

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P3473/2005

**CATCHWORDS**

Section 77 Planning and Environment Act 1987 – child care centre – Non Residential Use in a Residential Zone - removal of native vegetation - traffic

<b>APPLICANT</b>	Australian Childcare Developments Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Mornington Peninsula Shire Council
<b>RESPONDENTS</b>	Ian G Parker, David P Trunfull, Pauline Powell, GN Green
<b>SUBJECT LAND</b>	22 Maori Street, Rye
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Jeanette G Rickards, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	13 April 2006
<b>DATE OF ORDER</b>	17 May 2006
<b>CITATION</b>	[2006] VCAT 878

**ORDER**

- 1 The application for review is disallowed. The decision of the Responsible Authority dated 15 December 2005 is affirmed.
- 2 No permit is to issue.

Jeanette G Rickards  
**Member**

**APPEARANCES:**

For Applicant

Mr S Stewart, Solicitor, Rigby Cooke

Witnesses

Ms J Kelly, Town Planner

Ms J Burke, Botanist

Mr M Durkin, Traffic Engineer

For Responsible Authority

Mr P Newman, Town Planner

For Respondents

Mr L Sayer, Town Planner

## REASONS

### Background

- 1 The applicant seeks a review of the decision of Mornington Peninsula Shire Council to refuse to grant a permit for the use and development of a child care centre at 22 Maori Street, Rye.
- 2 The Responsible Authority refused the application on the basis that the proposed location is inappropriate for a child care centre, it will have unacceptable traffic and parking impacts and the extent of the development will not allow for retention of existing vegetation or the planting of vegetation.

### Planning Scheme Provisions

- 3 The subject site is located within the Residential 1 zone under the Mornington Peninsula Planning Scheme. A permit is required under the zone provisions for the use of the land for a child care centre as well as a permit for buildings and works and signage associated with the use. The land is also affected by Design and Development Overlay Schedule 2 (Bayside and Village Design) under which a permit is required for buildings and works and the Vegetation Protection Overlay Schedule 1 (Township Vegetation) under which a permit is required to remove, destroy or lop any vegetation.

### Subject site and surrounds

- 4 The subject site is located on the north side of Maori Street and has a total area of 2,317m<sup>2</sup>. It has a frontage to Maori Street of 39.73m and a variable depth of 57.07m (east side boundary) and 59.95m (west side). The site is flat and covered with a range of vegetation in varying states of health. Two buildings on the site are to be demolished and the single vehicle crossover at the centre of the site is to be removed.
- 5 The surrounding area consists of residential dwellings comprising detached housing and units with some newer development. The land adjoining the site to the east was formerly a caravan park which is currently being cleared. To the west is a recent single storey dwelling. To the rear are two double storey dwellings with a frontage to Point Nepean Road. Opposite the site is a single storey dwelling.

### Proposal

- 6 The child care centre is to accommodate 90 children between 0 to 5 years. A maximum of 14 staff are to be on site at any one time and the centre is to operate between 6.30am and 6.30pm Monday to Friday.
- 7 The child care centre building is to be 5.3m in height and single storey. It is to be sited on the west side of the site and towards the rear. The building is to be setback 22.8m from Maori Street and this front setback is to be used

to accommodate 23 car spaces. A 3m wide landscaping strip is to be provided in front of the car park which is to be accessed via two crossovers on the east and west side of the site for ingress and egress. The main play yard is to be on the east of the building with a smaller play area on the north side. Various shade sails will cover the areas containing sand pits and play equipment.

- 8 Advertising signage is proposed on the building and a single non illuminated sign measuring 1.8m x 1.2m on a 2.1m high pole is to be in a central location at the frontage.
- 9 Of the existing vegetation on the site which consists of fifteen relict Moonah trees in good health and several Coast Tea-trees in varying stages of senescence and collapse, as well as weeds covering the ground three Moonah trees and several Coast Tea-trees are to be retained with the remainder of the vegetation being removed. A landscape plan proposes the use of Coastal Banksia and Moonah trees as well as other native shrubs and ground cover to be located throughout the site mainly along the frontage and front east and west boundaries.

