx'.
- 30 Subsequent plans were submitted in response to a request for further information from Council. These are marked 'Revision B' (dated 1 October 2017) and again show the signs sitting directly on top of the host building with a height above the building of These show the signs sitting directly on the roof of the host building with an overall height above the roof of the building at 11.045m 'Approx'. (Figure 3).

⁹ Applicant's oral submission day 2.



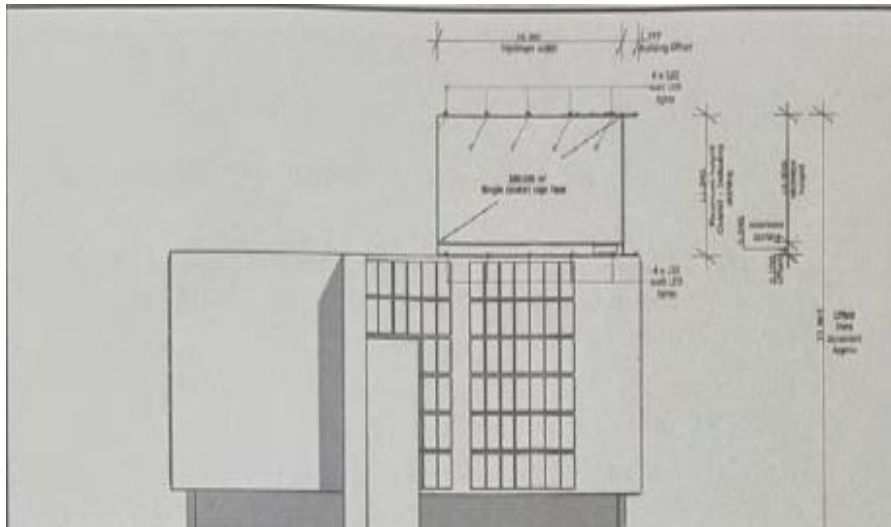


Figure 3: Extract from Revision B plans.

- 31 Notice of the application was not undertaken by the Council, other than to the referral authority VicRoads.
- 32 A third set of plans marked 'Revision C' (dated 4 February 2018) was submitted to VicRoads in response to a further information request from that authority asking for photomontages. These plans were carbon copied to the Council in February 2018. The Revision C plans show the signs 15.620m above the roof with an 'gap' to the bottom of the signs described as '4600 offset'. (Figure 4).
- 33 I note that in the different versions of the plans, the overall height 'Aprox' above pavement levels differs.

