

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P3183/2006
PERMIT APPLICATION NO. M/2006/502

CATCHWORDS

Section 80 Review of Conditions; Paving of parking area with an impervious surface creates a need for expensive drainage detention system; Carparking number and waiver of same; Restriction on number of practitioners for specialist clinic; Proximity of public transport; Availability of on-street parking.

APPLICANT	Jari Evertsz
RESPONSIBLE AUTHORITY	Maroondah City Council
RESPONDENT	L Cleave
SUBJECT LAND	13 Kalinda Road CROYDON VIC 3136
WHERE HELD	55 King Street, Melbourne
BEFORE	A.J. Quirk, Member
HEARING TYPE	Hearing
DATE OF HEARING	29 March 2007
DATE OF ORDER	3 April 2007
CITATION	Evertsz v Maroondah CC [2007] VCAT 547

ORDER

The decision of the Responsible Authority is varied. The Tribunal directs that Permit No. M/2006/502 must contain the conditions set out in the permit issued by the Responsible Authority on 21 November 2006 with the following modifications:

Condition 2 is to be amended to read:

- 2 Prior to the commencement of the development hereby permitted construction plans for new buildings, driveways and impervious surface areas shall be submitted to and approved by the Responsible Authority. The drainage system shall drain to the discharge points specified by Council's Engineering Department, and be designed to the satisfaction of the Responsible Authority so as to limit discharge from the property of any silt, gravel or vegetable matter by the inclusion of

appropriate silt traps in grated pits. Pits drains are to be regularly maintained.

Condition 3 is amended to read:

- 3 Before the use/development starts, areas set aside within the site for parked vehicles and access lanes as shown on the endorsed plans must be:
 - (a) constructed with an all weather pervious gravel pavement having a minimum compacted depth of 150mm;
 - (b) provided with appropriate kerbs or plinths to prevent access to garden areas;
 - (c) provided with appropriate kerbs or other barriers to prevent direct vehicle access to an adjoining road other than by a vehicle crossing;
 - (d) provided with directional signs to direct drivers to the area set aside for carparking. The signs must be located and maintained to the satisfaction of the Responsible Authority, and must not exceed 0.3 square metres each.

Parking areas and access lanes must be kept available for these purposes at all times and are to be regularly maintained.

Condition 5 is amended to read:

- 5 Except with the further written consent of the Responsible Authority, not more than two (2) Practitioners shall operate under this permit at any one time.

The purpose of the permit is to have the words “and waiver of car parking requirements” after “psychology practice”.

The Responsible Authority is directed to issue a modified permit in accordance with this Order.



A.J. Quirk
Member

APPEARANCES:

For the Applicant for
Review/Permit Applicant

Mr Simon Merrigan, Landscape Architect of
Millar Merrigan.

For the Responsible Authority

Ms Kate Morris, Solicitor of Maddocks.

For the Respondent

The Respondent Objector did not appear but
had submitted a Statement of Grounds which
has been considered.

REASONS

- 1 This is an application to review conditions placed on a planning permit for a specialist medical clinic at 13 Kalinda Road Croydon. The conditions to be reviewed are as follows:
 - 3 Before the use/development starts, areas set aside within the site for parked vehicles and access lanes as shown on the endorsed plans must be:
 - (a) surfaced with an all-weather seal coat, with one of the following alternatives:
 - (1) 100 mm depth reinforced concrete on a 50 mm Class 2 fine crushed rock bed with F72 reinforcing fabric fixed centrally.
 - (2) A bituminous concrete surfacing consisting of a 40 mm compacted depth, size 10 aggregate, on a 150 mm depth bed of 20 mm, Class 2 fine crushed rock bed.
 - (3) A bituminous prime and seal or emulsion treatment using a cover of size 10 aggregate and a second cover of size 5-6 aggregate on a fine crushed rock bed as for (2) above.
 - (b) line-marked to indicate each car space and all access lanes;
 - (c) provided with concrete kerbs or other barriers to prevent direct vehicle access to an adjoining road other than by a vehicle crossing;
 - (d) provided with a directional sign(s) to direct drivers to the area set aside for car-parking. The sign(s) must be located and maintained to the satisfaction of the Responsible Authority, and must not exceed 0.3 square metres each.

Parking areas and access lanes must be kept available for these purposes at all times.
 - 5 Except with the further written consent of the Responsible Authority, not more than one (1) Practitioner shall operate under this permit at any one time.

The Site and Surrounds

- 2 The site is situated on the west side of Kalinda Road Croydon north of Whitehorse Road/Maroondah Highway. It is within an established residential area and contains a single dwelling with a carport.

The Proposal

- 3 This is to use the land as a clinical psychology practice with three part time practitioners and a waiver of carparking requirements. The responsible authority has issued a permit for the use of land for the purpose of a medical

centre (psychology practice) in accordance with the endorsed plans. The proposal includes for the provision of five carparking spaces including a disabled one at the rear of the site and proposes that these be paved with a compacted gravel surface. Hours of operation are 8am to 8.30pm Monday to Friday and 8.30am to 1pm on Saturday. No more than two practitioners are to operate at any one time. Each consultation is take 50 minutes with a 10 minute break. No support staff to be employed.

