

Our Reference: 2001624

10 February 2021

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Statutory Planning Department
Mitchell Shire Council
113 High Street
BROADFORD VIC 3658

Dear Sir/Madam,

**RE: PLANNING PERMIT APPLICATION
ERECT AND DISPLAY ONE ADVERTISING SIGN
LOT 2, PLAN OF SUBDIVISION 006746 – NORTHERN HIGHWAY, BEVERIDGE**

Beveridge Williams act on behalf of Crystal Group (the permit applicant). We submit this planning permit application to erect and display one advertising sign at the above property.

Pursuant to the provisions of the Mitchell Planning Scheme, the proposed development requires a planning permit for the display of the sign, and the proposal is not exempt under the provisions of Clause 52.05 – Advertising Signs.

In support of this application please find attached:

- Current Certificate(s) of Title
- Planning Permit Application Form
- Town Planning Report
- Signage Plans

We kindly request and invoice be raised for the payment of the requisite application fee of \$1147.80.

The enclosed application assesses the proposed development against the relevant planning controls and policies contained within the Mitchell Planning Scheme. We trust that the enclosed information is sufficient for Council's review. Should you have any queries or require any additional information, please contact the undersigned on 0418 444 366 or stewartb@bevwill.com.au or alternatively Alyse Knape on 0490 009 277 or knapea@bevwill.com.au

Yours sincerely,

BERNARD STEWART
Senior Town Planner
BEVERIDGE WILLIAMS

Our Reference: 2001624

16 April 2021

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Fawaaz Price
Senior Statutory Planner
Mitchell Shire Council
Sent via email: Fawaaz.Price@mitchellshire.vic.gov.au

Dear Fawaaz,

**RE: PLANNING PERMIT APPLICATION PLP056/21 – RFI RESPONSE
NORTHERN HIGHWAY, WALLAN VIC 3756**

Beveridge Williams continue to act on behalf of the permit applicant in relation to the above-mentioned address and planning permit application. We have been requested to provide a response to Council's Request for Further Information (RFI) dated 20 March 2021 for the 'Installation and display of a static Advertising Sign for the sale of land' on the subject site.

The following documents are submitted in response to Council's RFI:

- Updated Town Planning Report prepared by Beveridge Williams
- Updated Signage Plans prepared by Crystal Group
- Site Plan prepared by Beveridge Williams

REQUESTED INFORMATION:

Table 1: Requested Information

RFI ITEM	RESPONSE AND DOCUMENT REFERENCE
<p>The subject site is located predominantly within the Rural Conservation Zone (RCZ) pursuant to Clause 35.06 of the Mitchell Planning Scheme. Under the direction of Clause 35.06-7 the area is considered as a Category 4 under the requirements of Clause 52.05 (Signs).</p> <p>Pursuant to Clause 52.05-14 the proposed major promotion is not considered appropriate as any listed type in Section 1 or Section 2 and therefore, the proposed sign falls with Section 3 which is prohibited.</p>	<p>We note that the site is currently zoned RCZ. As the site is expected to be rezoned (pending PSP), we have applied for a planning permit to install and display a static Advertising Sign publicising the sale of the property on which it is displayed under the exemptions provided at Clause 52.05.</p> <p>We note that the Future Urban Structure Plan (Plan 3) within the Beveridge North West Precinct Structure Plan 2019 (VPA) designates the subject land as future residential land.</p> <p>Clause 52.05-10 provides an exemption from a planning permit for signage which publicises the sale or letting of the property on which it is displayed (less than 10sqm). Clause 52.05-10 also provides that a permit can be issued for such signage which exceeds 10 square metres in display area.</p> <p>As such, the proposed signage is permissible. The proposed single sign will promote the sale of land for</p>

