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**JURISDICTION** : TOWN PLANNING APPEAL TRIBUNAL

**CITATION** : DRAKE and CITY OF SOUTH PERTH  
[2003] WATPAT 20

**CORAM** : MR P MCGOWAN  
MR J JORDAN  
MR R HOPE-JOHNSTONE

**HEARD** : 18 AND 19 JUNE 2003

**DELIVERED** : 30 JUNE 2003

**FILE NO/S** : APP 46 of 2002  
APP 47 of 2002  
APP 48 of 2002

**BETWEEN** : BARRIE MILES DRAKE  
Appellant  
  
AND  
  
CITY OF SOUTH PERTH  
Respondent

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*Catchwords:*

Signs - Purpose of sign - Sign illumination - Amenity

*Legislation:*

Nil

*Result:*

Appeal No 46 of 2002 allowed.

Appeal Nos 47 and 48 of 2002 allowed in part.

*Category:* B

**Representation:**

*Counsel:*

Appellant	:	Mr D McLeod
Respondent	:	Mr A Roberts

*Solicitors:*

Appellant	:	McLeods
Respondent	:	Minter Ellison

**Case(s) referred to in decision(s):**

Nil

**MR P MCGOWAN, MR J JORDAN, MR R HOPE-JOHNSTONE:**

- 1     These three appeals, heard together, are against the refusals by the City of South Perth of applications for planning consent for signs erected at three separate premises owned by Barrie Miles Drake and operated as “Drake’s Apartments With Cars”.
- 2     Appeal 46 of 2002 is against refusal of a signboard for the apartment building at Lot 3 (No.2) Scenic Crescent, South Perth. The signboard is located in the front setback adjacent to the driveway as depicted in Drawing No. 100092-SK2 dated November 2001.
- 3     Appeal 47 of 2002 is against refusal of two signboards for the apartment building at Lot 1 (No.42) Swanview Terrace, South Perth. The signboards are located in the front setback each side of the driveway as depicted in Drawing No. 100092-SK3 dated November 2001.
- 4     Appeal 48 of 2002 is against refusal of a signboard in the front setback adjacent to the access path, as depicted in Drawing No. 100092-SK1 dated November 2001 and refusal of lettering affixed to the façade, as depicted in Drawing No. 100092-SK5 dated November 2001, of the apartment building at Lot 500 (Nos 5-7) Scenic Crescent, South Perth.
- 5     The signboards in each instance are freestanding and measure 1.2 metres by 2.4 metres. Attached to each of the refused applications is Drawing No. 100092-SK4 dated November 2001 showing the design of the signboards. Each signboard installed on the sites stands to a height of approximately 1.6m above the ground. The signboards identify the use carried on in each of the premises, provide contact details and names and advertise the standard of accommodation and types of vehicles offered.
- 6     The lettering on the façade of the building on Lot 500 is approximately 300mm high and displays the words “Drake’s Apartments” and “Reception”. The location of the lettering on the façade is shown in Drawing No. 100092-SK5 dated November 2001.
- 7     The Council refused each application for reasons that can be summarised as:
  - (a)    The signs contravene the size restrictions in clause 74 of Town Planning Scheme No.5
  - (b)    The proposed signage:

- (i) will adversely affect the amenity of the surrounding residential locality;
    - (ii) is not in keeping with the purpose for which the land in the locality is used; and
    - (iii) is not consistent with the orderly and proper planning of the locality
  - (c) Council does not regard the exercise of its discretion to approve the signage as appropriate in the circumstances.
- 8 In respect of the refusal for Lot 500 Scenic Crescent (Appeal 48 of 2002) the refusal also referred to the lettering on the building façade and included as a footnote:
- “A modified application relating solely to the name of the building (Drake’s Apartments), and complying with the requirements of Clause 74(2) of the No.5 Scheme, would receive approval.”
- 9 Each refusal decision refers to *City of South Perth Town Planning Scheme No.5* (“**TPS 5**”). Subsequent to the appeals being lodged, *City of South Perth Town Planning Scheme No.6* (“**TPS 6**”) was published in the Government Gazette of 29 April 2003. At clause 1.7 of TPS 6 is notice of the revocation of TPS 5 and thereby the revocation of clause 74 referred to in the refusals. The appeals therefore fall to be determined under TPS 6.
- 10 Clause 6.12 of TPS 6 is concerned with the planning control of signs. Clause 6.12(6) provides that an application for planning approval for a sign shall be examined:
- “... in the light of the objectives of the Scheme and the precinct, and with particular regard to the character, amenity, historic or landscape significance and traffic safety, within the locality.”
- 11 TPS 6 objectives can be found at clause 1.6. Mr Roberts, for the City, drew attention to the Scheme objectives at 1.6(2) and particularly:
- “(a) Maintain the City’s predominantly residential character and amenity;
  - (e) Ensure community aspirations and concerns are addressed through Scheme controls;