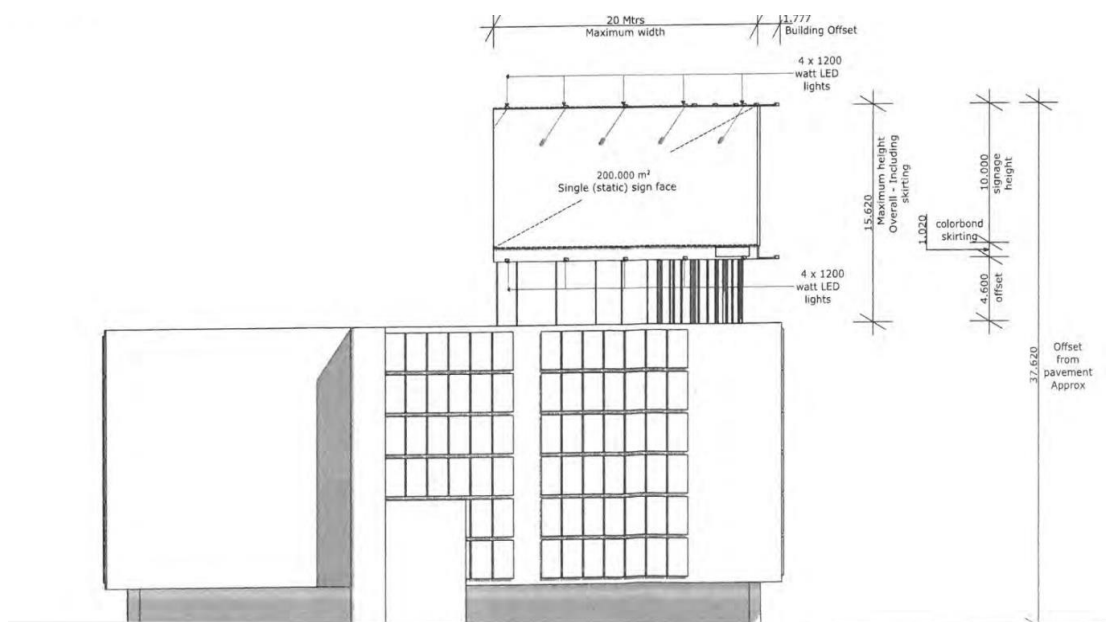


Figure 4: Extract of Revision C plans.

- 34 The material before me shows that there was no formal amendment of the application to reflect the revision C plans by Council at any stage.
- 35 The Revision B plans were the plans that formed the basis officer's assessment in the officer's report in May 2018. The notice of refusal issued on 11 May 2018 describes what has been refused as 'to display two (2) externally illuminated major promotional signs on the roof'.
- 36 An application for review was lodged with the Tribunal on 29 June 2018. The application described the proposal as 'display of an illuminated promotion sign/s'. The application material included the officer's report and all three sets of plans with no explanation.
- 37 As the application was not advertised by Council other than to the authority, full notice was directed by the Tribunal.
- 38 There were no amended plans circulated in accordance with the Tribunal's practice note PNPE9 and there was no formal substitution of the Revision C plans in the Tribunal's order pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic). Accordingly, the Revision B plans, being those considered in the officer's report would appear to be the plans before the Tribunal in the proceeding.¹⁰ However, the Original Decision does not identify the plans before the Tribunal. It describes the proposal as 'it is proposed to display two major promotion signs mounted on top of an existing office building'.
- 39 Council's submission to the Tribunal at section 1.3 states that 'the proposed development plans considered by Council are dated 04.02.2018 Revision C'. However, section 3.2 of the submission entitled 'proposal' provides the Revision B plans in full. The remaining assessment section in the submission is based on the dimensions of the signs in the Revision B plans. The version of the Council submission on the Council's advocate's file shows the reference to 'Revision C' hand corrected to 'Revision B'. Council advises that their representative's recollection is that the Revision B plans were relied on.
- 40 There are no such corrections on the Tribunal's copy of the Council's submission retained on the Original Decision file, but there is a handwritten note under section 1.3 which appears to in part read 'make sure look at rev C'.
- 41 The photomontages provided by the permit applicant in the hearing of the Original Decision also appear to be based on the Revision B plans (Figure 5). The photomontages illustrate the sign sitting directly on the host building rather than suspended above it.¹¹ The applicant before me says that these photomontages were merely 'illustrative' and that their recollection is that the Revision C plans were relied upon.

¹⁰ There is no recording available of the previous hearing.

¹¹ Copies were provided to all parties at the hearing.



- 42 Permit TPA/47966 was issued on 4 February 2024. There is no Condition 1 requirement for amended plans in the permit issued and no reference to the plans in the conditions. The first plans endorsed in the planning permit on 14 February 2019 are the Revision C plans as provided to the Council by the permit applicant. These were subsequently amended by secondary consent to adjust the “Aprox” overall height dimension and include the support structure.



Figure 5: Extract of permit applicant's photomontages.

- 43 The applicant submits that as the Revision C plans are the first set endorsed in the 2019 permit, that I should assume that these were the plans before the Tribunal and correctly endorsed by the Council. I give some weight to the fact that the first set of plans endorsed in the permit were the Revision C plans. However, based on the information before me, I cannot make a definitive finding that identifies the plans before the previous Tribunal. I find that this necessarily tempers the weight that I can give that decision in my assessment.
- 44 It is also important to note that the plans before me cannot be identical to the plans that were before the previous Tribunal whether Revision B or C, due to the secondary consent process that occurred post decision. Post decision changes include the introduction of the substantial steel support structure that suspends the signs over and above the host building. I find that the introduction of the support structure is a significant change.
- 45 I noted at the hearing that the proposed changes to the illumination (generally less) are also significant changes to the proposal. These changes to illumination are generally favourable. However, the position of the top row of floodlights extending above the sign height differs to that shown in either the Revision B or C plans and the latest set of endorsed plans in the 2019 permit.

