

Planning regulation of large format LED displays

By Denis McLeod

A local government's signs local planning policy (**LPP**) which prohibits third party advertising, recently was considered and accepted by the State Administrative Tribunal (**SAT**) in the case of **Carrooda Pty Ltd and City of Gosnells** [2022] WASAT 15 (**Carrooda**). This article discusses some of the issues and principles on signs, particularly large digital LED signs, which emerge from the **Carrooda** decision.

Policy framework for digital LED signs

The maximum sign area that Main Roads WA (**MRWA**) will permit under its *Policy and Application Guidelines for Advertising Signs Within and Beyond State Road Reserves* (**Main Roads Policy**) is 85m².

Testing the limits of what local governments will tolerate for roadside signs, the advertising industry has recently been offering developers the opportunity to establish 85m² digital LED signs for urban locations on high traffic thoroughfares. Those signs, which are also commonly known as "Spectaculars":

- are at the maximum area of 85m² under the Main Roads Policy;
- feature third party advertising;
- are digitally operated with messages changing at the minimum phase of 40 seconds under the Main Roads Policy;
- are LED internally illuminated;
- generally are double-sided; and
- to maximise exposure, are at the Main Roads Policy maximum of 12 metres above ground level.

Many urban local governments have adopted signs policies which totally prohibit, or significantly restrict third party advertising, and which additionally impose a maximum on the area of hoardings, generally in the vicinity of 20m². A spectaculars sign would display third party advertising, would be internally illuminated 24 hours per day, with a 40 second phase in its third party advertising messages, and would be at or only slightly less than the 85m² maximum under the Main Roads Policy.

SAT refusals of LED Spectaculars signs

Local governments should be aware of the fact that refusals of Spectaculars signs have been unsuccessfully challenged in the SAT in at least two recent cases, namely **MWest Pty Ltd and City of Bayswater** [2019] WASAT 103 (**MWest**), and more recently the **Carrooda** case mentioned above. In both of those cases, the SAT had regard to the relevant local government's signs and hoardings local planning policy, which in each case prohibited third party advertising, and in each case imposed strict limits on the area of hoarding signs.

In the **Carrooda** case, decided 22 February 2022, the SAT at [95] stated that it did not consider there were cogent reasons to depart from the provisions of the LG's signage policy, and at [94], stated the finding that the proposed sign would detract from the current and likely future character and amenity of the immediate locality, because, amongst other reasons, it would appear as a visually dominant illuminated structure in contrast to the existing relatively small scale industrial and residential development surrounding it.

Role of the Main Roads Policy

Local governments handling similar applications should take care in dealing with the evidence of MRWA traffic experts, and other traffic experts, who treat the Main Roads Policy as the sole relevant test in regard to the safety issues associated with advertising in and in the vicinity of MRWA controlled roads. The tendency of MRWA traffic experts, and some others, is to assume that if a sign satisfies the safety criteria under the Main Roads Policy, then there is no safety issue associated with the sign.

However, a competent and independent traffic consultant may very well conclude that there are other safety issues associated with a significant sign such as the Spectaculars digital LED signs, that are not covered by the Main Roads Policy safety criteria. The independent (non-MRWA) traffic consultant relied on by the respondent in the **MWest** case gave evidence of safety issues with the sign in that case, which extends beyond consideration of the Main Roads Policy safety criteria. The Main Roads safety criteria are based upon serious crash statistics within the affected area of a sign, and that may not be the only relevant consideration in evaluating the safety impact of a proposed sign. Local governments should ensure that in choosing a traffic expert in a sign case, the expert is not narrowly focused only on the safety criteria under the Main Roads Policy.

It should also be remembered that the safety criteria under the Main Roads Policy are based on the last 5 years serious crash statistics on the relevant road in the vicinity of the proposed sign location. But a safety score that may be acceptable over one 5 year period may not be acceptable in the following year, necessarily using a different 5 year period.

Balanced policy

Some local governments which have a signs LPP that totally prohibits third party advertising may at the same time have contracts for the provision of street furniture (e.g. bus shelters; seats; bin enclosures; and illuminated street names) which display third party advertising. Those signs are very small and don't significantly compete with very large signs such as the Spectaculars. However, to avoid unfair competition/monopoly criticisms, it would be as well for the local government to allow for the possibility of leaving a discretion in their Signs LPP to allow third party advertising signs on bus shelters, bin enclosures, public area seating and illuminated street direction signs, which are erected and maintained by and at the expense of the sign proponent. The local government would in that way place itself, hypothetically, on the same footing as any other person proposing similar signage, rather than leaving open the criticism that the local government allows itself the



opportunity of that kind of third party advertising while prohibiting third party advertising for others.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. Local governments requiring further assistance in relation to these issues are welcome to contact Denis McLeod on 9383 3133 or dmcleod@mcleods.com.au.

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