	<p>the upcoming St Hilaire development and will measure 44.1m² in display area. The sign will support the future land sales office which is proposed to be established later this year.</p> <p>We therefore consider that the proposal is permissible and should be considered by Council.</p>
<p><i>Council recommends that the application be withdrawn as the development is contrary to the relevant planning policy. However, should you wish to proceed with the application Council will not be able to support the application and therefore will be recommending a refusal.</i></p>	<p>The sign will be advertising land for the St Hilaire Estate which will be selling approximately 6500 lots. Considering the substantial scale and significance of this project we believe that in this context Council should support the proposed sign.</p>
<p><i>The submitted site plan has not provided an appropriate scale. An updated plan is required to provide a proposed setback distance from at least two property boundaries</i></p>	<p>A Site Plan has been prepared to display the proposed setback distances from property boundaries. The sign will be setback 10 metres from the site boundary to the east (Northern Highway) and 230 metres from the northern site boundary.</p> <p>Please refer to the Site Plan prepared by Beveridge Williams for further information.</p>
<p><i>Confirmation is also required toward the dimensions of the proposed sign. The proposal suggests that the sign will have a total display area of 443m² and include a length of 126 meters whilst only including a height of 3.5 metres.</i></p>	<p>Signage Plans have been updated to reflect the proposed signage dimensions of 12.6 metres (width) and 3.5 metres (height), culminating in a total display area of 44.1m². (There was a typo on the original plan)</p> <p>Please refer to the updated Plans for further information.</p>
<p><i>Details about the height, width, depth of the total sign structure including method of support and any associated structures such as safety devices and service platforms.</i></p>	<p>Signage Plans have been updated to include the height, depth of structure, support method and associated structures.</p> <p>The billboard sign will comprise concrete footings and a steel frame.</p> <p>Please refer to the updated Signage Plans, Site Plan and Town Planning Report for further information.</p>
<p><i>Details of associated on-site works.</i></p>	<p>On-site works will be minimal and will include the installation of concrete footings to support the steel framed billboard sign.</p>
<p><i>Any landscaping details</i></p>	<p>No landscaping is proposed within this permit application for signage.</p>

CONCLUSION

The proposal has been designed with the above requested information in mind. It is considered that the design appropriately responds to the applicable controls and the site's context.

We trust this response and enclosures satisfactorily addresses Council's request for further information dated 20 March 2021. However, if this information, in whole or in part, does not satisfy Council's request, please accept this correspondence as a request for an extension of time pursuant to Section 54(1) of the Planning and Environment Act 1987 for an additional 30 days to provide the relevant information.

The St Hilaire project will deliver approximately 6500 residential lots as well as substantial community assets and infrastructure. We seek Council support for this substantial investment in the Mitchell Shire.

We look forward to the further progression of the application. Should you have any queries with regard to the above or enclosed, please do not hesitate to contact the undersigned on 0490 009 277 or via email at knapea@bevwill.com.au

Yours faithfully,



ALYSE KNAPE
Town Planner
BEVERIDGE WILLIAMS

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Our Ref: JL:NB:936765

Your Ref: PLP056/21

17 May 2021

Via Email

Lisa Belokozovski

Director

Inverloch Investments Pty Ltd

Email: lisa@crystalgroup.com.au

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Dear Lisa

**Advice regarding the display of a Sign
Northern Highway, Wallan**

You have sought our advice as to whether the proposed installation and display of a static sign (of 12.66 metres by 3.5 metres, with an area of 44.31 m²) (**Sign**) to be located on land within Volume 3948 Folio 518 known as Northern Highway, Wallan (**Subject Land**), is permitted by the relevant planning controls of the Mitchell Planning Scheme (**Scheme**) applicable to the Subject Land.

Specifically, you have sought our advice in relation to item 2 of Mitchell Shire Council's (**Council**) Request for Further Information letter dated 6 May 2021 (**RFI**) concerning Planning Permit Application PLP056/21 (**Permit Application**), requesting that you provide:

Independent legal advice which seeks to explain how the last dot point exemption at clause 52.05-10 can be exercised in the presence of a prohibition under clause 52.05-13 or 14.

The Subject Land is predominately within the Rural Conservation Zone (**RCZ**), partially within the Urban Growth Zone (**UGZ**), and affected by Vegetation Protection Overlay Schedule 2 (**VPO2**). We are instructed that the Sign is to be located on part of the Subject Land zoned RCZ, and not within the VPO2.

Executive Summary

Having reviewed the material provided to us, the controls affecting the Site, and the relevant case law, we have formed the view that an application of the Exemption at clause 52.05-10 of the Scheme empowers Council to issue a planning permit for the Sign.

The basis for our view is set out below.

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

Doc ID 835027533/v1

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Categorisation of the Sign

In order to answer the question of law, namely whether the Sign is permissible on the Subject Land, the Sign must first be categorised.

From a review of the materials provided to us it is clear that the permit application does not attempt to categorise the Sign, however Council has categorised the Sign as a 'Major Promotion Sign', which is defined at clause 73.20 as:

A sign which is 18 square metres or greater that promotes goods, services, an event or any other matter, whether or not provided, undertaken or sold or for hire on the land or in the building on which the sign is sited.

