

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION**

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P312/2010
PERMIT APPLICATION NO. PA0918837

CATCHWORDS

Section 77 of the Planning & Environment Act 1987; Hobsons Bay Planning Scheme;

Proposed construction of two, two-storey semi-detached-style dwellings. Whether site is vulnerable to future climate-change induced sea level rise and, if so, of what consequence. Whether proposal is respectful of neighbourhood character.

APPLICANT	Suburban Blue Print Pty Ltd
RESPONSIBLE AUTHORITY	Hobsons Bay City Council
SUBJECT LAND	7 Romawi Street, Altona
WHERE HELD	Melbourne
BEFORE	Michael Read, Member
HEARING TYPE	Hearing
DATE OF HEARING	23 rd July, 2010
DATE OF ORDER	26 th July, 2010
CITATION	Suburban Blue Print Pty Ltd v Hobsons Bay CC [2010] VCAT 1272

ORDER

- 1 The decision of the responsible authority in relation to permit application no. PA0918837 is set aside.
- 2 A permit is granted in relation to land at 7 Rowani Street, Altona. The permit will allow the construction of two two-storey dwellings above basement car parking generally in accordance with the endorsed plans and subject to the conditions set out in Appendix A.

Michael Read
Member

APPEARANCES

For Suburban Blue Print Pty Ltd	Mr. John Glossop, town planner, of Glossop Town Planning. He submitted his expert report on climate-change-induced sea-level rise by Mr. Joris Jörrissen, of BMT-WBM Pty Ltd, and offered to call Mr. Jörrissen as expert witness, though this was not required.
For Hobsons Bay City Council	Ms. Lunn, town planner, of Louise Lunn Planning.

INFORMATION

Description of Proposal	Construct a pair of two-storey, semi-detached dwellings on a relatively flat site.
Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act</i> 1987 to review Council's refusal to grant a permit.
Zone and Overlays	Residential 1 zone. Adjoining land is similarly zoned.
Permit Requirements	Clause 32.01-4: construct two or more dwellings on a site.
Relevant Scheme policies and provisions.	Clauses 12, 14, 15.08, 16.02 21.06, 22.08, 32.01, 55 and 65.
Land Description	A rectangular site on the western side of Romawi Street; a frontage of about 20 metres and a depth of 50 metres. Adjoining sites contain a variety of one and two-storey dwellings.
Tribunal Inspection	I inspected the subject site and its locality after the hearing
Cases Referred To	Cadzow Enterprises Pty Ltd v Port Phillip [2010] VCAT 634

REASONS

What is this proceeding about?

- 1 Council has refused to grant a permit for the construction of a semi-detached pair of large, two-storey dwellings, citing a number of reasons relating largely to lack of respect to neighbourhood character. In a late statement to the Tribunal, Council added a further ground relating to the fact that the site
... may be vulnerability to coastal hazards and inundation arising from possible future rise in sea level due to coastal climate change and from storm surges.
- 2 At the hearing, Ms. Lunn did not contest Mr. Jörrissen's expert evidence that while the site itself and the basement level could be subject to inundation because of climate-induced sea level rise, the accommodation levels were above the inundation level, though with only a 200mm freeboard rather than general preference for 300mm freeboard. This question then became one of sorting out the confusing situation where Council sought to refuse a permit where there is already a large stock of non-complying housing and where a single dwelling could be constructed on this site without Council having any say about floor levels.
- 3 The other key issue was that relating to the building not being respectful of neighbourhood character due to its large width combined with its two-storey height. As I set out following, I have concluded that in respect to both of these issues the proposal is acceptable.

Is the site vulnerable to future sea-level rise and, if so, is the proposal acceptable?

- 4 Council's late ground of refusal (subject to two levels of uncertainty) referred to the site's unsuitability for the proposed development due to it being vulnerable to inundation from climate-induced sea level rise within the next 100 years. I have concluded that this proposal is acceptable on this site after taking account of the absence of appropriate policy, the complexity of already existing issues that policy must address in future and the currently assessed marginal risk of future inundation.
- 5 Council was concerned both with the possibility of inundation of the dwelling but also with loss of escape routes due to flooding of the site itself and surrounding streets, even if the dwelling itself remained flood-free. However, it was not clear to me whether Council was seeking to have the dwellings' design modified to include higher floor levels or flood protection of the basement or to refuse any multi-unit development on this (and equivalent) sites. The latter does not seem particularly logical, given the lack of any permit requirement for a single dwelling in this locality. Ms.