#### Issues for Consideration

- 10 I consider there are three main issues which are raised in this application that centre on the, traffic, vegetation and location. These issues raise a number of questions as to whether there is adequate car spaces provided on site, whether the traffic generated by the proposal will have an impact on the area, whether it is appropriate to allow the removal of the vegetation, whether what is proposed in the landscaping plan is adequate and importantly whether this site is an appropriate location for a child care centre. I will address each of these issues under a separate heading.

#### Traffic and Car Parking

- 11 There are 23 car spaces proposed to be located on the site. The Responsible Authority's engineer had raised an issue as to whether the number of car spaces was adequate. This was done in the context of reference to a number of other childcare centres within the Municipality where it was observed cars would frequently park within the street at drop off and pick up times creating some congestion and possible safety issues.
- 12 Mr Durkin provided evidence that in his view whilst Maori Street is a local street it could still accommodate the increased traffic likely to be generated by this use. In this respect he considered 90 vehicle movements could occur during the peak hour with a daily generation of 225 vehicles per day. It was his view that the majority of this traffic would come along Dundas Street to Maori Street with a small proportion coming from Elgan Avenue. It was therefore his view that at present the traffic flow in Maori Street was between 210 to 380 vehicles per day and with the child care centre this could be expected to increase to 435 to 605 still well within the expected maximum volume of 1000 vehicles per day for this street.

- 13 I accept that there will be an increase in traffic in Maori Street as a result of the child care centre and that this increase is still well within the maximum volume expected for a local street however I would agree with the resident objectors that this increase will be noticeable.
- 14 I also accept Mr Durkin's evidence that the increased amount of traffic will have a minimal impact upon the intersection of Dundas Street, Maori Street and Nelson Street and although not directly opposite one another there is adequate area for a vehicle to come from Nelson Street and turn right into Maori Street without impacting on the flow of through traffic along Dundas Street to the south.
- 15 It is commonly understood that parents dropping off or collecting children from child care centres do not spend longer than on average 5 minutes which tends to suggest an average parking peak of 0.21 spaces per child up to 0.26 spaces per child. A number of Tribunal decisions have accepted somewhere between 0.19 to 0.21 spaces per child. Mr Durkin was of the view the proposal could generate 19 to 23 spaces of which 10 spaces would be required for longer term (staff) parking.
- 16 It was his view that the provision of 23 car spaces would adequately accommodate the requirements of staff car parking and parent drop off and pick up parking. It was also his view that if there was an overflow with say the need for 3 to 4 additional spaces this could be adequately accommodated on Maori Street which has unrestricted parking and the provision for approximately 55 on street parking spaces.
- 17 I do not consider there is likely to be any impact on the surrounding street as a result of vehicles parking in the street and do not consider there is any need for 'no parking' signs. I consider the car park layout will adequately accommodate vehicles entering and exiting the site in a forward manner that is safe and will not compromise the surrounding street network.

#### Vegetation

- 18 To propose a building on a site that currently has only two small dilapidated buildings and a considerable amount of vegetation in various states of health is to require that a considerable amount of this vegetation will be removed. As Ms Burke stated there is no alternative to the removal of the vegetation.
- 19 Three Moonah trees are to be retained on the site within the large play area and several Coast Tea-trees are to be retained along the eastern boundary and frontage of the site. Ms Burke indicated the trees to be removed particularly the 12 Moonah trees are said to be regrowth from large old trees which were cut at ground level 40 years ago. The Coast Tea-trees would have established after clearing, burning and other disturbances around the same time.
- 20 Ms Burke was of the view that in balancing the removal of the vegetation special consideration should be given to what was to be replanted on the

site and in this respect she indicated she had had some input into the types of plants suggested to be used in the landscape plan. A revised landscape plan shows the use of appropriate native species that should make a contribution to the area.

