

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2100/2009
PERMIT APPLICATION NO. 57/2009

CATCHWORDS

Section 82 *Planning and Environment Act* 1987; Port Phillip Planning Scheme; Residential 1 Zone; Heritage Overlay; Special Building Overlay; Implications of climate change and potential sea level rise; Construction of a dwelling on a lot less than 500 square metres; Increased floor levels; Solar access to neighbouring north facing windows; Amenity impacts; Heritage.

APPLICANT	Cadzow Enterprises Pty Ltd & A Rosshandler
RESPONSIBLE AUTHORITY	Port Phillip City Council
RESPONDENT	L Kenyon & J Ellis
SUBJECT LAND	38 Broadway, Elwood
WHERE HELD	Melbourne
BEFORE	Bill Sibonis, Member
HEARING TYPE	Hearing
DATE OF HEARING	7 December 2009 & 23 February 2010
DATE OF ORDER	12 April 2010
CITATION	Cadzow Enterprises Pty Ltd v Port Phillip CC [2010] VCAT 634

ORDER

- 1 The decision of the Responsible Authority is varied.
- 2 In Planning Application No. 57/2009 a permit is granted and is directed to be issued. The permit will allow demolition and the construction of a dwelling in accordance with the endorsed plans and subject to the conditions specified in the Notice of Decision issued on 21 July 2009 but with the following modifications:
 - Deletion of Condition No. 1 and its replacement with:
Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to, and approved by, the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans identified as *Ground Floor Plan* TP04a Rev A Feb 2010; *Revised Elevations (East & South)* TP06a Rev

A Feb 2010; *Sections* Part 07a Rev A Feb 2010 prepared by T-Square Architects but modified to show:

- a) A first floor plan.
 - b) A site plan showing the proposed dwelling in the context of the site boundaries. The plan must include an outline of the dwellings on the adjoining land to the north and south. The windows of these dwellings which face the subject site (including annotations that distinguish between habitable and non-habitable room windows) must also be shown.
 - c) A north elevation and a south elevation.
 - d) The following windows screened in accordance with Clause 54.04-6 (Standard A15) of the Port Phillip Planning Scheme:
 - The south-facing and west-facing windows of the main Bedroom;
 - The south-facing bathroom windows;
 - The retreat windows;
 - The south-facing window of Bedroom 2.
 - The eastern-most south facing dining room window.
 - e) A coloured schedule (2 copies) of the construction materials, external finishes and colours;
 - f) All wall heights (maximum and incremental) and overall height above natural ground level.
 - g) The southern wall of the bathroom set back from the southern property boundary in accordance with Standard A13 at Clause 54.04-4 of the Port Phillip Planning Scheme.
 - h) Any modifications to the height and/or setbacks to ensure compliance with Standard A12 at Clause 54.04-3 of the Port Phillip Planning Scheme in respect of the south facing habitable room window/s of the adjoining dwelling to the north.
- Deletion of Condition No. 10 and its replacement with:

The proposed dwelling is to be constructed with a minimum floor level of 2.4 metres Australian Height Datum (AHD).

Bill Sibonis
Member

APPEARANCES

For Cadzow Enterprises Pty Ltd	G, A, & A Cadzow
For Port Phillip City Council	Allison Hawke, Urban Planner (7 December 2010) Aaron Hewet, Urban Planner (23 February 2010)
For Laurence Kenyon and Jennifer Ellis	David Song of Aspect Town Planners (7 December 2009) Ms Tania Cincotta, Solicitor of Best Hooper (23 February 2010)
For Melbourne Water	Ms Kerrie Homan and Mr Brush Rush

INFORMATION

Description of Proposal	<p>It is proposed to demolish the existing dwelling on the land and construct a two-storey dwelling. The dwelling is proposed to be constructed to the northern boundary and, with the exception of a carport, will be set back a minimum of 2.1 metres from the southern boundary. A minimum front setback of 5.4 metres and 9.4 metres is proposed for the ground and first floors respectively.</p> <p>The dwelling is to accommodate a study, living/dining area, kitchen, laundry, three bedrooms, two bathrooms and WC.</p> <p>The development is of a contemporary design, incorporating flat and skillion roof forms, a rendered external wall finish and sheet metal cladding. A clerestory window element protrudes above the main roof line.</p> <p>A 1.5 metre high rendered brickwork and vertical timber picket fence is proposed on the front boundary.</p>
Nature of Application	Section 82 <i>Planning and Environment Act</i> 1987

