



[AustLII](#)**Victorian Civil and Administrative Tribunal****Metro Signs v Whitehorse CC [2011] VCAT 70 (21 January 2011)**

Last Updated: 2 February 2011

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**ADMINISTRATIVE DIVISION****PLANNING AND ENVIRONMENT LIST**VCAT REFERENCE NO.  **P1293**  /2010
PERMIT APPLICATION NO. WH/2009/43**CATCHWORDS**

Whitehorse Planning Scheme; Application pursuant to [Section 77](#) of the [Planning and Environment Act 1987](#); Residential 1 Zone; Significant Landscape Overlay (SLO4); Neighbourhood Character Overlay (NCO1); Existing church; Internally illuminated business identification sign; Size.

APPLICANT	Metro Signs
RESPONSIBLE AUTHORITY	Whitehorse City Council
RESPONDENTS	Blackburn Village Residents Group Inc (David Morrison), Bernadette Cahill, Ron Grainger
SUBJECT LAND	40-44 Blackburn Road, Blackburn
WHERE HELD	Melbourne
BEFORE	J A Bennett, Member
HEARING TYPE	Hearing
DATE OF HEARING	20 December 2010
DATE OF ORDER	21 January 2011
CITATION	Metro Signs v Whitehorse CC [2011] VCAT 70

ORDER

1. The decision of the Responsible Authority is affirmed.
2. In permit application WH/2009/43 it is directed that no permit is to issue.

J A Bennett

Member**APPEARANCES**

For Applicant for Review	Mr Mark Sheehan, Town Planner of Metropol Planning Solutions.
For Responsible Authority	Ms Emily Blyth, Urban Planner.
For Respondents	Ms Bernadette Cahill and Mr Ron Grainger. Mr David Morrison for Blackburn Village Residents Group Inc was unable to attend but asked that a written submission be taken into consideration.

INFORMATION

Description of Proposal	Display one internally illuminated business sign (total area both sides of 8.4m ²).
Nature of Application	Section 77 <i>Planning & Environment Act</i> 1987.
Zone and Overlays	Residential 1 Zone (R1Z). Significant Landscape Overlay (SLO4). Neighbourhood Character Overlay (NCO1).
Permit requirements	Cl 32.01-7 (advertising sign in R1Z – Category 3 - Cl. 52.05-9 High Amenity Areas). Cl. 43.05-1 (buildings and works in NCO1).
Land description	The review site is located on the north west corner of Blackburn Road and The Avenue, approximately 60 metres from the southern edge of the Blackburn Activity centre. A cream brick Uniting Church with a tall corner steeple is set back behind garden beds along Blackburn Road and The Avenue but is sited so that its main entrance faces the corner and an open concrete apron. A secondary entrance off The Avenue is used as the primary entrance to the church. The Uniting Church also owns property south of The Avenue occupied by a 'Connections' community centre and tennis courts. North of the church facing Blackburn Road is a preschool/kindergarten. Dwellings are located on the eastern side of Blackburn Road in the immediate vicinity of the review site, except that the former dwelling on the south east corner of Blackburn Road and Gordon Crescent is now a medical centre. Blackburn Road is a busy arterial road and includes a bus route. The Blackburn train station is within easy walking distance to the north.
Tribunal inspection	I inspected the review site and locality on Thursday 23 December 2010.

REASONS

Assessment

1. The application is for the construction of an internally illuminated Business sign at The Avenue Uniting Church in Blackburn. The sign is a panel style sign, 3.6 metres in height, 1.2 metres in width and has a total area of 4.32m² on each side (8.64m² in total). The only part of the sign to be illuminated is the Uniting

Church Logo and the words 'The Avenue'. In addition, an A3 sized clear panel and contact details will be included in the bottom half of the sign. It will replace an older style 'noticeboard sign' located on The Avenue frontage which has now been removed.