- 46 The introduction of the revised Australian Standard for outdoor lighting AS/NZS 4282:2023 *Control of the obtrusive effects of outdoor lighting* is also a change. The earlier version of that standard was not referred to in the Original Decision. In addition, I have the benefit of lighting evidence which the previously Tribunal did not. I find that these are significant changes since the previous decision. I give these facts some weight in my assessment of the merits.

MERITS ASSESSMENT

- 47 I have assessed the application before me as a new application on the merits. In doing so, I give due weight to the findings of the previous Tribunal considering the changes that I have identified above.
- 48 Under the planning scheme, each of the proposed signs may be characterised as a ‘floodlit sign’, a ‘major promotion sign’, a ‘sky sign’ and a ‘panel sign’. Planning permission is required for each. This was noted in the evidence of Mr O’Shea. Clause 52.05-2 provides that ‘if a sign can be interpreted in more than one way, the most restrictive requirement must be met’. The application is for a ‘floodlit major promotion sign’, however, I have amended the application to include the reference to a ‘sky sign’ as recommended in the evidence of Mr O’Shea.
- 49 I have had regard to the purposes of the sign controls at Clause 52.05 of the scheme, the general decision guidelines and the specific decision guidelines for a major promotion sign.
- 50 The Original Decision did not identify any policy concerns with the proposal. The changes to the planning policy framework warrant an assessment of the proposal in this new framework. The applicant relied on the evidence of Mr O’Shea in this respect. Clause 15.01-1L-01 sets out local planning policy for signs. The objectives of this Clause are:
- To facilitate signs that provide orderly and effective identification of businesses and other land uses.
 - To support signs that are complementary to the built form and landscape character of the locality and minimises impacts on residential amenity.

Relevant strategies include:

- Locate, site and design signs for non-residential uses so that they do not adversely affect the amenity of residential areas particularly along non-arterial roads.
- Baffle floodlit signs to avoid amenity reducing light spill.
- Discourage major promotion signs that are inconsistent with the garden city character.



- Support sky signs located at major entry points of large retail centres and which are designed to integrate with the architectural features of the centre.
- Support sky signs used for the identification of retail centres to be internally illuminated or floodlit.
- Discourage sky signs that are animated, flashing or reflective and any associated bunting sign.
- Discourage promotional advertising on sky signs.

The policy guidelines continue to refer to the *Monash Outdoor Advertising Policy* (City of Monash, 2003).

- 51 The site is included within the Commercial 1 Zone, on the edge of the neighbourhood activity centre of Waverley Gardens. In this zone, signs are included within Category 1 Minimum Limitation at Clause 52.05. The location of the site within a commercial precinct is consistent with the locational criteria for Major Promotion signs which are encouraged in commercial and industrial locations in a manner that complements or enhances the character of the area.
- 52 The review site sits within a commercial area of relatively robust character adjacent to the elevated freeway. The Original Decision placed significant emphasis on the location of the review site as ‘a stand alone, commercial pocket of land’ noting that ‘the proposed signs are not designed and sited to be a part of the surrounding neighbourhood’. The Original Decision concluded that the review site was a suitable location for consideration of major promotion signs. In principle, I agree that this is a location that can accommodate these large signs because the site is located within a commercial precinct, adjacent to the freeway and bounded by two main roads subject to an acceptable design response.
- 53 The policy framework and provisions of Clause 52.05 seek to ensure that signs sit comfortably within their context and do not adversely affect the amenity of residential areas. In applying the policy, I have considered the impact of the signs on the character of the area and amenity below.