Zone and Overlays	Residential 1 Zone Heritage Overlay Special Building Overlay
Reason(s) Permit Required	cl 32.01-3 (construction of a dwelling on a lot less than 500 square metres) cl 43.01-1 (demolition and the construction of buildings and works on land within a Heritage Overlay) cl 44.05-1 (construction of buildings and works on land within a Special Building Overlay)
Land description	<p>The review site is located on the west side of Broadway, between the Elwood Canal and Meredith Street in Elwood. The land has a frontage of 10.22 metres and a depth of 33.93 metres, yielding an overall site area of 346.76 square metres. Occupying the land is a single storey attached dwelling that dates from the Federation period. This dwelling forms a duplex pair with the adjoining dwelling to the north.</p> <p>To the south is a row of three single-storey duplex pairs of dwellings, also of the Federation period. The opposite (east) side of Broadway supports a variety of dwellings including detached houses and two & three storey blocks of flats.</p> <p>To the west is a car parking area and service yard associated with a block of flats that fronts Meredith Street.</p>
Site Inspection	<p>I undertook an inspection after the hearings. This included an inspection of the neighbouring dwelling to the south.</p>

REASONS¹

INTRODUCTION

- 1 Laurence Kenyon and Jennifer Ellis sought planning permission from the Port Phillip City Council to demolish the existing dwelling on the review site and construct a new two-storey dwelling in its place.
- 2 The Council determined to approve the application and issued a Notice of Decision with conditions.
- 3 The owners the two adjoining properties have applied to the Tribunal for a review of the Council's decision.
- 4 Having regard to the submissions of the parties, the planning policies, provisions and guidelines of the Port Phillip Planning Scheme and the context of the review site, the Tribunal must decide whether the proposal represents an acceptable planning outcome.

IN SUMMARY, WHAT ARE THE PARTIES' SUBMISSIONS?

- 5 The Council submitted that the demolition of the existing dwelling is acceptable as it is a non-contributory building within the heritage area. It was further submitted that the contemporary design is an acceptable response to the streetscape and neighbourhood character given the recessive first floor, the proposed front and southern side setback and replacement of the existing high front fence. In support of the design, reference was also made to the existence of a variety of built forms in the area, including multi level blocks of flats. Ms Hawke submitted that, subject to the conditions detailed in the Notice of Decision, the amenity impacts of the proposed dwelling are reasonable, having regard to the inner city context of the review site.
- 6 The principal concerns of the Cadzow family are loss of light to their north facing windows, overshadowing and overlooking. It was submitted that, given the attached nature of their dwelling, an outlook to the south is not possible and the majority of their windows face north. They emphasised that the amenity of the dwelling is heavily reliant upon the northern aspect and the development will unreasonably impact on this by reducing solar access to their windows.
- 7 It was submitted that the overall height of the development should be reduced and that the first floor should be set back a greater distance from the southern property boundary.
- 8 Concerns were also expressed regarding potential overlooking into their windows from the upper level windows of the proposed dwelling – specifically from the windows of Bedroom 1 and 2.

¹ I have considered all submissions and accompanying material, assisted by my inspection. I do not recite all of the material presented as all documentation is retained on the Tribunal's file.

- 9 Mr Rosshandler did not appear at the hearing. His application opposed the development on grounds relating to structural considerations; overlooking; overshadowing; the effect on the streetscape; and potential impact on the adjoining chimney².
- 10 Mr Song stated that the design of the development is appropriate within the context of the site which displays a diversity of architectural styles and forms, and will not have an unacceptable impact on the neighbourhood character or local heritage area. He submitted that the clerestory window element is recessed from the external walls of the dwelling and will not be visible from the adjoining property to the south, nor will it impact on the streetscape.
- 11 While conceding that the development, in part, does not comply with the relevant Standard of Clause 54 in respect of solar access to neighbouring north facing windows, Mr Song submitted that the extent of non-compliance is marginal and the windows will receive adequate sunlight. He commented that selected rooms have an additional window other than the north facing one and also stated that the affected windows are associated with bedrooms which, given the nature of their use, have a lesser need for sunlight than living areas.
- 12 Mr Song submitted that, due to the existence of vegetation on the adjoining land, unreasonable overlooking from the south facing window of Bedroom 2 will not occur, but acknowledged that any overlooking that may occur from the proposed development could be addressed by appropriate screening.

