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Robin Daley Holdings v Cardinia SC [2006] VCAT 2274 (2 November 2006)

Last Updated: 13 November 2006

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2165/2006

PERMIT APPLICATION NO. T060204

CATCHWORDS

Waiver of parking requirements; traffic and access concerns; road construction concern; safety; relevant history of Brethren Group, the users of the property; responsible authority decision upheld.

APPLICANT	Robin Daley Holdings Pty Ltd
RESPONSIBLE AUTHORITY	Cardinia Shire Council
RESPONDENT/PERMIT APPLICANT	Phillip Grimshaw Beacon Gospel Trust
SUBJECT LAND	24 May Road, Officer
WHERE HELD	Melbourne
BEFORE	John Quirk, Member
HEARING TYPE	Hearing
DATE OF HEARING	27 October 2006
DATE OF ORDER	2 November 2006
CITATION	Robin Daley Holdings v Cardinia SC [2006] VCAT 2274

ORDER

The decision of the Responsible Authority is varied. A permit is granted for development and use of land as a church (place of assembly), associated building and works and reduction in car parking at 24 May Road, Officer. The development and use are to be generally in accordance with the endorsed plans and subject to the conditions contained in the Notice of Decision to Grant a Permit No. T060204 dated 7

August 2006 modified by:

The deletion of Condition 12 and in its place the following:

In accordance with [s.68](#) of the [Planning and Environment Act 1987](#), this permit will expire if one of the following circumstances applies:

- a. the development and use are not commenced before two years from the date of this permit; and
- b. the development is not completed within two years of the date of commencement above.

In accordance with [s.69](#) of the [Planning and Environment Act 1987](#), 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.

The Responsible Authority is directed to issue a permit under [s.85\(1\)\(b\)](#) of the [Planning and Environment Act 1987](#).

A.J. Quirk
Member

APPEARANCES

For Applicant	Mr R.S. Daley in person
For Responsible Authority	Mr N. Crawford of Best Hooper Solicitors
For Respondent/Permit Applicant	Mr P. Connor, Barrister instructed by the Partners Advisory. He called Mr. Don Robertson, a traffic engineer of the Traffix Group, as a witness who was made available for cross-examination.

REASONS

1 This is the review of a decision to grant a permit for a place of worship/place of assembly at 24 May Road, Officer by the Cardinia Shire Council.

Preliminary Matter

2 At the commencement of the hearing, Mr. Crawford questioned the actual name of the applicant for review. He stated that it was initially made in the name of DSL Securities Pty Ltd with the registered office in Frankston. He questioned the applicant's interest in the permit application. Mr. Daley stated that while his registered office is in Frankston, he lives in Officer in 13 May Road and is a resident and developer there. DSL Securities is one of his companies and I note that the letter on which the application was made was actually under the heading of Robin Daley Holdings Pty Ltd.

Site and Surrounds

3 The site contains an area of 2,580 square metres and is vacant. It contains some significant vegetation. It is in an area of large rural residential lots but close to residential land across the Princess Highway and to the west. It also faces cleared undeveloped farming land to the west. It is within the Beaconsfield Township Strategy Area. It sits on a hill and falls 3 metres from west to east and has been used in the past for residential purposes.

The Proposal

4 This is to build a small church with amenities having a floor area of approximately 210 square metres together with a large veranda. The church is to be used on Sundays for worship between the hours of 6am and 6pm and on Mondays to Saturdays for approximately two hours a day between the hours of 1pm and 9pm. The building will be constructed within the subject site and the site is to be provided with a new vehicle cross-over from May Road together with a gravel parking area to its rear. There is also a proposal to reduce the requirement for car parking under cl.52.06-1 of the scheme.

Planning Provisions

5 The proposal is affected by both state and local planning policy frameworks including Melbourne 2030 as the site is within the urban growth boundary. Under local policy it is within a growth corridor and as stated is affected by the Beaconsfield Township Strategy where it is envisaged that further residential development will occur between May Road and O'Neils Road on the north-east corner of Princess Highway and Whiteside Road. The strategy calls for attractive safe and convenient residential neighbourhoods where local and regional traffic and parking are effectively managed and there will be a provision of community and recreation facilities for a rapidly growing community.

6 The land is zoned Rural 1 where a place of assembly, including a place of worship, is a [Section 2](#) use within the zone requiring a permit. The land is also affected by an Environmental Significance Overlay Schedule 1 (Northern Hills). A permit is required for building and works and vegetation removal.