Planning Provisions

- 4 The land is zoned Residential 1 and is covered by a Significant Landscape Overlay Schedule 4. A permit is required for a medical centre and also to construct a building or construct or carry out works for a Section 2 purpose. The proposal is affected by the State and Local Policy Framework, the Municipal Strategic Statement and Local policies. As well as Clauses 52.06-1 and 52.06-5 set a provision for parking and indicate that five spaces per practitioner are required.

The Application

- 5 On receipt this was advertised resulting in two objections being received. The application was also referred internally with comments being received from engineering personnel in relation to parking, paving and drainage.
- 6 A decision to grant a permit was made subject to conditions and as stated two of these conditions have been appealed.

Basis of Decision

- 7 I note that both advocates tabled written submissions. Some photographs and other documents were tabled and the relative ones are retained on the Tribunal file.
- 8 Ms Morris referred to Section 62 of the *Planning and Environment Act* 1987 that relates to the power to impose conditions and the conditions that can be included as well as limitations that have been imposed by courts and tribunals on that power. These cases such as Pyx Granite and Rosemeier are well known to this Tribunal. They state that a condition must fairly and reasonably relate to the permitted development and that it must not be proposed to achieve an ulterior motive or an irrelevant planning purpose and it also must be reasonable.
- 9 I will deal first with Condition 5 that has an impact on parking. This restricts the number of practitioners to a maximum of one at any one time. This is because the applicant is providing only five parking spaces and not seven as originally planned, after some discussion with Council officers who wanted more landscaping on the site. The Council officers are also insisting that the provisions of Clause 52.06-5 in relation to the number of spaces provided are met.

- 10 Without going into all the issues addressed by the parties I believe it is appropriate to consider that many studies done by traffic engineers have indicated that planning scheme requirements are often too onerous and that a more practical solution is required. In this case, where there are specialist clinical psychologists operating in extended, sensitive counselling sessions, there is not likely to be a queue of patients waiting to be seen and consequently no need to provide large parking areas as appointments are well controlled. There is ample provision of unrestricted on-street parking available in Kalinda Road, there are bus stops on either side of the street some 80 metres from the site, and also buses running regularly along Whitehorse Road. It goes without saying that best practice planning should encourage the use of public transport rather than individual vehicles, wherever it is practical.
- 11 Therefore I intend to uphold the application for review in relation to Condition 5 that will now specify “*Except with the further written consent of the Responsible Authority, not more than two (2) Practitioners shall operate under this permit at any one time*”. Therefore the plans to be endorsed as part of the permit will be those showing five carparking spaces on the south-western boundary of the site. These will include one disabled space.
- 12 The appropriate surface for the parking area is one that has required consideration on all aspects of the proposal and the likely vehicular movements and impact on the pavement provided. In the case of a concrete, asphalt or bitumen sealed pavement there is no doubt that there will not be any damage whatsoever from vehicle movements. There will not be any grit washing off during storm periods but there will be silt from airborne dust that gathers on the pavement in dry periods. Whereas in the case of gravel pavements there is more likelihood of small quantities of dust blowing off pavements when dry and some loss of fines and grit at peak storm times, depending on the grades to which it is constructed. The question is whether a fully sealed impervious pavement is an over design for the purpose for which the carpark is to be used. This clinic will only be likely to have a maximum of a dozen or so patients a day spread over an eleven hour period, some of whom may attend by public transport and therefore there are likely to be no more than 20 vehicle movements per day to and from the site. That is a very low load impact. Now in my opinion a fully impervious pavement, together with the concomitant drainage regime required to service it is an over design for the purpose.
- 13 It is more preferable to have a pervious surface that has been well compacted and that can be maintained occasionally if it wears to the extent that such is needed. This can be designed and drained to one or more collection points with grated pits having decent silt traps below the drain inverts that will allow efficient collection of stormwater and negligible intrusion of rubbish and other contaminants into the drainage system, provided the pits are cleaned on a regular basis. Such a pavement can be

separated from garden areas by a simple timber plinth or such other appropriate kerbing.

- 14 A pervious pavement such as this will result in less stormwater runoff than an impervious pavement and should be more environmentally friendly and sustainable. Also part of the design element could be to ensure that there is some runoff onto garden areas, thereby reducing the necessity for watering.
- 15 This means that Condition 3 will be altered to specify a gravel pavement and appropriate kerbs bordering such pavement. This change to Condition 3 will require some change to Condition 2. Firstly, the condition is a generic condition and refers to buildings, driveways and impervious surfaces requiring construction plans. As no construction plan is required for the existing building therefore the word “all” will be replaced by “new” in the second line. Further, there is no need for any detention system under the proposed condition and therefore the wording in the last two lines “to the equivalent of that for a 35% impervious area” is to be deleted. Those words are to be replaced by “of any silt, gravel or vegetable matter by the inclusion of appropriate silt traps in grated pits”. Finally, what the permit allows is to be amended under Sec. 127 of the VCAT Act by: after the words “psychology practice” add “and waiver of carparking requirements”.



A.J. Quirk
Member