

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P382/2005
PERMIT APPLICATION NO. YR-2004/1272

CATCHWORDS

4 lot subdivision of large lot with existing dwelling and three new single storey dwellings. Residential 1 Zone and Foothills Residential Areas policies, urban character

APPLICANT	I Harris
RESPONSIBLE AUTHORITY	Yarra Ranges Shire Council
SUBJECT LAND	82 Hereford Road, Mt Evelyn
WHERE HELD	Melbourne
BEFORE	John Quirk, Member
HEARING TYPE	Merits Review of Refusal
DATE OF HEARING	27 May 2005
DATE OF ORDER	1 June 2005
CITATION	[2005] VCAT 1076

ORDER

The decision of the responsible authority is set aside. A permit is granted for a four lot subdivision, development of three dwellings and associated works at 82 Hereford Road, Mt Evelyn. The development and subdivision are to be in accordance with the endorsed plans and subject to the following conditions:

1. Prior to the commencement of the permitted development and subdivision, an amended plan(s) must be submitted for approval to the satisfaction of the responsible authority showing:
 - a. the addition of a 600mm latticework extension to the southern boundary fence adjacent to unit 4 to prevent any overlooking into the adjoining property at 3 Fernhill Road.when approved the plan(s) will be endorsed to form part of this permit.
2. The layout of the site and the size of any proposed buildings and works shown on the endorsed plans can not be altered or modified unless agreed to by the responsible authority.

3. This permit will expire if one of the following circumstances apply.
 - (a) the development is not started within two years of the date of this permit;
 - (b) the development is not completed within four years of the date of this permit.
 - (c) the Plan of Subdivision is not certified, pursuant to the provisions of the Subdivision Act 1988, within two (2) years of the date of issue.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

4. The layout and site dimensions of the proposed subdivision as shown on the endorsed plan(s) must not be altered or modified unless agreed to by the responsible authority.
5. The landscape works as shown on Drawing No 12020L02 plan must be carried out within 3 months of the completion of the dwellings. All landscape areas must be maintained or replaced as necessary to the satisfaction of the responsible authority.
6. If construction of any approved dwellings has not commenced when a Statement of Compliance is sought, the certified plan must be amended to include a Notice of Restriction to ensure that the vacant lots on the plan are developed in accordance with this permit (YR2004/1272) or any subsequent permit or variation approved by the responsible authority.
7. Prior to the issue of a Statement of Compliance, a payment equivalent to 2% of the value of the land as determined by the responsible authority must be made to the responsible authority being payment of cash-in-lieu of the Public Open Space requirement.
8. Prior to a statement of compliance being issued or the occupation of the permitted development, piped outfall drainage from the site to the council drain in front of 4 Fernhill Road will be constructed to the satisfaction of the responsible authority.
9. Prior to a statement of compliance being issued or the occupation of the permitted development, the parking areas and vehicular accessways shown on the endorsed plan must be fully constructed, sealed, drained and delineated to the satisfaction of the responsible authority.
10. Prior to a statement of compliance being issued or the occupation of the permitted development, a 5.4 metre wide concrete vehicle crossing must be

constructed in Hereford Road to serve the development to the satisfaction of the responsible authority.

11. Prior to a statement of compliance being issued or the occupation of the permitted development, piped drainage must be constructed to drain all paved areas to the satisfaction of the responsible authority.
12. Prior to a statement of compliance being issued or the commencement of any works covered by this permit, engineering plans showing all car parking, driveways and drainage must be submitted, to the responsible authority for approval.
13. The works as required by condition 8 of this permit are to be maintained in good condition and repair by the developer, for a period of three months from the date of practical completion, to the satisfaction of the responsible authority.
14. Prior to a Statement of Compliance being issued or the commencement of any works covered by this permit, an inspection / surveillance fee to the value of 2.5% of the cost of the drainage works must be paid to the responsible authority to the satisfaction of the responsible authority.
15. Prior to a Statement of Compliance being issued a maintenance bond of \$1000 for drainage works must be submitted to the responsible authority.
16. The construction of the driveways and drainage within the site is to be inspected and approved by a suitably qualified or experienced civil engineer. Prior to a Statement of Compliance being issued or the occupation of the permitted development, the engineer must certify the construction of these works, to the satisfaction of the responsible authority.

VicRoads conditions

17. A two-way vehicular crossover shall be constructed at least 5.4 metres wide, as measured at the property boundary, to the satisfaction of the responsible authority.
18. The driveway within the site shall be at least 5.0 metres wide for the first 6 metres to allow two way traffic flow.
19. All car parking spaces shall be designed to allow all vehicles to drive forward when both entering and leaving the subject property.
20. The vehicle crossover between the property boundary and the existing pavement shall be constructed and sealed in accordance with the responsible authority's standards.

