



PART B – SHIRE OF MUNDARING

1. Declarations of Due Consideration

2. Disclosure of Interests

3. Form 1 DAP Applications

- 3.1 Lot 28 (No. 23) Stanhope Gardens, Midvale – Proposed Advertising Structure – DAP/24/02771

4. Form 2 DAP Applications

Nil.

5. Section 31 SAT Reconsiderations

Nil.

Part B – Item 3.1 – LOT 28 (NO.23) STANHOPE GARDENS, MIDVALE – PROPOSED ADVERTISEMENT STRUCTURE

Form 1 – Responsible Authority Report (Regulation 12)

DAP Name:	Metro Outer DAP
Local Government Area:	Shire of Mundaring
Applicant:	Pinnacle Planning
Owner:	Bethesda Holdings Pty Ltd
Value of Development:	\$2.88 million
Responsible Authority:	Shire of Mundaring
Authorising Officer:	Michael Pengelly – Acting Director Statutory Services
LG Reference:	ST 1.23
DAP File No:	DAP/24/02771
Application Received Date:	30 September 2024
Report Due Date:	24 April 2025
Application Statutory Process Timeframe:	90 Days
Attachment(s):	1. Location Plan 2. Recent street views of subject property 3. Development Plans 4. WAPC development approval (dated 26 November 2019)

Responsible Authority Recommendation

That the Metro Outer DAP resolves to:

1. **Accept** that the DAP Application reference DAP/24/02771 and accompanying plans (plans S1 and S2) is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
2. **Approve** DAP Application reference DAP/24/02771 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of the Shire of Mundaring Local Planning Scheme No. 4, for the proposed advertisement structure at Lot 28 (No.23) Stanhope Gardens, Midvale, subject to the following conditions:

Conditions

1. Pursuant to clause 26 of the Metropolitan Region Scheme, this approval is deemed to be an approval under clause 24(1) of the Metropolitan Region Scheme.
2. This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially

commenced within the specified period, the approval shall lapse and be of no further effect.

3. The development shall comply with the approved plans unless approval is granted by the Shire of Mundaring for any minor variation made necessary by detailed design.
4. The advertisement panels and the associated structure being maintained by the landowner to the Shire's satisfaction.
5. The advertisement panels not displaying content which in the Shire's opinion is misleading, offensive, explicit or dangerous.
6. All stormwater must be managed onsite to prevent erosion and transportation of water borne pollutants, to the satisfaction of the Shire.
7. The proposed single-sided north-facing LED digital sign shall comply with the following:
 - a) The maximum dwell time shall not be less than 110 seconds during all hours
 - b) The maximum luminance level shall not exceed 300cd/m² during dawn/dusk and 150cd/m² during night time.
 - c) The display content shall exclude colours and shapes that may be mistaken for a traffic signal, traffic signs or instruction signs during all hours.
 - d) The display content shall not be predominantly red, green or amber during all hours.
 - e) The display content shall not flash, pulsate or chase during all hours.
 - f) The sign and sign structure are to be placed on private property and shall not over hang or encroach upon the road reserve.
 - g) The sign shall not contain fluorescent, reflective or retro reflective colours or materials.
 - h) No other unauthorized signing is to be displayed.
 - i) Main Roads agreement is to be obtained prior to any future modifications

Details: outline of development application

Region Scheme	Metropolitan Region Scheme
Region Scheme - Zone/Reserve	Urban
Local Planning Scheme	Local Planning Scheme No.4
Local Planning Scheme - Zone/Reserve	Light Industry
Structure Plan/Precinct Plan	N/A
Structure Plan/Precinct Plan - Land Use Designation	N/A
Use Class and permissibility:	N/A – 'Advertisements' is a general term under Schedule 1 of LPS4, not a land use.
Lot Size:	1,556sqm
Existing Land Use:	Warehouse
State Heritage Register	No
Local Heritage	☒ N/A

	☐ Heritage List ☐ Heritage Area
Design Review	☒ N/A ☐ Local Design Review Panel ☐ State Design Review Panel ☐ Other
Bushfire Prone Area	No
Swan River Trust Area	No

Proposal:

The application proposes the construction of a 15.5m high structure, attached to which shall be two 87sqm panels which will display third party advertisements. The northward facing panel will have an LED display, whereas the southward facing panel will have static advertisements affixed to it.

The structure will be located towards the rear of the subject property in place of an existing advertisement structure.

The advertisement panels will be visible to traffic along Roe Highway and Stanhope Gardens.

Refer to **Attachments 1 to 3**.

Background:

Site Description

The general character of the locality consists of warehouse and office uses. The vast majority of the buildings being single storey.

Towards the rear of the subject property is a tall advertisement structure, further details regarding which are in the following sub-section of this report.

Immediately to the west of the subject property is Roe Highway and a slip lane from Great Eastern Highway.