MELBOURNE WATER REQUIREMENTS

- 13 The land is within a Special Building Overlay. In accordance with Clause 44.05-5, the application was referred to Melbourne Water – in its capacity as the relevant floodplain management authority – for comment. In response, Melbourne Water advised that it had no objection to the proposed development subject to a number of conditions, one of which requires the floor level of the dwelling to be a minimum of 300mm above the applicable flood level of 1.63 metres to the Australian Height Datum.
- 14 I asked the parties how far the review site is from the coast and was advised by Council that it is approximately one kilometre. I then asked whether the comments of Melbourne Water take into account the potential impacts of sea level rise. As none of the parties were in a position to answer this question, I asked Ms Hawke to contact Melbourne Water to ascertain whether the nominated level was solely a response to potential flooding

² In response to the concerns of Mr Rosshandler: the structural considerations will be addressed as part of the Building Approval process; I was not provided with any submissions or evidence that the development's siting proximate to a neighbouring chimney would result in a fire hazard or affect the operation of the chimney; the development will not overshadow any neighbouring secluded private open space area. I comment on the other issues of concern in my reasons.

from the urban stormwater drainage system or whether it also accounted for a potential sea level rise arising from climate change.

- 15 After consulting with Melbourne Water, Ms Hawke advised that Melbourne Water had revised their requirements for the development and would now seek a floor level that is a minimum 800mm above the applicable floor level of 1.63 metres to the Australian Height Datum.
- 16 Subsequent to the hearing, I issued directions requiring the Council to refer to the Application to Melbourne Water and also requiring the applicant to prepare revised plans that incorporated Melbourne Water's requirements.
- 17 In accordance with this direction, Melbourne Water provided a written response dated 31 December 2009 advising:
 - The response dated 24 February 2009 did not consider the impacts of sea level rise as Melbourne Water had not commenced its current program of modelling sea level rise.
 - Based on the preliminary analysis undertaken to date, Melbourne Water considers that the property will be affected by a rise of 0.8 metres in the mean sea level of Port Phillip Bay by 2100 and therefore will be affected by flooding from the Bay.
 - Melbourne Water is currently finalising interim assessment guidelines for development and subdivision in areas affected by tidal inundation and sea level rise within the Port Phillip and Western Port region. Based on the criteria in the interim guidelines, floor levels for habitable buildings will be required to be set at a level no lower than the projected 2100 Port Phillip Bay level of 2.4 metres Australian Height Datum (AHD). This level will provide a floor level freeboard margin against current flood levels and the anticipated incremental rises in mean sea level.
- 18 At the request of the Permit applicant, a further hearing was held on 23 February 2010 to consider whether an increase in the floor levels is required as a response to sea level rise. At my direction, Melbourne Water attended the hearing and made a submission.
- 19 I discuss this issue in a later section of these reasons.

WILL THE DEVELOPMENT BE APPROPRIATE IN THE CONTEXT OF THE HERITAGE AREA AND NEIGHBOURHOOD?

- 20 It is noteworthy that the appropriateness or otherwise of the development's design in the context of the local heritage values and neighbourhood character is largely not in contention. The Council is satisfied that the contemporary design is an acceptable response to both the heritage area and the broader neighbourhood and, similarly, Mr and Ms Cadzow did not express any concerns regarding the developments appearance in this respect. Mr Rosshandler, although not attending the hearing, expressed in his grounds that the skillion roof form is not appropriate.

21 Given this, I will not address the matter of the development's design in any significant detail, other than making the following observations:

- The Heritage Policy³ states that new development should be encouraged to be respectful of the scale, form, siting and setbacks of nearby significant and contributory buildings and that contemporary architecture and innovative design can be considered.
- The site is located at the edge of the Heritage Overlay and within a streetscape that displays a diversity of dwelling styles, heights and forms.
- The existing dwelling on the site is identified as a non-contributory building.
- The overall siting and scale of the dwelling is respectful of existing development in the street and will not dominate the streetscape or the adjoining dwellings.
- The key point of difference between the proposed dwelling and the majority of the dwellings in the street is the parapet forms and the skillion roof profile. I note that the design has the support of Council's Heritage and Urban Design Architect and was developed through a pre-application process with the Council officers. Although it is true that pitched roof forms prevail in this section of Broadway, it is not a uniform characteristic. There is evidence of flat roof forms in the area.