Lunn also did not contest Mr. Mr. Jörrissen's evidence about the future sea level that should be used for development assessments in this locality.

- 6 Neither Council nor any state authority has prepared an assessment of the appropriate minimum levels for habitable buildings close to Altona Beach that are any more specific than the general requirement of Clause 15.08-2, which requires development to make an allowance of a sea level rise of 0.8 metres by 2100, plus provision for other weather factors¹. There is no flood-related overlay and the planning scheme identifies no flood-related referral authority. Council has produced a map (copy provided to the Tribunal) showing the extent of existing coastal inundation from storm surge with the current sea level and has apparently mapped the extent of inundation that would occur under the 0.8 metre sea-level rise, but this is not yet a public document and is certainly not part of any local planning provision.
- 7 The Tribunal has considered a number of development proposals on sites that could be inundated on occasion by rising sea levels and has considered the principles that are relevant to its decision in such circumstances. In the Cadzow matter², the Tribunal set out the justification for its consideration of this issue, the application of the precautionary principle (set out in Clause 15.08) and the relevance of the opinion of the referral authority. The Cadzow matter related, however, to a detached house and a planning permit was required because the dwelling was located in a Special Building Overlay. Melbourne Water was a referral authority. In that case, the Tribunal imposed a requirement for increased floor levels to satisfy the requirements of Clause 15.08.
- 8 Mr. Jörrissen had concluded that the appropriate level for the design storm tide, allowing for climate-induced sea level rise up to 2100 and including storm tide levels and wave setup, is 2.64 metres AHD. The proposed minimum ground floor level is 2.83 metres AHD and the high point of the driveway ramp in front of the basement is 2.23 metres.
- 9 The site is situated in an area where there are possibly hundreds of existing dwellings with floor levels below the desirable 2.94 metres AHD that would give a 300mm freeboard above the adopted 2100 sea level. There is no requirement for a planning permit along the Altona foreshore area for single dwellings on lots of 500 square metres or more and, consequently, such dwellings can be constructed without regard to any future sea level rise.

¹ Clause 15.08 (in part), states: "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".

² Cadzow Enterprises Pty Ltd v Port Phillip [2010] VCAT 634

- 10 This proposal would result in the addition of a second dwelling to this site, with both dwellings having minimum floor levels close to that which would satisfy the requirements of Clause 15.08; this in contrast to a single new dwelling that need not comply with this policy. When Council's Planning Scheme and Corporate Plan are amended to include more specific policies that address the challenge of future sea level rise in Altona they will, importantly, have to also address the problem of the existing large stock of housing that is set at a too-low level. Mr. Glossop submitted that the addition of an extra dwelling with an almost-appropriate, raised floor level would not impose any additional costs on the community at any point in the future.
- 11 In applying the precautionary principle, I have therefore taken account of the fact that future policy to address rising sea levels will, most importantly in this location, have to deal with the inundation of extensive areas of existing housing stock. It seems reasonable to conclude that, in this context, a proposal for an additional dwelling with both dwellings now having almost-acceptable floor levels and possibly floodable basements is acceptable.

Is the proposal respectful of neighbourhood character?

- 12 Ms. Lunn submitted that the combination of the proposal's height and width, as viewed from the street, would be too dominating and that the design should be modified to reduce this impact on the existing neighbourhood character, preferably by greater articulation and setting the first-floor back somewhat.
- 13 I have concluded that it is appropriate to give some weight to the emerging and quite different neighbourhood character and, in this context, the proposal is acceptable.
- 14 The thrust of Ms. Lunn's submission was that a combination of the building's 8.5 metre height, its 16 metre width at first floor, the double basement garages (which, furthermore, are not a feature of Romawi Street) and lack of articulation of the upper floor façade,
... combine to create a development at odds with the generally more modest development surrounding the property and the preferred neighbourhood character.
- 15 Ms. Lunn was also critical of the lack of articulation of the side elevations.
- 16 In response, the thrust of Mr. Glossop's argument in support of the building's effect on neighbourhood character was that this is an area undergoing significant change: redevelopment of the existing stock of modest, single-storey dwellings with much larger and generally two storey dwellings, either as detached dwellings or multi-unit developments. In this context, he submitted, it is not appropriate to assess the proposal against the

existing, historic neighbourhood character; rather, it should be assessed for its consistency with the emerging character.