Previous Decisions Relevant to the Proposal

Decision Date	Summary of Decision
August 2014	Council approved a double sided non-illuminated billboard sign on the subject site which on the approved plans is shown to be 20.1m in overall height, have a nil rear boundary setback, and two 87sqm advertisements panels which face north and south. No details were provided at the time by the applicant nor the Shire Officer as to what type of advertisements (e.g. third party) would be affixed to the panels other than the signage would be static. The advertisement structure was subsequently constructed.

May 2017	Local Planning Scheme No. 4 (LPS4) was amended to include specific provisions for 'Advertising' (Clause 5.7.33) as follows: <i>"5.7.33 Advertising</i> <i>Advertising, not otherwise exempt under Schedule 5, must:</i> <i>(a) not detract from or erode the visual qualities and character of a particular locality and/or transport corridor; and</i> <i>(b) be associated with the operation or business on the subject site; and</i> <i>(c) not be misleading or dangerous; and</i> <i>(d) be of a size and scale that is proportionate to the realistic needs of local commerce in the locality; and</i> <i>(e) be designed to minimise visual clutter."</i>
August 2018	Council refused a development application which proposed to replace the static advertisements on the subject site with LED panels facing north and south. Council provided the following reasons: <i>1. The LED signage is inconsistent with Local Planning Scheme No. 4 (LPS4) as it:</i> <i>a. would be inconsistent with the objectives of the zone (Clause 4.2.8) by detracting from the established visual amenity of the locality; and</i> <i>b. would be fundamentally inconsistent with provisions (a-e) of Clause 5.7.33;</i> <i>2. The proposal is inconsistent with the 'deemed provisions' (Clause 67) contained within Planning and Development (Local Planning Schemes) Regulations 2015;</i> <i>3. The proposal is fundamentally inconsistent with Councils previous approval (Condition 4 - specifying that the sign is not to be illumination);</i> <i>4. The proposal would create an undesirable precedent and undermine the intent behind the introduction of Clause 5.7.33 to restrict third party advertising and the visual impact caused by advertising within the Shire; and</i> <i>5. The proposal is not supported by Main Roads WA due to non-compliance with Main Roads 'Policy and Application Guidelines for Advertising Signs - Within and Beyond State Road Reserves', specifically:</i> <i>a. Roe Highway (northbound) does not meet the Critical Crash Criteria; and</i> <i>b. The sign is within a 'Device Restriction Area' (s 5.3.2)."</i>

	Following Council's determination to refuse the proposal, the applicant lodged an appeal (review) with the State Administrative Tribunal (SAT) against the Shire's decision. The application proceeded to mediation which concluded with the applicant providing a revised proposal, and the SAT subsequently inviting the Council to reconsider its decision.
June 2019	Council approved amended plans for the LED advertisement panels on the subject site which showed: a) Upgrading of the north-facing sign to an LED panel. The south facing sign being proposed to be static. b) The proposed LED panel being switched off during the evening, and switched on again in the morning; The Shire Officer's report states: <i>"As the approval was issued and the development was completed prior to the gazettal of Clause 5.7.33, the landowner retains the right to maintain the sign as approved. The Shire does not have the right to retract its approval even though third party advertising would now be fundamentally inconsistent with subclause 5.7.33 (b). Nevertheless, the right to 'illuminate' the sign with LED panels represents a modification to the existing approval and must be considered against Clause 5.7.33."</i> The application was subsequently referred to the WAPC for determination as the approval decision differed to the refusal recommendation of Main Roads WA.
November 2019	The WAPC approved the amended plans for the advertisement panels and associated structure (refer to Attachment 4). The approval subsequently lapsed as the development did not substantially commence within 2 years of the approval decision by the WAPC.

Legislation and Policy:

Legislation

- *Planning and Development Act 2005*
- *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations)
- Metropolitan Region Scheme
- Local Planning Scheme No.4 (LPS4)

State Government Policies

- Development Control Policy 1.2 – Development Control (General Principles) (DCP 1.2)

Structure Plans/Activity Centre Plans

None

Local Policies

- Advertising Planning Proposals Local Planning Policy - PS-01

Consultation:

Public Consultation

The proposal was advertised by the Shire to nearby landowners and occupants potentially impacted by the proposal in accordance with its Advertising Planning Proposals Local Planning Policy - PS-01. During the advertising period no submissions were received.

Referrals/consultation with Government/Service Agencies

Plans originally received for the current application proposed a 17.5m high advertisement structure with 87sqm LED advertisement panels facing north and south.

As the proposal is intended to address the users of Roe Highway, the application and supporting documentation was referred to Main Roads WA for comment. In response, the following was advised to the Shire:

- “1. The proposed development does not comply with Section 6.4 of Main Roads’ Policy and Assessment Guidelines for Digital Advertising Signs (September 2024):
 - a. The proposed Large Format Digital Sign (LFDS) is located within a Critical Movement Prohibition Zone (CMPZ) for both north and south bound directions. Specifically, the proposed southbound facing panel is within a Diverge Prohibition Zone, and the proposed northbound facing panel is within a Merge Prohibition Zone, therefore both signs are deemed unsuitable.
2. The development proposal is deemed unacceptable having due regard to Clause 67, subclause (2)(r) and (za) of Schedule 2 (Deemed Provisions) of the Planning and Development (Local Planning Schemes) Regulations 2015.