I consider that the design approach adopted here supports the recessive nature of the development so that it does not detract from the prominence of the adjoining contributory buildings. The skillion roof profile at the upper level reflects an acknowledgment of the pitched forms displayed by existing dwellings, without mimicking or reproducing this form.

Had the site been within a more consistent streetscape context, I would not have supported the proposed roof form. However, being at the edge of the heritage area and having regard to the variety of built forms in the street, I consider that the design can be supported. This is particularly so given the recessive nature of the development and its understated appearance when compared with the surrounding dwellings in the Heritage Overlay.

WILL THE DEVELOPMENT UNREASONABLY IMPACT ON SUNLIGHT TO THE ADJOINING NORTH FACING WINDOWS?

22 This is the key amenity consideration in the assessment of this application, and is the primary concern of the Cadzow family. It is conceded by the Permit applicant that the development is non-compliant with Standard A13 at Clause 54.04-4 (North facing windows). This non-compliance affects two north-facing bedroom windows of the dwelling to the south.

³ Clause 22.04

- 23 The eastern-most bedroom is served by a corner window. One side faces the review site, the other faces the front setback area. On the basis that this room has an alternative light source to the north facing window, I consider it reasonable to exercise discretion in relation to the development's non-compliance with Standard A13. I also place weight on the fact that the window is only partly affected by the development. The window has a width of 1.7 metres and only the eastern-most 500mm is directly opposite the section of wall that does not achieve the setback required by Standard A13. In combination, these two factors persuade me to accept the design response as being a reasonable one and I do not consider that an increase in the setback of Bedroom 2 from the southern boundary is necessary in this instance to provide an acceptable level of amenity to the affected room of the neighbouring dwelling.
- 24 I am not persuaded, however, that non-compliance with the Standard is an acceptable outcome in relation to the remaining affected bedroom window. This is the sole window to the bedroom and it is almost directly opposite the bathroom wall of the development for its entire length. An increase in the setback of the bathroom wall from the southern boundary is necessary in this instance to achieve compliance with Standard A13. I discuss this further in a later section of these reasons in relation to the changes to the building envelope as a response to potential sea level rise.

WILL UNREASONABLE OVERLOOKING OCCUR?

- 25 The conditions of the Notice of Decision require that the windows of Bedroom 1 be screened in compliance with Standard A15 at Clause 54.04-6 to limit views to adjoining secluded private open space areas and habitable rooms. The upper level 'retreat' window will be positioned opposite a bedroom window of the dwelling to the south and will potentially allow views into this room. I consider that this window should also be screened to address any overlooking. Mr Cadzow expressed concerns regarding the potential overlooking from the south facing Bedroom 2 window into another bedroom window of his property. This south facing window can be screened without unduly impacting on the amenity of the associated room as an additional window, with an outlook to the street, is proposed.

COASTAL HAZARD VULNERABILITY (SEA LEVEL RISE)

- 26 State planning policy in relation to Coastal Areas is detailed at Clause 15.08 of the Planning Scheme. Objectives of this policy include:
- To plan for and manage the potential coastal impacts of climate change.
 - To achieve development that provides an environmental, social and economic balance
- 27 In respect of managing coastal hazards and the coastal impacts of climate change, the relevant strategies are:

Planning to manage coastal hazards and the coastal impacts of climate change should:

- Plan for sea level rise of not less than 0.8 metres by 2100, and allow for the combined effects of tides, storm surges, coastal processes and local conditions such as topography and geology when assessing risks and coastal impacts associated with climate change.
- Apply the precautionary principle to planning and management decision-making when considering the risks associated with climate change.
- Ensure that new development is located and designed to take account of the impacts of climate change on coastal hazards such as the combined effects of storm tides, river flooding, coastal erosion and sand drift.
- Ensure that land subject to coastal hazards are identified and appropriately managed to ensure that future development is not at risk.