- 17 In principle, I agree with Mr. Glossop with respect to the emerging neighbourhood character. Most of the properties fronting Esplanade have now been developed with large, modern, two-storey, single or multi-unit dwellings and similar examples are now starting to appear in areas extending northwards towards the railway line. This new type of housing, markedly different to the modest historic stock, presumably reflects a quite recent demand for much more expensive dwellings on sites close to Port Phillip.
- 18 While the housing stock around the subject site and more widely is still dominated by the modest original buildings, the upper extreme of the range of housing scale is established by the scatter of large, often ostentatious, two-storey buildings. It is not difficult to find numerous examples of two-storey buildings (both single or multi-unit) that have an upper level of 16-or-more metres in width. For example, there is No. 14 Romawi Street, which at its frontage consists of a two-storey, semi-detached pair of dwellings of very similar scale to proposal in this case, or a large yellow house in Upton Street, with a 30-metre wide façade. I therefore conclude that this proposal fits within the upper end of the range of building scale that is now becoming part of the locality's general character.
- 19 I consider that the façade is well articulated (verandahs inset, the en-suite bathrooms at first floor projecting, first-floor pergolas and other decorative architectural elements. Likewise the side elevations are anything but bland and certainly not simple sheer walls, with their use of different finish materials, windows and various changes in setback.
- 20 With respect to the basement garages, I agree that there do not appear to be any examples of this type of structure within the immediate locality, but I note that such parking solutions can now be more frequently found in middle-suburban areas. As a solution, it is much less intrusive in the general streetscape than the more typical at-grade double-garage (often built to one side boundary when occurring in conjunction with a single dwelling). I also accept that there is sufficient space for landscaping, though I also endorse the proposal for a permit condition requiring some opportunity for landscaping along the driveway embankments.

Are there any other issues to consider?

- 21 Mr. Glossop pointed out that, by his assessment, a projecting first-floor wall around the en-suite to the master bedroom (the building's south-eastern corner) failed to comply with Standard B20 (sunlight to existing north-facing windows). The affected window is a ground-floor habitable room window on the side elevation of No. 5 Romawi Street. Mr. Glossop proposed that the bathroom's southern wall be set back in line with the wall

behind, asserting that this would satisfy the standard. However, he acknowledged that this would create an asymmetry to the building's façade unless the façade's design was changed to match its northern side with its southern.

- 22 The permit applicant appeared to have no concern with this asymmetrical outcome.
- 23 The façade as proposed in the permit application is completely symmetrical. The change proposed by Mr. Glossop (clearly as somewhat of an afterthought, as his original assessment had claimed that this aspect of the design complied with the Clause 55 standard) would render the façade inexplicably but obviously asymmetrical. In circumstances where symmetry has been such an obvious design element, I consider that it should be maintained.

What conditions are appropriate?

- 24 At the conclusion of the hearing the parties discussed Council's draft permit conditions. I have, in the preceding sections of this decision, commented on some matters that would require new or amended conditions. I have addressed further matters, as raised in the final discussion, below.
- 25 Re Condition 1(g), I agree that this should be amended to provide for the maximum height of metre boxes to be not less than the minimum acceptable to service authorities
- 26 Re Condition 1(h), screening should also apply, if necessary, to ground-floor windows.
- 27 Condition 1(i) is not required as there is no front fence and any would require an amendment to the drawings.
- 28 Re the part of Condition 1(k) dealing with ramp grades, Council did not provide any argument as to why the grades should be less than required by the relevant Australian Standard.
- 29 I agree that, with respect to Condition 1(q), there is no need to reduce the building's height and certainly not any justification in lowering the level of the ground floor, given my earlier discussion about sea-level rise³.
- 30 The reference to "Sustainable Design Assessment" in Condition 1(s) should be changed to "Sustainable Design Statement", this being less onerous.
- 31 Re Condition 1(t): as I understand it, the finished floor levels do comply with the Coastal Hazard Vulnerability Report prepared by BMT WBM Pty Ltd [re Condition 1(t)] and, as discussed, I accept that this is appropriate for this site.

³ And furthermore, this provision would seem to be contrary to Council's last ground of refusal!

- 32 Condition 5 should be amended to refer to the recent Australian Standard dealing with tree protection zones.
- 33 I agree that there should be no specific requirement for a single point of drainage discharge. Such an issue should be capable of later resolution (re Condition 13).

Conclusion

- 34 Based on my above discussion, the decision of the responsible authority will be set aside.

Michael Read
Member

APPENDIX A

PERMIT APPLICATION NO:	PA0918837
LAND:	7 Romawi Street, Altona
WHAT THE PERMIT ALLOWS:	Construction of two two-storey dwellings above basement parking in accordance with the endorsed plans.