Subsequently, the applicant provided amended plans (**Attachment 3**), which essentially are identical to those which were approved by the WAPC in November 2019. They were referred to Main Roads WA for comment, and in response the following was advised:

“Main Roads’ Traffic Management Services branch provided advice directly to the applicant stating that Main Roads will honour the prior approval (the WAPC’s 2019 approval)) provided the signage is identical to the 2019 plans.”

Condition 7 in the Shire's recommendation to the DAP is based upon the comments received from Main Roads WA.

Design Review Panel Advice

Not applicable

Planning Assessment:

In accordance with the Regulations, regard is to be given to the potential impact the proposal may have in terms of the area's amenity and character, the possible risk to human health or safety, provisions in LPS4 and any adopted policy, and the development's relationship to development on adjoining land or on other land in the locality.

These matters are discussed in the following sub-sections.

Character and amenity

In considering the suitability of the proposal, the DAP is required to have regard to the following relevant planning considerations in making decisions on this development application in accordance with DCP1.2:

- Compatibility with relevant planning policies, strategies and development control criteria;
- Integration of development into the site and its surroundings;
- Transport and traffic impacts;
- Relevant factors of amenity and suitability

Clause 1.6 (2) of LPS4 (the aims of the Scheme) provides the following relevant aim's for the DAP's consideration:

- “(a) promote and safeguard the health, safety and general welfare of the residents of the Shire;*
- (b) preserve and enhance the amenity of the Shire and to manage land uses so as to minimise conflicts between potentially incompatible land uses;*
- (m) assist in the implementation of regional plans and policies and other elements of the State Planning Framework.”*

Clause 5.7.33 (Advertising) of LPS4 states that advertising must:

- “(a) not detract from or erode the visual qualities and character of a particular locality and/or transport corridor; and*
- (b) be associated with the operation or business on the subject site; and*
- (c) not be misleading or dangerous; and*
- (d) be of a size and scale that is proportionate to the realistic needs of local commerce in the locality; and*
- (e) be designed to minimise visual clutter.”*

Advertising proposals must also not conflict with the objectives set out in LPS4 for the applicable zone.

Clause 4.2.8 (Objectives of the zones) provides the following objectives for DAP's consideration:

- “(a) To accommodate a range of light and service industries and related uses which will not, by the nature of their operations, detrimentally impact upon the amenity of other properties in close proximity.*
- (b) To ensure development is designed in order to maintain the visual amenity of the area as seen from public roads, and the amenity of any adjacent residential areas in particular.”*

The term ‘amenity’ is defined in clause 1 of the Deemed Provisions to mean ‘all those factors which combine to form the character of an area and include the present and likely future amenity’.

The subject property currently features a double-sided static advertising sign located in close proximity to Roe Highway. The surrounding area is primarily industrial, with residential zones situated to the west of Roe Highway (on the opposite side to the subject site). At present, the advertisement structure of the same dimension, but which is greater in height, to that proposed in this application, forms part of the established visual amenity of the locality.

The scale of the proposed structure will be no greater than what currently exists on the subject property. Also, its proposed setback distance from the rear lot boundary (being 1.3m) is compliant with the LPS4 setback requirement for all development on Light Industry zoned sites (being a nil setback). Therefore, in this circumstance the proposed structure would maintain the visual amenity of the area as seen from surrounding properties and nearby roads (including Roe Highway).

What is currently proposed is the same as what was approved by the Shire and then subsequently by the WAPC in 2019.

Type of Advertisements

The advertisement proposed is not a type which is exempt from requiring development approval under Schedule 5 of LPS4.

When the existing advertisement structure was approved on the subject site by Council in 2014 there were no provisions in the local planning framework regarding third party advertisements. This changed in 2017 as a result of clause 5.7.33 being included in LPS4 which states that advertising must be associated with the operation or business on the subject property.

The 2019 Council approval which included third party advertisement panels, was granted on the basis that

“As the (2014) approval was issued and the development was completed prior to the gazettal of Clause 5.7.33, the landowner retains the right to maintain the sign as approved. The Shire does not have the right to retract its approval even though third party advertising would now be fundamentally inconsistent with subclause 5.7.33 (b).”

The advertisement panels currently proposed will display advertisements not associated with the operation or business currently on the subject property.

Whilst the proposal does not comply with this LPS4 provision, as advised earlier in this report, the plans now being proposed are identical to those approved by the Shire and subsequently by the WAPC in 2019. The local planning framework regarding advertisements and the general character of the area have not changed since then, and Main Roads WA has advised that it has no objection to the current plans (**Attachment 3**).

If the application is approved by the DAP, it is recommended that a condition be included to ensure that what is displayed on the advertisement panels is not misleading, explicit or dangerous (e.g. does not flash, pulsate etc.).