28 At the hearing on 23 February, 2010, Melbourne Water's submission was that:

- Melbourne Water is currently in the process of developing Local Guidelines that are specific to the area of the coastline that is within its operating area.
- The review site will be affected by any incremental increase in sea level rise associated with climate change predictions above the current Port Phillip Bay level of 1.6 metres.
- Sea level rise benchmarks are an increase above 2010 mean sea level (1.60 metres Australian Height Datum) of 200mm by 2040 and 800mm by 2100. This equates to a flood level for Port Phillip Bay of 2.4 metres Australian Height Datum by 2100.
- A freeboard of 600mm above the highest flood level applicable to the property should be required for all new development at this site, and is considered to deal with the uncertainties associated with tidal inundation such as wave action and other storm surge activity. This finished floor level would equate to 2.4 metres Australian Height Datum.

29 Ms Cincotta sought to temper the possible response to Melbourne Water's advice by submitting, quite correctly, that:

- although Melbourne Water has a floodplain management role, it is not a referral authority under the Port Phillip Planning Scheme in respect of rising sea levels;
- there are no overlay controls that address rising sea levels; and

- there is currently only a policy in the State Planning Policy Framework (Clause 15.08) dealing with coastal areas and that planning should, not must, plan for sea level rise and apply the precautionary principle.

30 She went on to submit that:

- rising sea level is a relevant consideration and Clause 15.08 is not mandatory and should be applied on a case-by-case basis;
- the Melbourne Water process is embryonic and has not found its way into the Planning Scheme;
- recent Tribunal decisions are distinguishable from this proposal on the basis that they related either to multi-dwelling developments or subdivision. The fact that this is a replacement of a single dwelling is relevant in balancing all the factors; and
- Melbourne Water is not insisting on the imposition of its conditions.

31 Sites' vulnerability to coastal hazards is an important consideration. While it is true that at this point in time it is only directly addressed within the State Planning Policy Framework of the Planning Scheme and has not found its way into the zones, overlays or particular provisions in the form of any specific controls, it is nonetheless a relevant matter to be addressed in circumstances such as this. It is policy that the precautionary principle is applied in decision making when considering risks associated with climate change, such as sea level rise. The General Practice Note on Managing Coastal Hazards and the Coastal Impacts of Climate Change (DPCD December 2008) notes that:

The precautionary approach is an accepted principle in coastal decision making. It requires decision makers to act having regard to the best available science, knowledge and understanding of the consequences of decisions and in the context of increasing uncertainty, to make decisions that minimise adverse impacts on current and future generations and the environment.

32 In this instance, the best available knowledge available to the Tribunal is the advice of Melbourne Water. At the hearing held to determine whether an increase in floor levels is required as a response to sea level rise, no expert evidence was called by any of the parties and no submissions (or evidence) contradicting Melbourne Water's advice was provided.

33 I note Ms Cincotta's submission that previous Tribunal decisions which have addressed the issue of coastal hazard vulnerability have related to multi-dwelling developments or subdivisions. I do not consider, however, that the issue is of any less importance in the circumstances of this case simply because the proposal is for the replacement of an existing dwelling in an established urban area. It is policy that new development is located and designed to take account of the impacts of climate change on coastal hazards. The policy does not distinguish between the types or scale of development and certainly does not give any indication that any particular

developments will be exempt from the considerations associated with vulnerability to coastal hazards.

- 34 The land is relatively low lying and is proximate to the coast. Melbourne Water's advice is that the land is potentially subject to inundation as a consequence of sea level rise. Section 60(1)(e) of the *Planning and Environment Act* 1987 requires the Responsible Authority to consider any effect the environment may have on a development or use. Section 84B(1) requires the Tribunal to take into account (or have regard to) any matter which the Responsible Authority is/was required to take into account (or have regard to). The potential inundation of the land is an effect the environment may have on the development and, in my view, is a relevant consideration in the assessment of the application. In addition, and importantly, it is policy that the precautionary approach is adopted when considering coastal hazards.
- 35 I have formed the view that the proper application of the precautionary principle in this instance would see the floor levels of the dwelling raised in accordance with the advice of Melbourne Water as a prudent response to the anticipated rise in sea levels. I consider that this requirement is in the interests of minimising adverse impacts on current and future generations.
- 36 I acknowledge that as more data becomes available and more sophisticated modelling is undertaken, the responses to potential sea level rise may alter. Alternatives to simply raising floor levels may be identified or recommended. However, at this point in time, based on the information available to the Tribunal, the appropriate response to this issue is to raise the floor levels of the dwelling.
- 37 Planning decisions should be based on the best information available at the time. I consider that the response to climate change in the context of a planning decision should not be delayed pending the potential emergence of different information, a different policy response or, indeed, new planning controls. I consider that the precautionary principle requires that appropriate action be taken in the circumstances of current proposals, and that this be done within the framework of the current knowledge and planning policies.
- 38 Notwithstanding her submissions, Ms Cincotta stated that, in the event that I was to find that increased floor levels are required, a plan showing how the development would be modified to accommodate this had been prepared. A set of the plans was tabled at the hearing, with a copy also provided to the Council and the Cadzow family.
- 39 The modified plans show that an increase in the minimum floor level to 2.43 metres AHD would result in the following:
- a ground floor level that is in the order of 700mm – 800mm above natural ground level;
 - a 230mm (23cm) increase in the wall heights; and