- 21 Whilst some of the vegetation on the site could be described as valuable it has been impacted upon at some time and is not in its original state. It is evident that some of the trees are in poor health and it is unlikely that the Coast Tea-trees will survive into the future. The site is dominated by weeds which decreases the value of the site.
- 22 I agree that the proposed landscape plan allows for replacement native trees that will contribute to the area. Due to the proposed use of the site for a child care centre and the safety requirements that go with such a use there is minimal trees within the play areas but there is adequate planting to occur along particularly the western boundary of the site and in the frontage of the site. Whilst the Responsible Authority was critical of the lack of vegetation I consider that with the proposed planting along the frontage in conjunction with the existing vegetation in the nature strip there will be a reasonable landscape interface to the street frontage.
- 23 It is also likely that one tree within the nature strip will be required to be removed to accommodate the crossover on the western boundary. If this occurred a replacement tree should be located within the nature strip.

#### Location

- 24 The site is located within a Residential 1 zone which encourages residential development. The zone also encourages to a limited extent what is termed non residential uses such as educational, recreational, religious, community and a limited range of other non residential uses to serve local community needs. However these non residential uses within a residential zone must be appropriately located.
- 25 The policy at clause 22.12 relating to Non Residential Uses in Residential Zones gives some guidance when assessing such an application as this. The policy is based upon ensuring that the character and amenity of existing and future residential areas are protected. Child minding centres are one of the identified non residential uses providing services to the local community that can be considered within a residential area provided there will be minimal impact on the amenity of the local area.
- 26 The policy provides that non residential uses be located:  

In areas that are appropriate to the intensity and scale of the proposed use and that will have a minimal impact on the amenity of the local area and nearby residential properties. Major facilities serving catchments beyond the local level should be located in commercial areas or sited on roads which avoid the generation of additional through traffic on residential streets.

- 27 It is the last part of this policy on which the Responsible Authority has focused indicating that in its view this site is not the appropriate location for such a commercial activity given the quite residential nature of Maori Street. In its view child care centres and similar traffic generating uses are better located on higher order roads, where traffic and early morning drop offs is not likely to cause disturbance or inconvenience to residents.
- 28 The resident objectors expressed concern not only with regard to the traffic but considered that such a community activity would be better located near an existing or planned community facility.
- 29 The site is located off Dundas Street which is a collector road although Maori Street is a very quite residential street. To the east of Dundas Street is the rear of the Rye shops along Point Nepean Road and to the north of the site on Point Nepean Road there is a service station and a local shop.
- 30 Whilst the site is an adequate size to provide for the proposed use and to accommodate an appropriate number of on site car spaces, the proposed built form on the site is in keeping with the single storey residential development in the area and Maori Street can potentially accommodate the increase in traffic that would be generated by the proposal I am not satisfied that this is the appropriate location for this use.
- 31 The proposed use will bring a sudden doubling of traffic into the street that would not be generated if there were an increase in residential development. Whilst the commercial nature of the activity confines its operation between Monday and Friday and does not occur on weekends it will still have a marked impact on the amenity of the residents in the area. At present they are subjected to a very small amount of traffic generated by the nearby residential dwellings I do not consider that a doubling of traffic generated in the area is something that the residents could or should expect.
- 32 Whilst the site is in close proximity to the shops to the east there is a clear separation between that area and this residential area and this separation is clearly defined by Dundas Street. If the proposed used was located either in Dundas Street, Point Nepean Road or even at the rear of the shops to the east it could be said that there was a reasonable connection to other community facilities but the location of this site almost mid block in a quiet residential location is not what I would considered to be an appropriate location for such an activity.
- 33 From the small amount of information provided as to the community need for this facility and I recognise that there is a need I would expect that this facility would service a wider area than the immediate local area. In this respect I consider that such a facility servicing a wider area need should be located on a higher order road not tucked away in a quite residential street.

### Conclusion

- 34 Whilst in design layout and built form I consider this to be an appropriate proposal, although there were some comments regarding signage and the

use of particular coloured shade sails, all of these more minor issues could be addressed by way of permit conditions it is the actual location of the proposed use that I do not consider is appropriate and it is for this reason that this application should be refused and no permit should issue.

Jeanette G Rickards  
**Member**