Matters to be considered by Local Government: Clause 67 of the Deemed Provisions for Local Planning Schemes

In considering the application the Shire and the DAP is to have due regard to the following matters listed in Clause 67 of the Deemed Provisions to the extent that, in the opinion of the Shire, those matters are relevant to the development the subject of the application. An assessment of the proposal against Clause 67 is considered through the planning assessment below. The matters most relevant to the proposal, and the Shire's response to each consideration, are outlined in the table below:

Matters	Shire's Comments
(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;	For reasons outlined in the report, and in the table on the following page, the proposal is not considered to be consistent with the aims and provisions of LPS4.
(e) any policy of the Commission.	For reasons outlined in the report, the proposal is considered to meet the relevant provisions of DCP 1.2 relating to amenity.
(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development.	For reasons outlined in this report, the proposal is considered to be compatible with the surrounding environment.
(n) the amenity of the locality including the following – (i) environmental impacts of the development; (ii) the character of the locality; and (iii) Social impacts of the development;	For reasons outlined in the report, the proposal is considered to be consistent with the existing amenity and character of the locality.

(y) any submission received on the application.	Refer to the 'Consultation' section of this report.
(za) the comments or submissions received from any authority consulted under clause 66.	Main Roads WA provided comments regarding the proposal as the management authority of Roe Highway. Refer to the 'Consultation' section of this report.

Conclusion:

The proposed advertisement structure maintains the current character and amenity of the area by virtue of not being greater in scale compared to the existing (to be removed) advertisement structure on the subject site.

The scale, appearance and location of the proposal, and the nature of the advertisements (being third party), are identical to the previous approval granted by the WAPC in 2019. The local planning framework regarding advertisements and the general character of the area have remained unchanged since then.

Considering this, there are cogent reasons to depart from the LPS4 advertising provision in this circumstance. Therefore, on balance it is recommended that the application be approved.

The Metro Outer Development Assessment Panel is advised that this recommendation should not be construed as meaning that any future applications for third party advertisements within the Shire of Mundaring should be supported.