CHARACTER AND VISUAL AMENITY

- 54 The local policy discourages major promotion signs that are ‘inconsistent with the garden city character’. The scheme has a focus on a garden city character, including within its commercial areas.
- 55 The decision guidelines for major promotion signs and the local policy require consideration of the visual amenity of the locality. The strategies at Clause 15.01-1L-01 include to ‘design signs to integrate with the architectural design, scale and construction detail of the building, premises or retail centre it is located at’.



- 56 Council submitted that the sign and supporting structure was inconsistent with the character of the area and dominated the locality and host building. In contrast, Mr O'Shea considered it was acceptable and that the supporting structure was visually integrated with the host building and did not detract from the building or the environs. Mr O'Shea considered that it 'hugs' the building and is reflective of its mullions.
- 57 Within its commercial setting that the overall impact of the signs, although large and exposed, is generally acceptable when viewed from Police and Jacksons Roads when the host building and adjoining office block are clearly visible. I did consider whether there would be benefit into treating the back of the signs in some manner but consider that cladding or similar would just add to the overall volume and visual presence of the signs.
- 58 I agree with the findings of the Original Decision that the signs are primarily designed to be seen from the freeway. From the freeway, the scale and position of these signs means that they are clearly viewed from each direction. When travelling on the freeway you are only exposed to one sign at a time unless directly passing the site. At the speed at which you pass the site, this is a fleeting view. This part of the freeway is elevated with sound walls and not a landscaped section as noted in the Original Decision. I find that the visual impact on the freeway is acceptable.
- 59 However, the supporting structure was not considered in the Original Decision and is not part of either the Revision B or C plans. I am not persuaded that the supporting structure is as seamless as opined by Mr O'Shea. The thickness of the supports when combined with the scale of the signs gives the appearance of the signs straddling the host building to its detriment when viewed from the intersection and the residential area to the south of the review site (discussed further below).
- 60 The Tribunal in the Original Decision was satisfied that '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'. Since the time of the previous decision there has been an approval of a sign on the north west corner of Police and Jacksons Road associated with the shopping centre. This sign is located orientated to the intersection and sits much lower than the proposed signs in a different visual plane. I agree with the previous Tribunal that even with this change this is not a proceeding about clutter.

IMPACTS ON RESIDENTIAL AREAS

- 61 The visual impact of the signs on nearby residential areas is central to this proceeding. Council submitted that the signs detrimentally affect the low scale garden city character and amenity of these areas. The decision guidelines at Clause 52.05 ask me to consider the effect of the sign on

residential areas. Major promotion signs are ‘discouraged where they will form a dominant visual element from residential areas.’

- 62 The Original Decision commented that ‘Council accepted that the proposed signs do not impact on any existing residential areas’. There was no further analysis, but I must assume that the Tribunal turned its mind to the impact on the residential area and was satisfied on the basis of the material available to the Tribunal at that time. I note that the Council submission to the previous Tribunal includes photographs from the residential areas.
- 63 Figure 6 shows the location and distances to nearby residential areas.

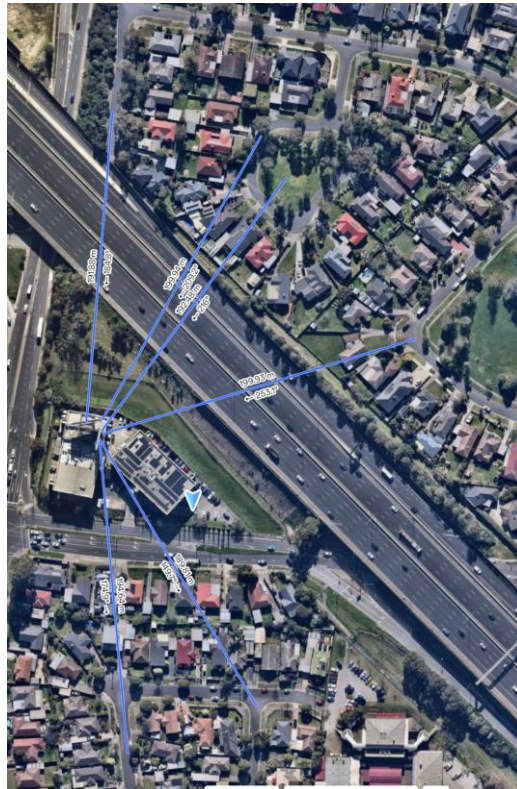


Figure 6: Location and distances to surrounding residential areas. Source: Nearmaps.