- an increased non-compliance with Standard A13 from 180mm to 300mm.
- 40 In respect of the revised plans, Council advised it was satisfied that the modified design minimises the impact on adjoining properties and has minimal impact on the neighbouring north-facing windows. The Cadzow family advised that their original submissions remain unchanged and that they oppose the development. Melbourne Water stated that the revised plans would meet the recommended floor level requirement.
- 41 Subsequent to the hearing, the Tribunal received correspondence from the Cadzow family, which I read to the extent necessary to determine the nature of its content. The correspondence did not appear to raise any new issues and, as leave for the making of further submissions had not been granted, I have not taken it into consideration in deciding this application.
- 42 I consider that the increase in the wall heights and overall height is acceptable in the context of the review site. The streetscape displays a diversity of building types of heights ranging between one and three storeys. The development will not be a dominant element in the street, particularly given the setback of the upper level from the site's frontage. The highest element of the proposed dwelling (a clerestory window/lantern feature) is set back some 12 metres from the frontage. It will not present as a dominant element in the streetscape or broader neighbourhood. In addition, this element is centralised and will not impact on the amenity of the adjoining properties
- 43 From a visual bulk perspective, the dwelling is sited adjacent to the dwellings on the adjoining lots and the built form will not impact on the secluded private open space area of these residential properties. Similarly, the shadow from the dwelling will be cast on the neighbouring dwelling to the south and will not affect its rear yard area.
- 44 It appears that the development will be set back 3.5 metres from the south facing study window of the dwelling to the north. The increase in height for that portion of the wall opposite this window (scaled at 7.0 metres on the modified plans) will still allow the development to comply with Standard A12 at Clause 54.04-3 and daylight to this window should therefore not be compromised. I will include a condition to ensure that the Standard is complied with in respect of this window.
- 45 The principal amenity consideration is the impact on the north facing windows of the southern adjoining dwelling. As noted earlier, the increased floor levels have the consequence of increasing the extent of the development's non-compliance with Standard A13.
- 46 I have carefully reviewed the plans and inspected the adjoining dwelling. I have concluded that the upper level bathroom should be set back from the southern boundary to comply with Standard A13 and provide adequate solar access to the bedroom window of this neighbouring dwelling. This

will require a reduction in the size of the bathroom. I consider that this can be achieved without compromising the useability of the bathroom, although it may necessitate a re-arrangement of the fixtures.

- 47 A further consideration is the fact that the raised ground floor level will allow for overlooking from ground floor windows. Specifically, the eastern-most dining room window will allow views into a north facing bedroom window of the dwelling to the south. This can be addressed by the application of screening to this window. I do not consider that a higher fence or the erection of trellis above the height of the fence to be an acceptable solution in this instance as it will potentially impact on light to the neighbouring window.
- 48 Ms Cincotta submitted that, in the event that I require an increase in the floor levels, then I should impose a condition that this be achieved by minimising the increase in the overall building height to the satisfaction of the Responsible Authority.
- 49 I consider this condition to be too vague or uncertain. Based on the submissions at the hearing, which explained how the increase in the building height had been minimised as a consequence of raising the floor levels, I am of the view that revised plans are a considered response to issue of potential inundation. I therefore consider that the plans should form the basis of this approval.

CONCLUSION

- 50 In conclusion, I consider that the development represents an acceptable outcome for the review site, subject to an increase in floor levels and the inclusion of setbacks from the side boundaries which ensure that solar access and daylight to the neighbouring windows is protected. I consider that the resultant built form is acceptable and should not have an unacceptable impact on the streetscape, neighbourhood character or amenity of adjoining land.
- 51 I will vary the decision of the Responsible Authority and direct that a Planning Permit be issued.

Bill Sibonis
Member