Locality Plan



Recent street views of subject property

Below – View of subject property from Stanhope Gardens

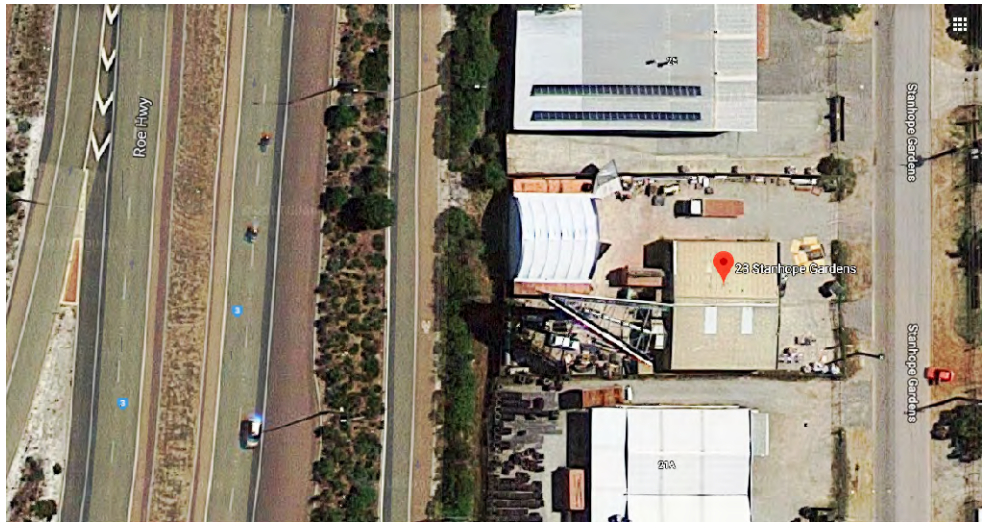


Below – View of subject property from Roe Highway looking south

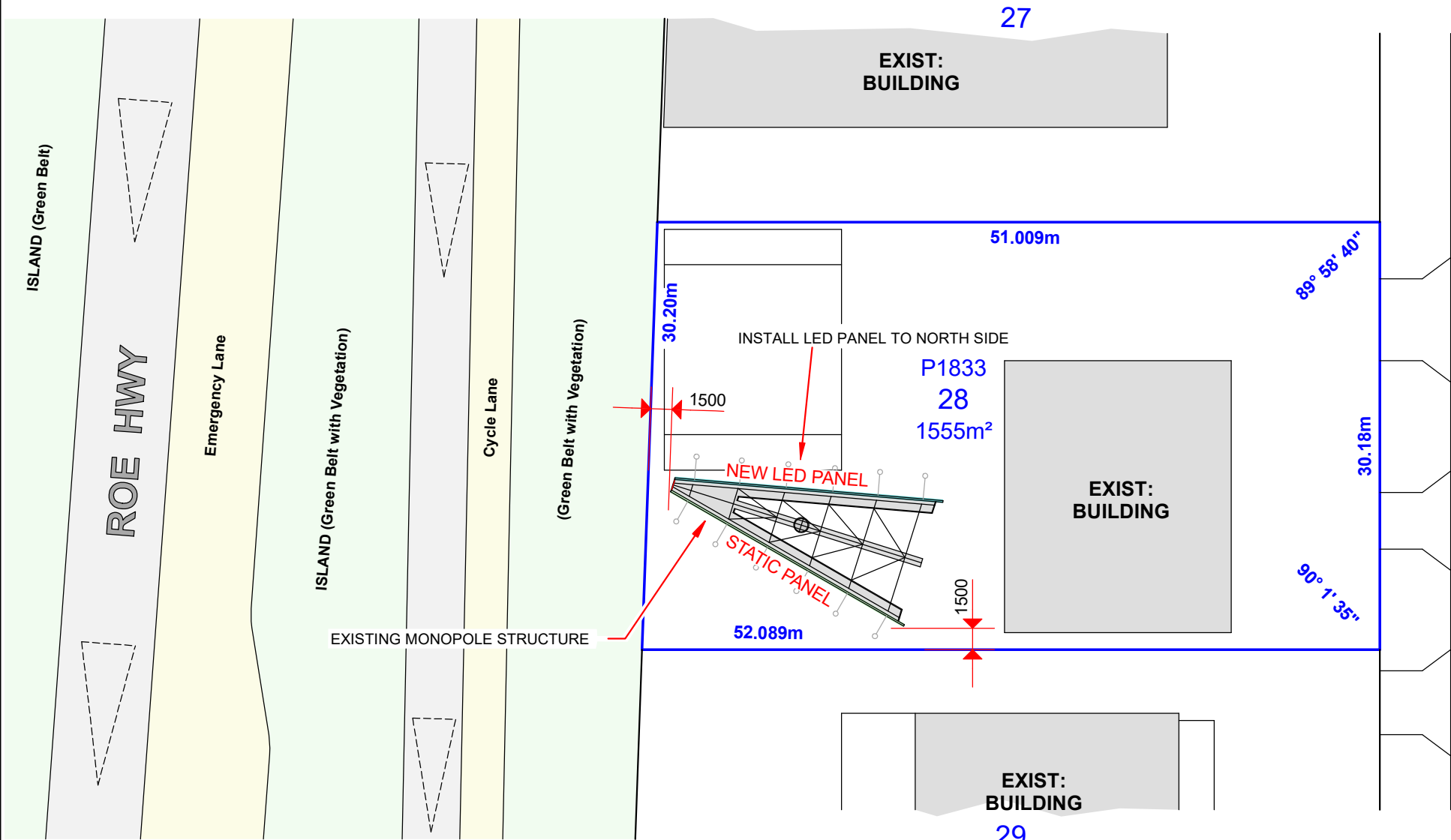


Below – View of subject property from Roe Highway looking north





LOCALITY

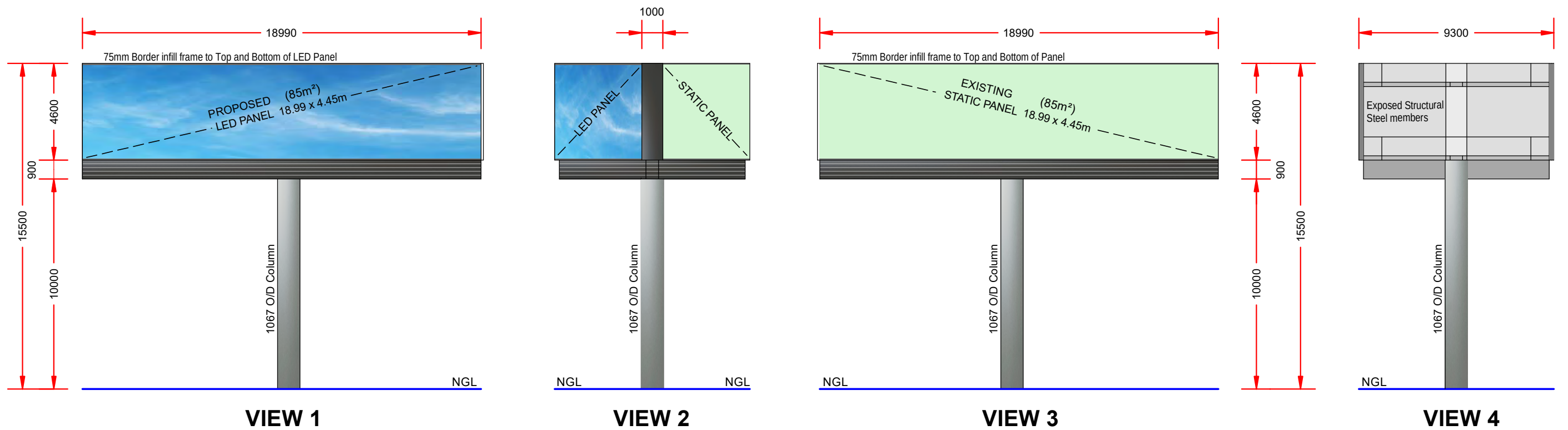


SITE PLAN

Scale 1:400

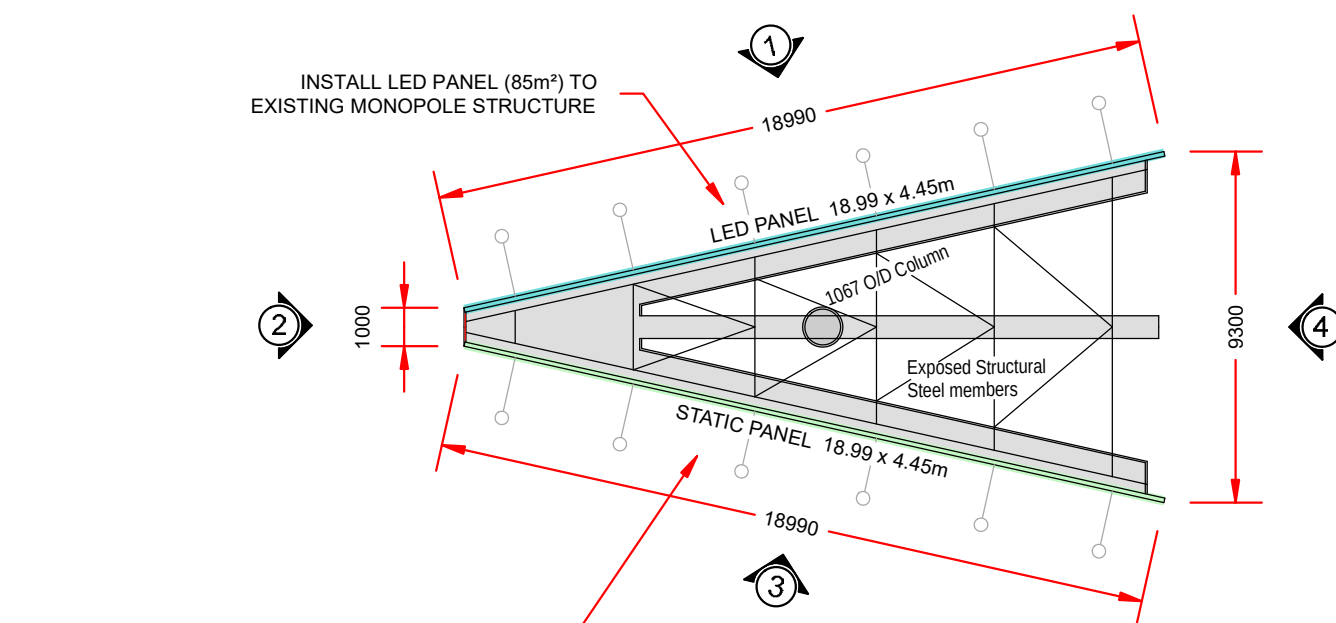


Project: Install LED Panel to: Exist: Monopole Structure	VailMedia Pty Ltd PO Box 749, Subiaco, WA, 6904 M: 0439909318 P: 08 93644955	
	Location: LT 28 23 STANHOPE GARDENS MIDVALE WA	Revision: 3 SHEET SIZE: A3
	Date: 06/03/2019	S1 of 2



ELEVATIONS

Scale 1:200



Project: Install LED Panel to: Exist: Monopole Structure		VailMedia Pty Ltd PO Box 749, Subiaco, WA, 6904 M: 0439909318 P: 08 93644955	
Location: LT 28 23 STANHOPE GARDENS MIDVALE WA		Revision: 3	SHEET SIZE: A3
		Date: 06/03/2019	S2 of 2



Our Ref : 27-50109-1
Your Ref :
Enquiries : Michael Flanagan (Ph 6551 9150)

Application for Approval to Commence Development dated 9 July 2019 received 9 July 2019.

Lot Number	: 28
Location	: -
Plan / Diagram	: Plan 1833
Volume/Folio	: 1679/353
Locality	: Stanhope Gardens, Midvale
Owner	: Ramsay Bogunovich & Phyllis Anne Bogunovich C/- 158 Railway Parade WEST LEEDERVILLE WA 6007

Under the provisions of the Metropolitan Region Scheme this application has been referred for determination by the Western Australian Planning Commission.

The application has now been considered by the Commission and the formal notice setting out the terms of the decision is attached.

A copy of this decision has been forwarded to the Local Government for information.

You are advised of the need to consult with the Local Government with regard to the gaining of all necessary approvals and the issuing of the requisite building licence.

This decision is issued pursuant to the provisions of the Metropolitan Region Scheme, and has been made by the Commission after due consideration of the regional planning implications of the proposal. The development must also comply with the requirements of Council's Local Planning Scheme(s) and any determination in this regard must be made by the local government. The Commission's decision, therefore, is made without prejudice to any others that may be separately required from Council.