- 64 Since the erection of the signs, there have been objections raised to this permit application from areas to the south and north side of the freeway. These objections include concerns about the visual dominance of the signs in the daytime and the lighting impacts. Council submits that:

- 88 The signs are out of keeping with both the character of the area which comprises low scale business development, the Monash Freeway and residential areas to the north east and south. With a total height of 30 metres above ground level (when including the building and structure) and with an area of approximately 200 square metres each, the signs dominate the skyline in the area, protruding above the acoustic freeway barriers into the surrounding residential areas. The signs in some viewing locations present with both panels visible. They are a confronting and unexpected scale when viewed in both their

immediate and broader context. They are an unreasonable presence overwhelming the high value residential area north of the Monash Freeway.

- 65 The applicant submits that there is no amenity impact on the residential areas. The applicant says that while visible, this is not the test and the signs are not dominating. Mr O'Shea considered that the views of the sign from the residential areas read as something very separate and belonging to the commercial area. He considered that due to the distance, the feeling was that the signs were 'something separate' and not part of the residential context.
- 66 I note that neither the overall height of host building nor the height of the signs above the building have not been surveyed.
- 67 Views of the signs from the few residential properties located immediately opposite the review site (on the south side of Police Road) are generally to the rear of the signs and the eastern sign. The signs are viewed in context with both office buildings on the site. In this context, although the signs are clearly legible, the visual impact is acceptable because it is contextual with the two large buildings, the signs are set back towards the northern end and the main parts of the frame are less visible situated between the two office buildings (see Figure 7).



Figure 7. Photo from Police Road opposite the site Source: Tribunal's own.

- 68 As you move further away into the surrounding residential areas to the south, there is a greater ability to view the signs without the full context and intervention of the two office buildings. As you enter Shelton Crescent, the

signs become visible from the public realm as to pass the small pocket park. These views are mitigated somewhat by vegetation and distance. As you get closer to the signs, you do have an understanding that you are close to the commercial area. The signs can be seen in most views with the top part of the host building and the adjoining building (Figure 8). The signs are clearly prominent, but I find that the impact is acceptably mitigated during the daytime by distance and the fact that the views are either of the rear of the sign or of the eastern sign face.



Figure 8: View from Shelton Cres. Source: Evidence of Mr O'Shea.

- 69 The most significant impact of the signs occurs to the residential areas on the north side of the freeway. Most objections were from this area.
- 70 The visibility of the signs differs at different locations. From Chelsea Avenue the top half of the sites are visible from the public realm (see Figure 9). Views are predominantly of the eastern face, but both signs can be seen. The signs appear far larger and more dominant than the large direction signs on the freeway which are also visible from Chelsea Avenue. Within the rear yards of properties abutting the soundwall, views would be further restricted to the top of the signs. The further back you are in the public realm the more of the signs you can see but distance mitigates the impact. In addition, vegetation provides some relief. While visible, I find that the views to the signs across the freeway from Chelsea Avenue are acceptable for these reasons.



Figure 9: View from Chelsea Crescent. Source: Tribunal's own.

- 71 The signs are more prominent from Brougham Square because you can see both faces of the sign at the same time. There is no views of the office buildings to provide context. The properties abutting the sound wall would see less of the signs, but the full effect is seen from the public realm and the central open space (Figure 10). The signs are visually prominent from the time you enter the square from Jolimont Avenue. While you are cognisant of the freeway, the signs do not have any context with the host building or the commercial area, rather they appear fully against the sky. In many views vegetation does not filter the views as in Chelsea Avenue.
- 72 I am not persuaded by the evidence of Mr O'Shea that the signs when viewed from Brougham Square would be understood as part of the adjoining commercial area. He considered that in 360 degree view that they were a small part of the backdrop to the residential area and did not present as 'jarring'.
- 73 When you stand in this square, I find that I support the Council's view 'even to a casual observer something is wrong'. The signs are dominant and draw the eye. They are more prominent than the impact of the sound walls along the freeway. The issue is not so much the fact you can see the signs, nor even the overall scale of the display area, but rather the elevation of the signs above the host building. The offset of the signs from the host building on the steel supporting structure means that the signs have the appearance of being suspended against the sky and not seen within a context of commercial land use. I find that this is unacceptable.