An alternative view is that the Sign qualifies as a 'Business Identification Sign', defined as:

A sign that provides business identification information about a business or industry on the land where it is displayed. The information may include the name of the business or building, the street number of the business premises, the nature of the business, a business logo or other business identification information. [emphasis added]

We are instructed that the Sign is for the predominant purpose of obtaining expressions of interest for future lots within the Subject Land from potential purchasers (in order to create a database of those potential purchasers to be contacted in the future). The Sign therefore does not merely identify the business, but rather promotes the sale of future residential lots within the Subject Land.¹ We are therefore of the view that the Sign is correctly categorised as a 'Major Promotion Sign'.

Is the Sign permitted within the RCZ?

Pursuant to clause 35.06-7 of the Scheme, the Subject Land is a 'Category 4 - Sensitive area' for the purposes of Signage, set out in clause 52.05 of the Scheme.

Pursuant to clause 52.05-14 of the Scheme, within a 'Category 4 - Sensitive area', a 'Major Promotion Sign' is a section 3 prohibited sign. Further, and in the alternative, a 'Business Identification Sign' is a section 2 permit required sign, however is conditioned so that it cannot exceed 3 m².

Clause 52.05-10 contains a list of exemptions under which a sign would not require a permit, including relevantly:

Despite any provision in a zone, overlay, or other particular provision of this scheme, a permit is not required to construct or put up for display any of the following signs:

A sign with an display area not exceeding 10 square metres publicising the sale or letting of the property on which it is displayed. Only one sign may be

¹ *Becton Corporation Pty Ltd v Melbourne CC* [2007] VCAT 631; *Fivex Pty Ltd v Melbourne CC (Red Dot)* [2019] VCAT 138 (31 January 2019); *Melbourne Grand Apartments Pty Ltd v Melbourne CC* [2018] VCAT 254; *Brady Vision Pty Ltd v Melbourne CC* [2018] VCAT 589

displayed, it must not be an animated sign and it must not be displayed longer than 7 days after the sale date. A permit may be granted for:

- *The display area to exceed 10 square metres if the sign concerns more than 20 lots.*
- *The sign to be displayed on land excised from the subdivision and transferred to the municipal council.*
- *The sign to be displayed longer than 7 days after the sale date.*

(Exemption)

The Sign, which includes the phrase 'A new community coming soon', and website details, in our view, qualifies as publicising the sale of the Subject Land on which it is displayed.

We are instructed that the Sign concerns roughly 6,500 lots within the Subject Land, forming part of the proposed Wallan South Precinct Structure Plan. We are therefore satisfied that the development involves more than 20 lots.

To properly ascertain the scope and effect of the Exemption, it will be necessary to consider the principles of statutory interpretation to determine whether adopting the above interpretation may do 'mischief' to the Exemption. The primary object of statutory construction is to construe the relevant provisions so that its legal meaning is consistent with the language and purpose of all of the provisions of the statute.²

The purposive approach is a fundamental principle of statutory interpretation. It states that where there is a choice between an interpretation that would promote the purpose of the statute, and an interpretation that would not, the former is to be preferred. As such, it emphasises contextual matters rather than a literal reading of the relevant text.

This principle is reflected in s 35(a) of the *Interpretation of Legislation Act 1984* (Vic) which states:

in the interpretation of a provision of an Act or subordinate legislation -

(a) a construction that would promote the purpose or object underlying the Act or subordinate legislation (whether or not the purpose or object is expressly stated in the Act or subordinate legislation) shall be preferred to a construction that would not promote that object or purpose.

Adopting a 'purposive approach', it is our view that the purpose of the Exemption is both clear, and wide ranging in scope and effect. It would be inconsistent with the purpose of the Exemption to interpret the permit requirement in the Exemption in such a way that a Sign would not qualify for the Exemption, and therefore be prohibited by clauses 52.05-13 and 52.05-14 of the Scheme.

In our view, Council is in a position to grant a permit for the Sign pursuant to clause 52.05-10, despite (and importantly regardless of) any provision in a zone, overlay, or other particular provision of the Scheme.

In summary, taking a purposive approach to the consideration of whether the Exemption applies to the Sign, it is our view that it is clear that the intent is to specifically allow for

² *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355

signage to be positioned on sensitive land for the purposes of advertising land sales, where it would otherwise not be allowed.

Should you have any queries, please contact us.

Yours faithfully



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