CONDITIONS

- 1 Before the development starts, three copies of revised plans drawn to scale and dimensioned, 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 substantially in accordance with the plans advertised on 12 October 2009, but modified to show to the satisfaction of the Responsible Authority:

- a) A survey plan of the subject land prepared by a licensed land surveyor showing the location of existing boundary fences and any other relevant land features in relation to the title boundaries. Any discrepancies between the plans submitted for endorsement and the survey plan must be rectified.
- b) A schedule of all external materials and finishes. The schedule must show the materials, colour (including two sets of colour samples) and finish of all external walls, roof, fascias, window frames and paving (including car parking surfacing).
- c) The southern and northern walls of the first-floor Master Bedroom ensuite bathrooms to be set in to align with the walls to their west, with commensurate changes to the internal bathroom layout.
- d) The positioning of all plant and equipment (including air conditioning units, heating units, hot water systems, etc) which is proposed to be located externally. Such plant and equipment must be positioned to prevent unreasonable noise and visual impact.
- e) The proposed landscape treatment of the site including the location of all existing and proposed species. An emphasis must be placed on maximising the use of native drought tolerant species.
- f) Nomination of a Tree Protection Zone in accordance with Condition 5 of this permit.
- g) The location of all service meters generally located in the front of each dwelling.
- h) The location and design (including elevations) of any structure to be sited within the front setback required to accommodate an electricity meter box. The structure must not be less than the minimum height

acceptable to the relevant service authority and designed to minimise the visual impact on the streetscape and possible impacts on pedestrian safety and vehicle traffic.

- i) Screening measures which comply with Standard B22 of Clause 55.04-6 and Standard B23 of Clause 55.04-7 of the Hobsons Bay Planning Scheme must be applied to all windows as appropriate and to the satisfaction of the Responsible Authority. Use of adhesive film to obscure glass is not acceptable. Where highlight windows are used the height of the window sill above floor level must be shown on the relevant elevations plans.
- j) Details on the layout and elevation plans confirming that all site and finished-floor levels are referenced to A.H.D.
- k) The basements to be designed to allow for vehicles to enter and exit in a forward direction through the provision of a turntable within the basement; or the ramps with grades that comply with Australian Standard AS2890.1 or to the satisfaction of the responsible authority.
- l) The side of the basement ramps to be stepped to allow the introduction of narrow planter beds to soften the appearance of the ramp walls. Details on the plans, drawn to a scale of 1:50, to incorporate terraced basement ramp retaining walls (not 'sheer') and landscaping to subdue its streetscape presence.
- m) Details on the plans confirming that the driveways leading to the basement garages are applied with a high quality (non-slippery) finish that is not plain concrete.
- n) Height of the garage doors increased to result in a minimum 2.2 metre height clearance.
- o) The vehicle crossovers reduced to be a maximum of 3 metres in width.
- p) The garage door widths reduced to single width with reduced driveway widths and less paving within the front setback to allow greater areas for landscaping.
- q) A Sustainable Design Statement, detailing sustainable design initiatives to be incorporated into the development, must be submitted to and approved in writing by the Responsible Authority. The Sustainable Design Assessment must outline proposed sustainable design initiatives within the development such as (but not limited to) energy efficiency, water conservation, storm water quality, waste management, material selection and greenhouse emissions. Upon approval the proposals set out in the Sustainable Design Statement must be incorporated into the development.
- r) Finished floor levels to comply with the recommendations of the Coastal Hazard Vulnerability Assessment report prepared by BMT WBM Pty Ltd dated 9th July 2010.

- 2 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 3 Prior to the endorsed plans being made available a bank guarantee or bond of \$1000.00 must be lodged by the owner with the Responsible Authority to ensure the satisfactory establishment of landscaping works. Once landscaping has been completed in accordance with the endorsed

landscaping plan, Council must be notified so that a site inspection can confirm the landscaping is compliant, and a 6 week establishment period will commence. The bank guarantee or bond will be returned after landscaping has been initially maintained for that period to the satisfaction of the Responsible Authority. After the establishment period, the landscaping must be maintained in accordance with the endorsed landscaping plan to the satisfaction of the Responsible Authority.