Figure 10: View from Bougham Square open space. Source: Tribunal's own.

- 74 From Jacksons Road within the service road, the northern face of the sign is also prominent. It can be viewed all the way along this street to the intersection with Jolimont Avenue. However, in this view, there is much more a sense of a transition to the freeway environs and the commercial area on the other side of the freeway. I find that the visual impact in this location is acceptable.
- 75 I turned my mind to possible modifications that may assist in reducing the impact of the signs within Brougham Square an acceptable level. These included lowering the height of the signs to reduce the visual impact of the sign on the amenity of the residential area. The applicant submitted lowering of the sign heights could not easily achieved without modification of the support structure based on advice from its structural engineer.¹² Given the position of the applicant, I have not sought to impose conditions.

¹² Advice from Benchmark Pty Ltd was that the sign could not be lowered by 1-2m without re-engineering the support structure.

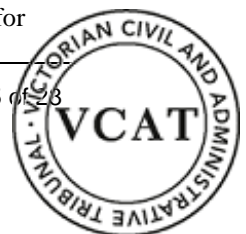
LIGHTING IMPACT

- 76 Many of the objections raised concerns about the impact of illumination. I have the benefit of being able to view the signs in location in the nighttime and the evidence of Mr Forbes. The evidence of Mr Forbes was based on the Australian Standard AS/NZS 4282: 2023 *Control of the obtrusive effects of outdoor lighting* ('standard'). An earlier report was prepared to accompany the application was based on the 2019 version of this standard.¹³ The Tribunal in the Original Decision did not have the benefit of evidence regarding lighting of the sign, although there was a lighting report based on a smaller sign size (D2 Platinum sign 12.66m x 3.35m). The original lighting report did not address the lighting impact of the larger signs proposed.
- 77 The bottom row of floodlights is proposed to be removed and the top row dimmed. I note that in respect to the Original Decision both the Revision B and Revision C plans, the positioning of the lighting arms appears to be in line with the top of the sign rather than above it. Mr Forbes considered that with the removal of the bottom row of floodlights that the illuminance of the signs would comply with the standard. He considered that it was not necessary to dim the retained top row of floodlights to comply with the standard but considered that this would be beneficial to amenity impacts. He also considered that the baffling of the top lights was warranted to reduce light spill to the rear resulting from their elevation above the top of the sign.
- 78 He based the assessment on the environmental zone in which the lighting system is located, being A4 'High District Brightness' which includes commercial areas and residential areas abutting commercial areas.¹⁴ In this environmental zone, the maximum allowable average luminance of the surfaces is 350cd/m². He noted that externally lit signs and billboards shall be lit from the top and shall have an upward light ratio (luminaire) or upward light ration (system) 'no greater 0.03'.
- 79 Mr Forbes undertook testing of the luminance of the signs in the field. During the site visit, the sign lighting 'was configured such that all lights were energised on the sign facing North, and only the top row of lights was energised on the sign facing East, the result being that the sign facing East had a reduced average surface luminance, being approximately half that of the sign facing North'.¹⁵ The north sign had an average luminance of 103cd/m² and the eastern sign less at 51cd/m².
- 80 He noted that the signs were not plain white as encouraged for measurement by the standard, but rather his recollection was that there was

¹³ Rubidium Light Pty Ltd dated 19 June 2023.

¹⁴ Section 3.3.1.2 of the standard.