2. Council opposes the sign on six grounds – non-compliance with the applicable zones and overlays; being contrary to the local advertising policy at Clause 22.02; not being in accordance with the decision guidelines of Clause 52.5; being detrimental to the streetscape, landscape values and character and residential amenity; and the proposed hours of illumination are excessive and will adversely affect residential amenity.
3. Two nearby residents and the Blackburn Village Residents Group Inc support Council's refusal and oppose the proposed sign for reason similar to those outlined above.
4. Mr Sheehan responded by submitting that the sign needs to be considered in its context and existing conditions and that it is consistent with the role and character of the area. The new sign replaces older signs and will be easier to maintain and is both more architectural in appearance and more energy efficient. It is also submitted that the sign will not have any amenity disbenefit to any residential property and that it will not cause a traffic safety hazard.
5. My responses to these submissions and the issues raised are as follows.
6. The site is within a Residential 1 Zone and advertising controls are for Category 3 - High Amenity Areas. The purpose is *to ensure that signs in high-amenity areas are orderly, of good design and do not detract from the appearance of the building on which a sign is displayed or the surrounding area*. An extensive list of application requirements and decision guidelines are include at Clauses 52.02-2 and 52.02-3 respectively.
7. The church and other church related activities have taken place on this site since the early days of settlement. The church is located on a prominent corner site near the top of the rise in Blackburn Road. However the church is set back from the footpaths. Except for the concrete forecourt facing the intersection and an entrance area off The Avenue, the setback areas are used for landscaping with taller canopy trees partly obscuring the building and giving it a landscaped setting, consistent with the vegetated character and appearance of the surrounding sites and streets. Despite the non residential activities occurring on three corners of the intersection, the area still retains a largely modest, low scale residential character and is distinguishable from the more intensive, commercial activities occurring further north in the Blackburn Shopping Centre.
8. The bushland character in parts of the City, and the importance of trees to the character of the municipality, is a consistent theme throughout the Municipal Strategic Statement. Clause 21.05-1 (Environment) notes that:

Main thoroughfares and gateways are prime locations for advertising signs. If not appropriately managed, the proliferation of signage can drastically reduce the visual amenity of an area. Council will facilitate adequate identification of businesses but seeks to minimise visual clutter.

9. I am not suggesting that this section of Blackburn Road is subject to the same advertising signage issues as the 'MegaMile' along Whitehorse Road (for example), but Council nonetheless has some clear directions about its approach to advertising signage. These directions are carried through in 21.05-4 (*ensuring advertising signs are well designed and compatible with the area and the building*). Clause 22.03 is local policy for residential development and applies to all development within the Residential 1 Zone. Given its focus on residential development it is of very limited relevance to this sign application but I note that the review site is within Bush Environment Character Area 30 and on the boundary with Area 24 to the south of The Avenue. Despite its limited relevance it provides a basis for the Neighbourhood Character Overlay discussed in paragraph 11.
10. Although the site is within the Significant Landscape Overlay (Schedule 4 – Blackburn Early Settlement

Neighbourhood Character – Vegetation Retention), a permit is not required under that overlay as the proposed sign is not within 4 metres of any vegetation that requires a permit to be removed, destroyed or lopped under SLO4. As explained at the hearing, on the basis of case law I am unable to have regard to the provisions of that overlay despite Council and parties making submissions about the effect of the SLO4. Given the focus of SLO4 is on vegetation retention, it is understandable that permits are not required for buildings and works unless they are within 4 metres of larger trees.

11. A permit is however required under the Neighbourhood Character Overlay (Schedule 1 – Blackburn Early Settlement Neighbourhood Character). The overlay has a single objective *to ensure that new buildings and works reflect the preferred neighbourhood character of the area*. The decision guidelines are all concerned with the siting and design of buildings (building form and siting; large/substantial setbacks from front, side and rear boundaries; single storey/pitched roof forms; and space for replacement planting. None have relevance to this sign proposal. The overlay includes as a reference document the Precinct Brochure for Precinct 5. The preferred neighbourhood character lists eight elements and five issues/threats, none of which are of assistance in considering this sign application. The design guidelines are also of no help as they relate to buildings (essentially in this context meaning dwellings) and vegetation.