- (f) Safeguard and enhance the amenity of residential areas and ensure that new development is in harmony with the character and scale of existing residential development;
  - (g) Protect residential areas from the encroachment of inappropriate uses.”
- 12 Clause 7.12 of TPS 6 is concerned with the granting of planning approval for development already commenced or completed.
- 13 Each of the three lots is zoned “Residential” under TPS 6. In Scenic Crescent the buildings on Lot 3 and Lot 500 are used as serviced apartments. A third building owned by Mr Drake on Lot 1, which is not part of these appeals, is also used as serviced apartments. All other buildings in Scenic Crescent are used for residential purposes, including single dwellings, grouped dwellings and multiple dwellings. Swanview Terrace is also a residential street made up of single, grouped and multiple dwellings. The building on Lot 1 is the only building used for the purpose of serviced apartments.
- 14 There was no dispute that “Drake’s Apartments With Cars” is operating lawfully on each of the three sites the subject of these appeals.
- 15 At issue in these appeals is whether approval should be granted for the proposed signboards at each of the three sites in what are essentially residential streets. In determining this it is necessary to consider the use made of each lot, the purpose of the signboards and the impact of the signboards on the amenity of the streets in which they are located. In addition, at issue is whether the word “RECEPTION” can be permitted to remain on the façade of the building on Lot 500.
- 16 The particular wording of the signboards, other than whether it is site specific or general advertising, is not an issue that properly falls to be considered by the Tribunal. Clause 6.12(6) requires that an application for planning approval for a sign be examined:
  - “... with particular regard to the character, amenity, historic or landscape significance and traffic safety, within the locality.”
- 17 The use made of the three lots is not such that sign content about it would give rise to adverse impact on neighbouring residential character and amenity. The photographs submitted also reveal that the content will not cause problems with traffic safety. The information displayed on the

signboards about the use made of the three sites is therefore considered to be a matter for Mr Drake

- 18 Mr Drake identified multiple dwelling buildings similar in character to his apartments buildings in Scenic Crescent and Swanview Terrace. He said that the signboards were necessary so that his customers and their visitors could readily differentiate his apartments from the multiple dwelling buildings in the street.
- 19 Mr Graeme Alfred Carter, a resident and owner of an apartment in a multiple dwelling block next door to Lot 1 Swanview Terrace, was called as a witness for Mr Drake. Mr Carter supported the use of a signboard to identify Drake's Apartments so that customers of the serviced apartments would not confuse the driveway to his apartment block with the adjacent driveway serving Drake's Apartments.
- 20 Mr David Gray, an experienced town planning consultant, was called on behalf of the appellant. Mr Gray said that as the serviced apartments were an approved use and that use was commercial, it was reasonable in planning terms that there be signs to identify the use.
- 21 The City of South Perth called as a witness Mr Rodney Harold Bercov, Manager, City Planning. Mr Bercov is also an experienced town planner. Mr Bercov expressed the view that a small sign on the façade of each building would be sufficient to identify the premises.
- 22 The Tribunal's attention was drawn to an internally illuminated box sign stating "Drake's Apartments with Cars" on the façade of Lot 1 Swanview Terrace and Lot 3 Scenic Crescent. Mr Bercov was of the view that these signs were sufficient to identify the buildings. Mr Drake considered these signs to be inadequate. The box sign on Lot 1 is near the eaves of this three-storey building. The box sign on Lot 3 is obscured by trees. In addition, Mr Drake considered it necessary to provide his customers and visitors with further information such as contact names and telephone numbers. It is to be noted from the photographs submitted that the signboard in front of Lot 1 Swanview Terrace also includes the additional information that reception is at 7 Scenic Crescent.
- 23 Mr Gray expressed the opinion that it is acceptable that commercial premises include an identifying sign in a location such as this and that the sign include additional information about the use, provided the information was site specific and not just general advertising. Mr Gray submitted that it was a matter of making a judgment on what he termed "reasonable signage requirements". In this regard, he considered that the

wording of the signs was acceptable. Mr Bercov agreed that there be reasonable signage requirements but maintained that the box signs served this purpose.

