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**JURISDICTION** : TOWN PLANNING APPEAL TRIBUNAL

**CITATION** : PRO MICRO PTY LTD and CITY OF JOONDALUP  
[2003] WATPAT 39

**CORAM** : MR J JORDAN

**HEARD** : 15 JULY 2003

**DELIVERED** : 18 JULY 2003

**FILE NO/S** : APP 138 of 2003

**BETWEEN** : PRO MICRO PTY LTD  
Appellant

AND

CITY OF JOONDALUP  
Respondent

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*Catchwords:*

Building extension - Easement in gross - Reciprocal vehicle access - Condition not fairly and reasonably relating to development

*Legislation:*

Nil

*Result:*

Appeal allowed subject to condition 1 being deleted from the planning approval.

*Category:* B

**Representation:**

*Counsel:*

Appellant	:	Mr R J Belton
Respondent	:	Mr G E Catchpole

*Solicitors:*

Appellant	:	As Agent
Respondent	:	As Agent

**Case(s) referred to in decision(s):**

Nil

**MR J JORDAN:**

- 1 This is an appeal against a condition imposed by the Council on the development approval granted for additions to the existing building at Lot 244 (No. 31) Green Road, Hillarys. The building is used as laboratories.
- 2 The Council granted conditional approval for the addition of a staff room, an office and an archives room, plus two parking bays at the front of the building. The approval was subject to nine conditions. The appeal is against Condition 1 which reads:

“The granting of an easement in gross pursuant to section 196 of Land Administration Act (at the full cost of the owner of the land) in favour of the City of Joondalup for Lot 244 (31) Green Road. The easement is required to provide that all land used for vehicle access ways and car-parking areas on the subject lot shall benefit the public at large, and is required to be registered on the title of the land.”
- 3 Lot 244 is zoned Residential R-20 with ‘Additional Use – Medical Centre’ approved under clause 3.15 of City of Joondalup District Planning Scheme No 2 (DPS 2).
- 4 In its response to the appeal, Council refers to clause 4.9 of DPS 2, which states:

“If the Council approves car parking and pedestrian access on neighbouring premises in a manner which relies on the reciprocal movement of vehicles and pedestrians between or across the premises, the owners concerned shall allow the necessary reciprocal access and parking at all times to the Council’s satisfaction.”
- 5 Mr Graeme Catchpole appeared as a witness for the Council. Mr Catchpole is an experienced planner and holds the position of Coordinator Planning Approvals, City of Joondalup. Mr Catchpole referred to the advice of the Appellant’s builder that there is in place an informal arrangement for reciprocal parking and access between Lot 244 and neighbouring Lot 245 to the south and Lots 242 and 243 to the north. These three neighbouring lots are used for a medical centre, physiotherapist and dentist, respectively.

- 6 The City requested that the Appellant consult with the neighbours to formalise an agreement for the reciprocal parking and access arrangement. The detail of these talks is not known, but they did not result in any formal agreement between the respective owners.
- 7 Mr Catchpole referred to clause 4.9 of DPS 2, which the Council considers allows it to impose Condition 1. He advised that the City imposed the condition because it wishes to secure the easement in gross so that there will eventually be guaranteed permanent reciprocal access and car parking for the four neighbouring lots. Council is of the view that it is necessary that the easement be in favour of the City of Joondalup as this would protect the rights of the affected owners, including the Appellant, until such time as a change of use occurs and the Council considers it appropriate that the easement be cancelled.
- 8 Mr Belton appeared for the Appellant. Mr Belton is an experienced town planner and is the Principal of Belton-Taylforth Planning and Environmental Consultants. Mr Belton, in cross examination, obtained from Mr Catchpole the information that there are no equivalent conditions in place for the development on the three neighbouring lots. Mr Catchpole acknowledged that the easement would only impose an obligation for providing access by others on Lot 244 and it was uncertain whether a future opportunity would arise to have a similar condition imposed on the neighbouring lots.
- 9 Mr Belton submitted that clause 4.9 of DPS 2 was not relevant in the circumstances of this development. Council was not approving car parking and pedestrian access on neighbouring premises in circumstances where the neighbouring premises each relied on the reciprocal movement of vehicles and pedestrians between and across the premises as required in clause 4.9.
- 10 With the assistance of an aerial photograph Mr Belton illustrated that the three neighbouring lots did not rely on Lot 244 for vehicle and pedestrian access. Mr Belton said each of the lots, and more particularly Lot 244 and the neighbouring Lot 245 to the south, could in fact continue to operate even if there was no vehicle movement between them. Mr Catchpole did not readily concede this point in respect of Lot 244 pointing to the narrowing of the access way along side the existing building and the layout of the parking bays at the rear as potential constraints on access and parking independent of the neighbouring lots.

- 11 Examination of the documents presented does show that for Lot 244, while vehicle movement might be more constrained without reciprocal vehicle movements, access can be achieved and the parking at the rear of the building still utilised independently of other lots.
- 12 Mr Belton acknowledged reciprocal access and parking was useful for each of the neighbouring buildings and that Council had good intentions in this regard. He believed, however, Council was endeavouring to recover from what could be considered a past error in failing to impose a condition like this at the time of the initial approval of the development on the four neighbouring lots. Mr Belton said the current approval did not provide a method for making up for Council's past failure to impose such a condition.
- 13 Significantly, Mr Belton argued that the development approved does not bring about the need for the condition appealed against. He pointed out that the approved building extension simply comprises an office, a staff room and room for the storage of documents. There will be no change of use for Lot 244 and no increase in staff numbers. The simple addition of these rooms to an existing use is argued by Mr Belton to not bring about the need for all of the land used for vehicle access ways and car parking on the lot to be made available for the benefit of the public at large and for the title to be endorsed to this effect.
- 14 It was Mr Belton's submission that the provisions of the *Town Planning and Development Act* and DPS 2 should not be used in this way as a vehicle to implement powers Council already has under the *Land Administration Act*. An exchange between Mr Belton and Mr Catchpole did not clarify just what powers were available to the Council to implement easements for access and parking on neighbouring lots outside of the development approval process. The inconclusive evidence in this regard, however, is not considered to prevent determination of this appeal.

## Conclusion

- 15 The development approved is a simple extension to an existing building. The additional rooms will not bring about a change of use or result in an increase in staff. The development approved does not generate the need for any significant additional traffic or pedestrian movement.
- 16 Clause 4.9 of DPS 2 is not considered to be applicable. This particular application did not require approval of car parking and pedestrian access in a manner that relied on the reciprocal movement of vehicles between and across neighbouring premises. While these might have been issues to

be addressed at the time of the original approvals on Lot 244 and the neighbouring lots, this application is not considered to be a form of development that creates the opportunity to revisit this issue.

- 17 There is currently in place an informal arrangement between landowners adjoining both sides of Lot 244 for access and parking. No evidence was presented that this situation is unlikely to continue. While it might be desirable that this informal arrangement does continue, if it does not it is apparent that Lot 244 can continue to operate with on-site access and parking arrangements and without reliance on access and parking available on neighbouring lots.
- 18 It is an established planning principle that conditions imposed must fairly and reasonably relate to the development approved. The Tribunal agrees with the Appellant that this relatively minor addition to the existing premises does not give rise to the need for all land used for vehicle access ways and car parking on Lot 244 to be made available for the public at large.
- 19 The Tribunal has therefore determined that this appeal is allowed and Condition 1 is hereby deleted from the planning approval dated 16 December 2002 issued by the Council for this development.