Should the applicant be aggrieved by this decision there is a right to apply for a review pursuant to the provisions of Clause 33 of the Metropolitan Region Scheme. Such an application for review must be submitted to the State Administrative Tribunal, Level 6, State Administrative Tribunal Building, 565 Hay Street, PERTH WA 6000 in accordance with Part 14 of the *Planning and Development Act 2005*. It is recommended that you contact the State Administrative Tribunal for further details (telephone 9219 3111) or go to its website: <http://www.sat.justice.wa.gov.au>.



ADVICE TO APPLICANT

1. This is a development approval under the Metropolitan Region Scheme. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the applicant to obtain any other necessary approvals, consents, permits and licences required under other law and to commence and carry out development in accordance with all the relevant laws.

A handwritten signature in black ink, appearing to read "Ms Sam Fagan".

Ms Sam Fagan
Secretary
Western Australian Planning Commission
26 November 2019



Our Ref : 27-50109-1
Your Ref :
Enquiries : Michael Flanagan (Ph 6551 9150)

METROPOLITAN REGION SCHEME

Shire of Mundaring

APPROVAL TO COMMENCE DEVELOPMENT

Name and Address of Owner and Land on which Development Proposed:

Owner	: Ramsay Bogunovich & Phyllis Anne Bogunovich C/- 158 Railway Parade WEST LEEDERVILLE WA 6007
Lot Number	: 28
Location	: -
Plan / Diagram	: Plan 1833
Volume/Folio	: 1679/353
Locality	: Stanhope Gardens, Midvale
Application Date	: 9 July 2019
Application Receipt	: 9 July 2019
Development Description	: Modifications To Signage

The application for approval to commence development in accordance with the plans submitted thereto is granted subject to the following condition(s):

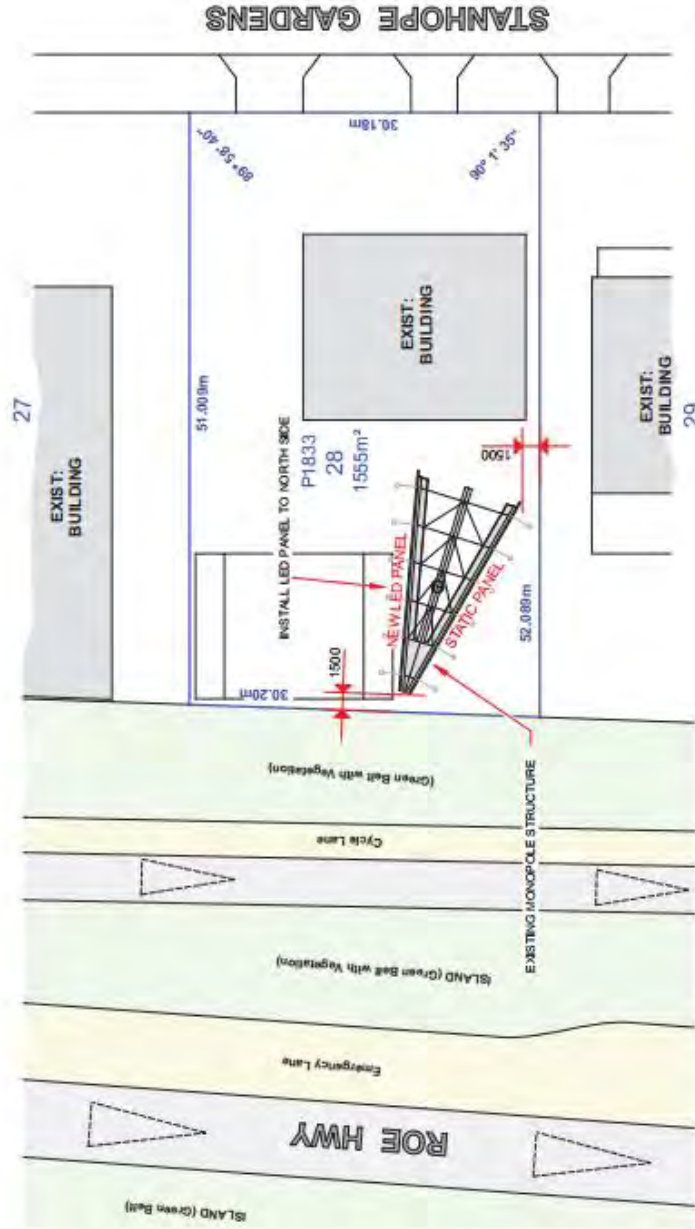
1. This approval relates to the approval for the proposed modification to the existing billboard sign at Lot 28 Stanhope Gardens, Midvale in accordance with the attached plans date stamped 10 July 2019 by the Department of Planning, Lands and Heritage on behalf of the Western Australian Planning Commission.