- 24 When asked by Mr Roberts, Mr Drake agreed that full details of the services available, contact information and the standard of accommodation were available from other sources. When questioned, Mr Drake said that virtually all of his clients were from overseas and interstate with little custom that could be described as passing trade. Mr Drake remained of the view, however, that the information on the signboards in addition to the name was an important service to his customers and their visitors.
- 25 Mr Gray also submitted that in locations such as Scenic Crescent and Swanview Terrace reasonable signage requirements also included balancing the purpose of a sign against the impact of the sign on the amenity of the residential locality. He said that a sign is acceptable until it becomes intrusive. The point at which a sign becomes intrusive is a combination of factors such as size, lighting, position and colour.
- 26 Mr Gray submitted that the amenity of Scenic Crescent is influenced by the need to first drive past commercial activity in Mill Point Road Ellam Street before entering Scenic Crescent. Mr Bercov used the aerial photograph given in evidence to illustrate the difference between the commercial activity east of Ellam Street and the residential character of Scenic Crescent, which is west of Ellam Street. Mr Bercov emphasised the need to have regard to this distinction when considering the impact of the signs applied for on the residential amenity of Scenic Crescent.
- 27 The appellant called as witnesses Mr Wally Jankovic and Mr Barry John Callan, who both reside in Scenic Crescent close to Lots 3 and 500. Both testified that the signs in Scenic Crescent do not detract from their perception of the character and amenity of the locality.
- 28 Mr Carter testified that he did not find the signboards at Lot 1 Swanview Terrace offensive or as detracting from the amenity of his locality.
- 29 The City called Mr Gregory James Davies, a resident of Scenic Crescent. Mr Davies considers the signs detract from the amenity of the street and should not be approved. Mr Davies objected to commercial use in this residential street. The serviced apartments at Lot 3 and Lot 500 are, however, a lawful use. Mr Carter, Mr Jankovic and Mr Callan, expressed the view that given that serviced apartments had been allowed signboards

identifying the premises were appropriate and signboards of the size applied for were acceptable.

30 Mr Carter, Mr Gray and Mr Callan advised they would object to general advertising signs in the street, but considered signs that were specific to the use conducted on a site acceptable. Signboards larger than those applied for might be unacceptable to them.

31 One of the reasons for refusal in each case was that the signboards exceeded the maximum size requirements of clause 74 of TPS 5. TPS 5 has been revoked. Clause 6.12 of TPS 6 does not include dimensions for signs. The evidence presented on the size at which a signboard might become unacceptable to various witnesses did not assist greatly because of the subjective response of each witness. 'Large' signboards and 'billboards' were generally agreed to be unacceptable. The witnesses called for the appellant considered the proposed signboards to be an acceptable size, those called for the City considered the size applied for unacceptable.

32 The Tribunal's attention was drawn to the presence of a commercial building, with signs and an associated carpark in Ellam Street visible at the end of Scenic Crescent. Various interpretations were placed on the impact of this commercial development and its signs on the amenity of Scenic Crescent. In the event the presence of this commercial development at the very end of the street was noted as one factor, but not a dominant factor, in the consideration of the amenity of the street.

33 The illumination of signs to identify the appeal sites did not emerge as a point of difference between the parties. It was accepted that the signs being visible at night was necessary. Mr Bercov referred to the internally illuminated box signs in this regard. The signboards applied for are illuminated by a mercury vapour lamp, with shade, on a curved pole that extends above the sign. Mr Carter considered the signboard lighting at Lot 1 Swanview Terrace to be part of the lighting already provided on the site to light the external access ways to the apartments. Mr Jankovic and Mr Callan commented that the light on the standard used to illuminate Lot 3 Scenic Crescent added light to an otherwise ill lit side of the street.

34 There are two signs applied for at Lot 1 Swanview Terrace, one each side of the driveway. The two signs are identical in size and contain the same wording. It was submitted that the two signs provided an "entry statement". It was also argued by Mr Drake and Mr Gray that two signs angled at about 45 degrees to the road are necessary to ensure that their



presence and the information on them would be readily spotted by a motorist coming from either direction along Swanview Terrace.