- 4 Prior to the occupation of the buildings hereby permitted, landscaping works as shown on the endorsed plans must be completed and thereafter must be maintained to the satisfaction of the Responsible Authority.
- 5 Prior to commencement of works, the following provisions relating to the protection of existing street trees must be undertaken to the satisfaction of the Responsible Authority:
 - i) A suitable Tree Protection Zone established in accordance with Australian Standard AS4970-2009, or otherwise to the satisfaction of the responsible authority, with barrier fence must be established around the street tree on the Romawi Street frontage.
 - ii) The Tree Protection Zone must be enclosed using a 2 metre high temporary cyclone fence or similar, which must remain in place through all stages of the development. This fence must not enclose the footpath which must be kept clear for pedestrian access and a sign must be erected on the fence informing that the fence is a 'Tree Protection Zone'.
 - iii) The area within the Tree Protection Zone must not be disturbed by any means (including parking of vehicles or storage of plant & equipment, materials, soil or waste).

No excavation is allowed within the Tree Protection Zone except with the consent of Council's Town Planning Department and under the supervision of a qualified Arborist.

- 6 Street numbers contrasting in colour to the background must be fixed at the front boundary of the property as near as practicable to, or on the letterboxes. Separate unit numbers must be placed adjacent to the front entrance of each dwelling, such numbers must be clearly legible from the access driveway.
- 7 All service pipes, (excluding downpipes), fixtures and fittings must be concealed on exposed elevations to the satisfaction of the Responsible Authority.
- 8 Any alteration of soil level involving an increased or decreased level at the boundary must be retained by the provision of an adequate retaining wall, which is constructed of brick or masonry or other suitable alternative approved by the Responsible Authority, to buttress the soil against the possibility of shift. The construction of this retaining wall must be carried

out by the owner. The retaining wall must remain in place whilst any increase or decrease level is present.

- 9 All brickwork on or facing the boundaries of the site must be either raked and cleaned (face brickwork) or rendered and painted or bagged and painted to the satisfaction of the Responsible Authority.
- 10 Prior to the occupation of the buildings hereby permitted, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must to the satisfaction of the Responsible Authority be:
 - (a) Constructed.
 - (b) Properly formed to such levels that they can be used in accordance with the plans.
 - (c) Surfaced with an all-weather seal coat.
 - (d) Drained and maintained.

Parking areas and access lanes must be kept available for these purposes at all times.
- 11 All basic services, including water, electricity, gas, sewerage and telephone must be installed underground and located to the satisfaction of the Responsible Authority.
- 12 Prior to commencement of the development the owner must prepare storm water drainage design plans in accordance with the relevant Council Standards to the satisfaction of the relevant Building Surveyor. An application must be made to Council for the Legal Point of Discharge for the disposal of storm water from the subject land to the Council drainage system. An on-site storm water detention system may be required if the anticipated volume of storm water from the subject land exceeds the permissible site discharge.
- 13 The subject land must be connected to a legal point of drainage discharge to the satisfaction of the Responsible Authority.
- 14 Before any construction or demolition works commence on the land, a secure fence must be provided around the perimeter of the land to prevent access to the land by unauthorised persons. This fence must be maintained for the duration of the construction and demolition, be a minimum height of 1.5m (or such alternative height as is approved in writing by the Responsible Authority), and be constructed to the satisfaction of the Responsible Authority. The gate or opening to the fence must be securely locked at all times when work is not being undertaken on the land.
- 15 The owner must meet the costs of all alterations to and reinstatement of, the Responsible Authority and other Public Authority Assets deemed necessary and required by such Authorities for the development. The owner must obtain the prior specific written consent of the Council or other relevant Authority to such alterations and reinstatements and must comply with

conditions required by the said Authority in relation to the execution of such works.

- 16 Any vehicle crossings must be constructed in the location shown on the endorsed plan to a standard satisfactory to the Responsible Authority. The relocation of any services including electricity poles, drainage pits, Telstra pits, fire hydrants and the like must be at the expense of the owner and approved by the appropriate authority prior to undertaking such works. Consent for such crossings must be obtained through Council's Assets and Maintenance Department prior to construction.
- 17 If the nature strip is damaged during construction of the development approved or during the construction of any services, it must be reinstated and made good, (including by the planting of grass) at the cost of the owner to the satisfaction of the Responsible Authority.
- 18 Boundary fences must be replaced to the satisfaction of the Responsible Authority at no less than 1.8 metres and no more than 2.0 metres in height and at the cost of the owner unless otherwise agreed to in writing by the Responsible Authority.
- 19 This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two years of the date of this permit.
 - (b) The development is not completed within four years of the date of this permit.

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.

--- End of Conditions ---