If the development the subject of this approval is not substantially commenced within a period of two years from the date of this letter, the approval shall lapse and be of no further effect. Where an approval has so lapsed, no development shall be carried out without the further approval of the responsible authority having first been sought and obtained.

Ms Sam Fagan
Secretary
Western Australian Planning Commission
26 November 2019



LOCALITY



DEPARTMENT OF PLANNING, LANDS AND HERITAGE	
DATE	FILE
10 Jul 2019	27-50109-1

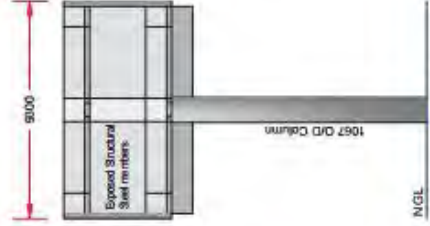
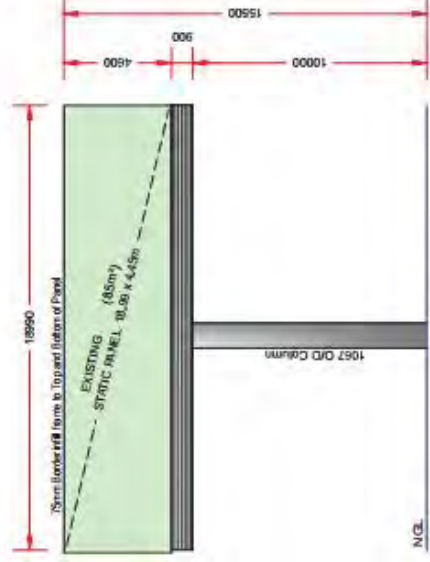
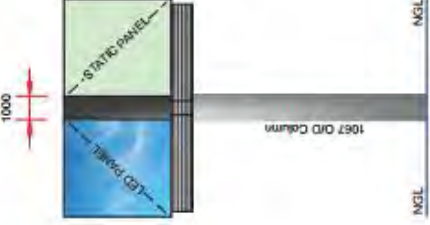
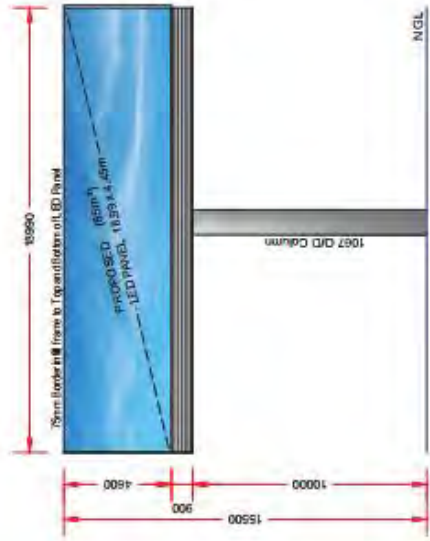
Project:	Install LED Panel to:	Revision: 3	SHEET SIZE: A3
	Exist: Monopole Structure		
Location:	LT 28	Date: 06/03/2019	S1 of 2
	23 STANHOPE GARDENS MIDVALE WA		



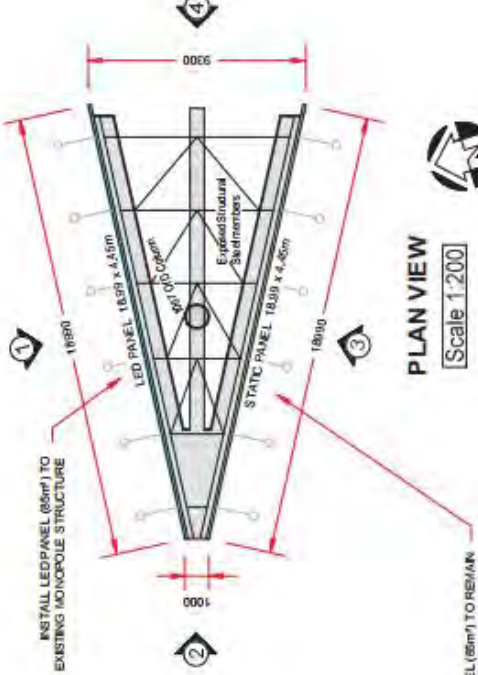
SITE PLAN

Scale 1:400

VaiMedia Pty Ltd
PO Box 749, Subiack, W.A. 6004
M: 08 9500 1315
P: 08 9564 8555



ELEVATIONS
Scale 1:200



DEPARTMENT OF PLANNING, LANDS AND HERITAGE	
DATE:	FILE:
18 Jul 2019	27 50109-1

Project: Install LED Panel to: Exist: Monopole Structure	VailMQUIER Pty Ltd PO Box 34, Subiaco, WA 6004 M: 08 94990219 P: 08 93544553	
	Revision: 3	SHEET SIZE A3
Location: LT 28 23 STANHOPE GARDENS MIDVALE WA	Date: 06/03/2019 S2 of 2	