21. Any redundant existing vehicle crossovers shall be removed and the footpath, nature strip and kerbing reinstated to the satisfaction of the Responsible Authority.
22. VicRoads will not permit the discharge of concentrated runoff or sillage into the declared road drainage system.
23. All works undertaken shall be at not cost to VicRoads.
24. Prior to the commencement of works within the road reservation, a Road Use Permit must be obtained from the VicRoads office at 12 Lakeside Drive, Burwood East 3151 (Telephone No 98818058).

Melbourne Water conditions

25. Prior to the issue of a Statement of Compliance, the Owner shall enter into and comply with an agreement with Melbourne Water Corporation, under Section 269A of the Melbourne Water and Metropolitan Board of Works Act 1958, for the provision of drainage works and the acceptance of surface and stormwater from the subject land directly or indirectly into Melbourne Water's drainage system.
26. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
27. Prior to Certification, the Plan of Subdivision must be referred to Melbourne Water, in accordance with Section 8 of the Subdivision Act 1988.
28. At least 21 days before the construction a Site Management Plan, detailing pollution and sediment control measures, must be submitted to Melbourne Water.

Telstra conditions

29. Prior to a Statement of Compliance being issued by the Responsible Authority, the owner shall provide to the satisfaction of Telstra all works for provision of Telecommunications Service to each lot created in the subdivision.
30. Where any extension or alterations to Telstra's network or plant are necessitated by the proposed subdivision, the cost of such works shall be met by the owner prior to the Statement of Compliance being issued.
31. The plan submitted for certification must show details of easements and/or RCM/RIM sites which may be required by Telstra.

TXU conditions

32. Enter into an agreement with SPI Electricity Pty for the extensions,

upgrading or rearrangement of the electricity supply to lots on the plans of subdivision as required by SPI Electricity Pty. A payment to cover the cost of such work will be required and easement internal and external to the subdivision and provision of sites for substations may also be required.

Yarra Valley Water conditions

33. The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of water supply.
34. The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of sewerage.

Multinet Gas conditions

35. The plan of subdivision submitted for certification must be referred to Multinet Gas in accordance with Section 8 of the Subdivision Act 1988.

CFA conditions

36. Roads
 - (a) All roads must be a minimum of 3.5 metres wide.
 - (b) Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a fully laden fire truck for the trafficable road width.

A.J. Quirk
Member

APPEARANCES

For Applicant	Mr Simon Merrigan, Town Planner
For Responsible Authority	Mr Angus McGuckian, Town Planner

REASONS

- 1 This is a refusal of the Yarra Ranges Shire Council to grant a permit for a four lot subdivision and the construction of three dwellings at 82 Hereford Road, Mt Evelyn.

Site and Surrounds

- 2 This rectangular shaped lot has an area of 2495m². The site contains an existing house that is surrounded by a large number of exotic trees. The lot is located towards the edge of the urban area of Mt Evelyn but abuts educational and community facilities to its north before the start of Rural Zones. To its south, east and west are normal residential zones with lots of varying sizes and densities.

The Proposal

- 3 This is to construct three, three bedroom dwellings behind an existing dwelling with the dwellings having private open space areas varying in size from 95 to 195m². All dwellings are to be single storey brick veneers with colourbond roofs. The application is also to subdivide the land in four lots plus common property. The proposal has a density in excess of one unit per 600m² and the amount of communal open space will be in excess of 800m². This communal open space will also include accessways and paths.
- 4 When the application was advertised it attracted one objection from the next door neighbour who was particularly worried about drainage issues that are ongoing and overlooking from one unit. However they do not object to the proposal in principal.

Planning Provisions

- 5 The land is zoned Residential 1. Hereford Road is a Road Zone Category 1. The relevant provisions of the State Planning Policy Framework apply to the application together with the Local Planning Policy Framework of the Municipal Strategic Statement and local policies.
- 6 In relation to townships there is a policy in clause 21.05 of the scheme relating to the Foothills Residential Area as defined under policy 22.01. This encourages a diversity of dwelling types in sustainable and attractive townships.
- 7 The Foothills Residential Area is a residue of the former Upper Yarra and Dandenong Ranges Regional Authority strategies. Mt Evelyn is included in the Municipal Strategic Statement as being a township in the lower fringes of the Dandenong Ranges in which low density residential development is encouraged among an extensive tree canopy of vegetation. This allows only limited potential for more intensive development.
- 8 The responsible authority maintains that the proposed development is outside its local policies for medium density housing preferred areas in that

it is not close to town centres, public transport and commercial and community facilities. Therefore the aim is to retain single dwellings as a predominant form of housing in the Foothills Residential Areas. The Council also maintains the density will not allow the retention of large canopy trees or their replacement.