7 The application is also affected cl.52.06-5 of the scheme in relation to the provision of car parking which sets a rate of 0.3 car spaces for each seat or square metre of net floor area, whichever is greater. Calculations by the responsible authority show that this will generate 64 car parking spaces. The proposal provides for 35 spaces.

The Application

8 On receipt this was advertised resulting in three objections being received one of which was later withdrawn. Mr. Daley, one of the objectors, of DSL Securities the owner of the land at 13 May Road, Officer, has an application before the responsible authority for a multi stage residential subdivision and motel development as well as a sports club. This application is on hold.

9 The application was referred to:

- the Council's traffic engineers and VicRoads who did not object to the proposal;
- the Council's environmental health department which did not oppose it but it required a detailed a land capability assessment for the purpose of septic tanks; and
- the Council's strategic planning department which did not oppose the application.

10 The responsible authority then determined to issue a Notice of Decision to Grant a Permit with conditions.

Basis of Decision

11 Mr. Daley's major concerns are about the present state of May Road that has an unsealed gravel pavement running past the site for the proposed church and the problems that the increased volume of traffic from the church will cause both the road pavement and the safety of other road users. Part of his concern is that there is no urban infrastructure including street lighting in the area at the present time that in itself would exacerbate the safety issues. He is also concerned that the \$30,000 contribution to road construction required under condition is not sufficient, although it may cater for the road in front of the proposal. He believes that the pavement should be sealed to the existing sealed section of May Road some hundreds of metres away. He is also not convinced there is enough parking being provided and stated there is no room for parking on the present road pavement. For the rest he agreed with Mr. Crawford's submission that the land is rural and has no agricultural capability. It did not appear that he is totally opposed to a church on the site. He simply indicated that the proposal is premature and should be delayed until better infrastructure is provided.

12 There is a strong strategic direction of the responsible authority in relation to this growth corridor that makes the rural zone and its associated policies obsolete. Also while the land is zoned rural it and its immediate neighbours are used as rural residential rather than rural properties. I agree with the strategic directions of the responsible authority and the submissions of Mr. Connor and Mr. Crawford supporting such. Mr. Crawford quoted from a number of previous decisions of the Planning Appeals Board and the Tribunal that he tabled. In Harrison v. Mornington Peninsula SC and ors. [\[2001\] VCAT 2010](#) the Tribunal concluded that a parish hall ancillary to an existing church is acceptable in terms of the rural zone. While that is relevant for a rural zone, the strategic directions of the council to which I have already referred simply reinforce that.

13 While a permit runs with the land it is significant that there have been decisions going back to 1983 in relation to applications for churches and halls for this religious group that have all received permits and have all concluded that this group has a good reputation for its high ethical and moral principles and is therefore not likely to create amenity issues for its neighbours. From the information provided to me by both advocates including the tabled decisions, I am comfortable that this reputation, which precedes the applicants, still exists and therefore believe that there will be no amenity issues.

14 In relation to servicing of the site including the provision of septic tank or other means of treatment of sewerage and sullage, I note that the use will occupy less than one whole day/week in total for the site, there are to be no major ablution facilities and therefore it is unlikely there will be huge volumes of effluent. An appropriate tank or treatment plant could adequately cater for this. In any event, I was informed that, as the area develops, it is most likely that reticulated sewerage should be available to this site in the not too distant future.

15 In relation to the major issues of parking and traffic, Mr. Robertson, an experienced and well known engineer, gave evidence on both. Mr. Robertson indicated that he had used surveys as well as experience with a number of other Brethren places of worship in the area in reaching his conclusions. He stated that the volume of traffic will be low peaking on Sundays and that the present pavement of May Road is more than adequate to support this. Because the worshippers will be from the local community it is more likely that they will

proceed to and from the church via Scott Lee Drive rather than May Road. He held these views when questioned by Mr. Daley and myself. I accept his evidence on both the volume of traffic and the ability of the road pavement to support the very low quantities of traffic expected to use it.

16 In relation to the number of parking spaces to be provided, his evidence was based on surveys that his firm and the church had done at other like facilities and again I accept it as being a reasonable and sound traffic engineering assessment.

17 While I can understand Mr. Daley's concerns that he had voiced both on his behalf and also the local community, I do not accept that this proposed use will create the type of problems he envisages. There will be a very small increase in traffic on May Road and this will be mainly in the daylight hours. A new crossing will be constructed to provide a much better ingress and egress situation for the site and this will allow for a sufficient sight distance to be provided.

18 I have given consideration to all the matters put before me and to the relevant provisions of the [Planning and Environment Act 1987](#) and the planning scheme in reaching my decision. A permit will issue subject to conditions as discussed with the parties at the hearing.

A.J. Quirk
Member

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