- 35 It is considered two signs are not necessary. It has been established that the signs are not to attract passing trade but to identify the site to those who are specifically attempting to locate it. One such sign, appropriately located would serve this purpose on what is a low speed suburban street on which there are no other signs.
- 36 The refusal reasons refer to the conflict of the proposals with orderly and proper planning. General Objective of the Scheme 1.6(2)(g) referred to by the Respondent requires the protection of residential areas from the encroachment of inappropriate uses. The Council has permitted serviced apartments to operate on each of the three sites. The applications are not to extend this use to other residential zoned lots or to change the use made of the appeal sites. The signs proposed are site specific and do not attempt to introduce general advertising signs into the locality.
- 37 Central to the façade of the apartment building at Lot 500 Scenic Crescent, between the second and third floors are the words “DRAKE’S APARTMENTS” in letters approximately 300mm high. Above a ground floor arch to one side of the façade is the word “RECEPTION” in letters of the same size. The appellant seeks to have these signs approved.
- 38 The signs on the façade displaying the name of the building are not in dispute. The Council indicated in the footnote to its decision on Appeal 48 of 2002 that an application relating solely to the words “Drake’s Apartments” would be approved.
- 39 The Council objects to the word ‘Reception’ on the façade of Lot 500 considering it to be unnecessary. Examination of the signboard applied for adjacent to the path reveals that it contains the word ‘Reception’ and an arrow. The signboard is illuminated at night, the façade sign is not. It is considered the Council’s position can be supported in this regard.
- 40 In summary, serviced apartments are operating lawfully on Lot 3 and Lot 500 Scenic Crescent and Lot 1 Swanview Terrace. Signboards would assist in identifying these commercial sites in otherwise residential streets. The signboards would assist visitors to the locality to differentiate between the serviced apartments and multiple dwelling buildings in the streets similar in appearance. A sign adjacent to the access to the serviced apartments would better serve the purpose of identifying the access, particularly during the day, than would the existing box signs on the face of the buildings at Lot 1 and Lot 3.

- 41 The signboards contain information that is available elsewhere, but to have this information repeated on these site-specific signs is considered acceptable. The signboards do not contain general advertising unrelated to the use of the sites.
- 42 While a specific size for signboards appropriate for this locality was not established from the evidence, the conclusion can be drawn that the signboards proposed do not cross a threshold over which they would be of a generally unacceptable size.
- 43 As discussed above, it is concluded that it is not necessary that there be two signboards at the front of Lot 1 Swanview Terrace.
- 44 The illumination of the signs means they are visible at night and the form of lighting used has been presented as not causing light to intrude into neighbouring residential lots.
- 45 Examination of the photographs of the signboards reveals they are of standard lettering and colouring.
- 46 Having regard to the general objectives of TPS 6 and the matters to be addressed when considering an application for a sign, it is concluded from the evidence presented that the use of the signboards can be supported.
- 47 In each of the appeals the design of the signs and the positions in which they are located on each site are depicted in drawings dated November 2001. Clause 7.12 of TPS 6 provides that planning approval may be granted for development already commenced or completed. It is therefore determined as follows:
- 48 Appeal 46 of 2002 against refusal of the Application for Planning Consent at Lot 3 Scenic Crescent is upheld. Planning approval is granted for a site-specific signboard of the design depicted in Drawing No. 100092-SK4 in the location shown in Drawing No. 100092-SK2.
- 49 Appeal 47 of 2002 against refusal of the Application for Planning Consent at Lot 1 Swanview Terrace is upheld in part. Planning approval is granted for one only of the site-specific signboards of the design depicted in Drawing No. 100092-SK4. Mr Drake to select which sign is to remain. The sign may be realigned relative to the kerb but is to be in the approximate location shown on Drawing No. 100092-SK3.
- 50 Appeal 48 of 2002 against refusal of the Applications for Planning Consent at Lot 500 Scenic Crescent is upheld in part. Planning approval

is granted for a site-specific signboard of the design depicted in Drawing No. 100092-SK4 in the location shown in Drawing No. 100092-SK1. Planning approval is granted for the words 'Drake's Apartments', but not for the word 'Reception', on the façade of the building on Lot 500 as shown in Drawing No. 100092-SK5.