- 9 The Municipal Strategic Statement continues to support Foothills Residential Areas having limited increase in housing densities in appropriate locations and any medium density housing that is compatible with the existing character of the area in which it is located. It calls for dispersal of medium density so it won't affect natural and landscape amenity of the area and also that enhances the overall character of the area.

The Application

- 10 This was referred to both the Council engineering and environmental departments. Both departments did not object to the application provided a number of conditions were placed on the application including a requirement for a detailed landscape plan, drainage, outfall to an existing council drain in front of 4 Fernhill Road, replacement of vehicle crossover and sealed accessway within the site. The application was also referred to Vic Roads as the road zone authority. Vic Roads asked for its normal conditions in relation to access to the arterial road. It was also referred to statutory authorities.

Basis of Decision

- 11 There was general agreement that the proposal complies with clause 55 of the scheme. However, the responsible authority claimed that it was not consistent with the objectives of clause 55.02-2. It also maintains that it is not consistent with Standard B33 in relation to common area maintenance. A planning permit would probably have been issued for two additional dwellings rather than the three as proposed.
- 12 The grounds of refusal are as follows:
 1. The proposed development is contrary to the Yarra Ranges Planning Scheme including the Municipal Strategic Statement and Local Planning Policy for Residential Areas (Clauses 22.01).
 2. The proposed development does not meet with the requirements of Clauses 55.02-2.
 3. The proposed development will set an undesirable precedent in a Foothills Residential Area that is outside the Council's preferred area for medium density development.
 4. The extensive common property area will present maintenance and management issues for the future inhabitants of the development and is inconsistent with Clause 55.06-3.
- 13 According to Mr Merrigan the proposal is quite well situated in that it is on a major arterial road that has a bus service running along it past the

premises. It is also within 400 metres of a very large reserve with both active and passive recreation facilities. It is close to Pembroke Secondary College, Mt Evelyn Special Development School and Morrison House, an adult education and childcare centre. It is 400m as a crow flies from the Warburton Rail Trail and 1.5km from the Mt Evelyn shopping centre. On the face of it, for a country town, this site is well situated in relation to community facilities.

- 14 While the site is within a Foothills Residential policy area it certainly does not contain any remnant native vegetation and in fact the exotic vegetation and few natives that exist on the site all received a poor rating in an arborist's report submitted to the responsible authority. It seems the responsible authority also used the same arborist as a consultant.
- 15 Across the other side of Hereford Road is a large area of Residential 1 Zoned lots that are very suburban in nature and in fact just to the south of this particular lot and to the west are large areas of what can be described as normal residential lots interspersed with a number of larger lots
- 16 The application was supported by a detailed landscape plan as requested by the responsible authority's environment department. This details a range of plant types, the majority of which are native and indigenous to the area, with large eucalypts dispersed around the common property, a range of large shrubs down to ground covers with some exotics, including silver birches along the driveway. It is a landscape plan that contains no lawn but ground covers, gravels and the like and one that is well suited to sustainable development.
- 17 Mr Merrigan submitted that this proposal is in principle no different from *Wade v Yarra Ranges Shire Council* [2004] VCAT 535 where the Tribunal stated:

[18] Notwithstanding this, the Council submitted that a permit ought not be granted because the review site is located outside the preferred medium density housing areas designated in clause 22.01-3. The substance of the Council's submission was that non compliance with this aspect of the LPPF is sufficient to justify a refusal of the application and that all other elements of the planning scheme including the zone purposes and decision guidelines, clauses 56 and 65.02 and the totality of the State and Local Planning Policy Frameworks are rendered irrelevant. The substance of the Council's submission was that only subdivision applications located within preferred medium density housing areas warrant the granting of a permit.

- 18 It was submitted that the site for that application for review was quite close to this one.
- 19 I agree with Mr Hewet and I also agree that the site is well situated in relation to urban facilities. It is a large site that even when subdivided will provide densities of the same degree as lots with single houses to the west

and to the north. It has good access to Hereford Road and will not cause any detrimental affect on the neighbouring properties.

- 20 Mr McGuckian submitted that there was a large body in the community totally opposed to higher densities within the Mt Evelyn area that were placing pressure on the Council to hold the Foothills Residential Area policies. They want the old ways retained.
- 21 Mr Hewet has dealt with in principle with that issue, but, as I stated, at the hearing it is interesting that, if that was the case, there is only one objection to this proposal and that is not even against the proposal in principle but rather drainage and overlooking.
- 22 I believe the proposal is well designed and is a good outcome for the lot and the neighbourhood, in relation to the maintenance of common areas.
- 23 That is clearly a situation for the Body Corporate, however a condition has been placed on the permit to require ongoing maintenance of common areas. A permit will issue subject to conditions discussed at the hearing.

A.J. Quirk
Member