12. The most relevant local control or policy is contained at Clause 22.02 (Visual Amenity and Advertising Signs Policy). I stress that the policy is not a mandatory control, that it has to be considered along with all other relevant policies and that it is necessary, as required by Clause 10.4 of the Planning Scheme, *to endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations*.

13. In Clause 22.02-3 for *Residential areas* it is policy that:

- . The quantity of signs is encouraged to be kept to a practical minimum and be designed with regard to the character and amenity of the area.
- . Floodlit and internally illuminated signs are encouraged to be limited to roads with high traffic volumes due to their visual dominance and their potential to be detrimental to the amenity of abutting residential properties and the streetscape.
- . Free-standing signs for medical centres and similar non-residential uses and home businesses are encouraged to be of a low profile design with a maximum height of 2 metres to minimise visual intrusion into the residential streetscape.
- . Bunting, reflective, pole, promotional, high wall, sky, panel, animated and reflective signs are discouraged as they are intrusive in residential areas and would be detrimental to the amenity of the area.
- . Business signs are encouraged to be a maximum of 2m². This may be increased if more signage is demanded given the nature of the use (e.g. service stations).
- . Above verandah signs are encouraged to be a maximum of 1 m² and not projecting more than 0.5 metre from the wall face.

14. The policy also includes seven objectives which, amongst other matters seek to encourage well designed and effective signage. I do not agree with Mr Sheehan that the proposed signage is in accordance with the objectives, although I do not question that the proposed sign is a well designed and effective sign. However, that is not the key question. Instead the key question is whether the sign is acceptable in this particular site context.

15. The first policy listed above in paragraph 13 is that the quantity of signs is encouraged to be kept to a practical minimum and be designed with the character and amenity of the area. (My emphasis). This area has a very special character and one recognised in local policy and by both a Significant Landscape Overlay and a Neighbourhood Character Overlay. Although not directly applicable to this application, they provide statements about the character and amenity of the area that Council is trying to retain and

enhance. Unlike many areas of Melbourne, the existing and preferred character is written down and available in public documents.

16. The second policy above for residential areas refers to floodlit and internally illuminated signs being limited to roads with high traffic volumes. Although I did not receive any statistics about traffic volumes, I accept that Blackburn Road is a main road and that it carries much higher traffic volumes than local streets. It is not, however, in the same league as major arterials such as Canterbury Road, Springvale Road and Whitehorse Road. I also note that one of the policies for *Roads and public land* is that signs are encouraged to be sympathetic to the function and aesthetics of the location and not visually dominate the streetscape. The third and fifth policies above seek to limit free standing and business signs to be no more than 2 metres in height and no more than 2m² in area. Although the church may not be a business of the type referenced (i.e. medical centres, home businesses), nor is it similar to a service station where the policy suggests signage may be increased because of the nature of the use. The fifth policy discourages a variety of signs because they are intrusive in residential areas and would be detrimental to the amenity of the area. The last policy is not relevant.

17. The decision guidelines for signs set out in Clause 52.05-3 include, most relevantly, ones dealing with character of the area, relationship of the sign to the streetscape, setting or landscape, and the impact of any illumination. I have already discussed the character, streetscape, setting and landscape issues in the paragraphs above. Although Council and residents were concerned about the effect of the internal illumination, I am not so concerned about the extent of illumination because it is only the Uniting Church logo and the words 'The Avenue' which will be illuminated despite the large area of the sign.

18. I accept that the Council's traffic engineers have not raised any issues about the sign causing adverse impacts on road safety. Although Ms Cahill is concerned that the new sign will encourage more vandalism and anti-social behaviour, I am not convinced that one new sign will make any appreciable difference to the existing anti-social activities she describes. Having personally suffered the behaviour she describes, although fortunately not the physical harm, I can well understand her strongly held feelings about the issue. However the potential for the sign to encourage additional anti-social behaviour is not a reason why I would refuse a sign on this site.

19. Given my responses above, I will therefore affirm Council's decision and direct that no permit be issued for a sign of this size.

J A Bennett

Member