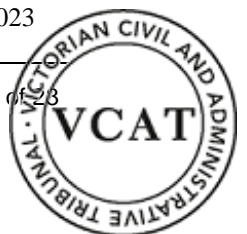
¹⁵ On my nighttime inspection, I understand that the configuration of the signs was the same as for Mr Forbes.



a green and white advertisement.¹⁶ He considered that this would impact on his measurements, but not to the extent that non-compliance would result due to the signs being well under the allowable limit. He accepted that post-lighting modification testing would be appropriate by condition.

- 81 The Council says that it takes no issue with the technical aspects of the lighting and considers that it could be made to be compliant with the Australian Standard as proposed. However, Council submitted that compliance with the standard does not automatically equate to an acceptable planning outcome.
- 82 I agree with Council that compliance with the standard does not necessarily mean that the illumination impact of the signs is acceptable. This is because the standard does not consider the specific circumstances of a location and does not address the scale of the signs being measured.
- 83 From the residential areas on the opposite side of Police Road and further to the south (Shelton Crescent and Alan Court) you have clear visibility of the top luminaries on both signs and the illumination of the east facing sign. On the northern sign, light spills directly towards the rear since the floodlight arms extend above the sign (Figure 11). Due to the scale and location of the sign against the sky, the impact is significant.
- 84 The local policy encourages baffling of floodlit signs to avoid amenity reducing light spill. I accept that the new baffling proposed by Mr Forbes will reduce this direct light spill and views of the luminaries from the rear for the northern sign. The dimming of the lights would also assist the impact of the overall illumination of the eastern sign. However, I am not persuaded that the impact of the direct views to the luminaries will be fully resolved by baffling because of the angle of view and the fact that you are lower than the sign looking up. As noted at section 2.2 of the standard, 'residential developments at a lower level than that of the lighting system are more likely to be subject to a direct view of the luminaries.'
- 85 From the residential areas to the north, the luminaires within the floodlights are also directly visible because the residential areas are in a lower location than the lights. They appear as prominent bright elements because they are clearly elevated above the sign display area and not in line with it. They appear far brighter than the streetlights, including those on the freeway. I am not persuaded that the form of baffling proposed will resolve the impact of these lights due to the angle of viewing being well below the signs.
- 86 From the residential areas on the northern side of the freeway you see both sides of the signs, especially in Brougham Square. The scale of the signs mean that they appear as brightly lit elements within the public realm. While the removal of the bottom row of lights for both signs and the dimming of the top row will be an improvement, I find that the scale of

¹⁶ The lighting report accompanying the application by Rubidium Light Pty Ltd dated 19 June 2023 adopted a 90% white surface but this report was not based on the amended plans before me.



these two signs when seen illuminated together against the dark sky results in an unacceptable amenity impact (Figure 12).



Figure 11: View from northern end of Shelton Crescent.
Source: Evidence of Mr O'Shea.



Figure 12: Signs from Brougham Square. Source: Tribunal's own.

- 87 I did contemplate whether in this instance, an acceptable outcome would be obtained by further dimming, lowering the floodlight arms to be in-line with the display area or whether a curfew was warranted. These changes were not supported by the permit applicant who indicated that they sought to rely on the existing sign infrastructure and current 24-hour operation.

ROAD SAFETY

- 88 Road safety was found to be acceptable in the Original Decision. I note that the issue was not raised in the proceeding before me and that there was no objection from the road management authority to the grant of a permit subject to conditions. The lighting report accompanying the application assessed veiling luminance as compliant (Rubidium Pty Ltd dated 19 June 2023) although this report was not based on the amended plans before me. The evidence of Mr Forbes was that the veiling luminance should improve as a result of the removal of the bottom row of lights and the dimming of the top row of lights. I place weight on the views of the road management authority in this matter and find that the road safety impacts are acceptable subject to conditions.

DO ANY OTHER MATTERS WARRANT REJECTION OF THE PROPOSAL?

- 89 Several other matters were raised in submissions and the objections originally lodged with the Council. None provides the basis for rejecting the permit application.

CONCLUSION

- 90 For the reasons given above I find that on balance the visual and illumination impacts on residential amenity are not acceptable. The decision of the responsible authority is affirmed. No permit is granted.

Megan Carew
Member