

Johnston v Bass Coast SC - [2015] VCAT 1971

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VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST VCAT REFERENCE NO. P1045/2015
PERMIT APPLICATION NO.
140180

CATCHWORDS

Application to review a decision to grant a permit under section 82 of the *Planning and Environment Act 1987*, Bass Coast Planning Scheme. Township zone. Design and Development Overlay and Schedule 1. Planning permission required under DDO-1 due to height of proposed building. Objections raise issues about environmental impacts, overlooking, neighbourhood character and landscape impacts. Ambit of discretion considered in respect to planning permission required under DDO-1.

APPLICANT Marjorie Johnston for the Silverleaves Conservation Society Inc

RESPONSIBLE AUTHORITY Bass Coast Shire Council

RESPONDENT Vimpat Pty Ltd

SUBJECT LAND 127 Silverleaves Avenue, Silverleaves

WHERE HELD Melbourne

BEFORE Ian Potts, Senior Member

HEARING TYPE Hearing

DATE OF HEARING 9 November 2015

DATE OF ORDER 16 December 2015

CITATION Johnston v Bass Coast SC [2015] VCAT 1971

ORDER

1. The decision of the Responsible Authority is varied.
2. In permit application 140180 a permit is granted and directed to be issued for the land at 127 Silverleaves Avenue, Silverleaves in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
 - Development of a building that is seven metres or more in height above ground level under the Design and Development Overlay – Schedule 1.

Ian Potts
Senior Member

APPEARANCES

For Majorie Johnston for the Silverleaves Conservation Society Inc.

Ms Majorie Johnston in person assisted by Ms Barbara Wilkinson.

For Bass Coast Shire Council

Ms Rewa Smith, a town planner from Bass Coast Shire Council.

For Vimpat Pty Ltd

Mr Paul Chiappi of counsel. He called the following witness:

- Ms Virginia Jackson a town planner from Harlock Jackson.

INFORMATION

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| Description of Proposal | Construct a five bedroom dwelling of three levels on a lot. |
| Nature of Proceeding | Application under Section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit. |
| Zone and Overlays applying under Bass Coast Planning Scheme | Township Zone (Clause 32.05). Vegetation Protection Overlay (Clause 42.02 and Schedule 2 - Phillip Island). Design and Development Overlay (Clause 43.02 ad Schedule 1 - Residential areas near the coast). |
| Planning Permissions required under Bass Coast Planning Scheme | Construct a building with a height of more than 7 metres above ground level. (Clause 43.02 - 2 and Schedule 1). |
| Relevant Scheme, policies and provisions of the Bass Coast Planning Scheme | Settlement (Clause 11), Environmental and landscape values – Coastal areas (Clause 12.02), Environmental risks (Clause 13.01), Urban design (Clause 15.01-1) and Housing (Clause 16.01) of the State Planning Policy Framework. Settlement (Clause 21.05), Land uses (Clause 21.06), Environment (Clause 21.07), Landscape and built form (Clause 21.08) and Local areas – Silverleaves & Cowes (Clause 21.10-5) of the Local Planning Policy Framework. |
| Land Description | A lot with a north south orientation having a width of 16.09m, length of 60.95m and area of 980m ² . The land rises from the road boundary to the centre of the site, falls and then rises to the north. The northern boundary is to coastal Crown land. The eastern boundary is to a vacant residential lot. The western boundary is to a residential lot with two double storey dwellings and an outbuilding. The subject land has been partially cleared with a small, single storey, fibro-cement dwelling located centrally on the lot. |
| Tribunal Inspection | An inspection of the site and surrounds was undertaken by the Tribunal following the hearing. |

Cases Referred To *National Trust of Australia (Victoria) v Australian Temperance and General Mutual Life Assurance Society Ltd* [1976] VR 592; *Victorian National Parks Association Inc & Anor v Southern Grampians SC & Horsham Rural CC, Iluka Resources Ltd & Wimmera Mallee Water Authority* [2004] 16 VPR 98; *Boroondara City Council v 1045 Burke Road Pty Ltd* [2015] VSCA 27.

REASONS

WHAT IS THIS PROCEEDING ABOUT?

1. On 17 July 2014 Vimpat Pty Ltd lodged an application with the Bass Coast Shire Council for planning permission to construct a dwelling on the land at 127 Silverleaves Avenue, Silverleaves. A revised plan was subsequently submitted to the Council following advertising and feedback from the Council's planning officers. On 24 April 2015 the Council's planning committee made a decision to grant a permit subject to conditions. Ms Marjorie Johnston, who is the president of the Silverleaves Conservation Association, objects to this decision and seeks a review by the Tribunal.
2. Ms Johnston's grounds raise a number of issues about the height and scale of the proposed dwelling along with apprehension of adverse impacts on the environmental values of the Silverleaves area.
3. Another member of the Silverleaves Conservation Association, Ms Wilkinson, appeared at the hearing and sought to be heard. Ms Wilkinson is the owner of the land immediately to the west of the subject site. With the leave of the Tribunal, Ms Wilkinson spoke about overlooking from the proposed dwelling onto her property, in particular into an east facing bedroom and an area of open space along the common boundary. She also expresses concerns about the environmental impact of this dwelling.
4. As I will explain in my reasons, a planning permit is required for this dwelling under the Design and Development Overlay because the proposed dwelling has a height of seven metres or more above ground level. Because the ambit of discretion is limited to this permission, issues such as overlooking and environmental impacts are not relevant considerations.
5. Having considered those issues about height that are relevant to the objectives of DDO-1, relevant decision guidelines and relevant policy matters, I am satisfied the proposal is acceptable and a permit should be granted.

DETAILS OF THE PROPOSAL AND SITE CONTEXT

Overview of the building design

6. The Vimpat proposal is for an undeniably large, contemporary dwelling. Details on the plan indicate a total floor area of 444m² across three levels. It will represent a significant change from the modest fibro-cement dwelling of some 60sqm presently located on the site. The proposed

dwelling would comprise of five bedrooms, a family room/library on an internal mezzanine floor, generous kitchen and dining area, lounge room and several levels of outdoor decking and balconies. One of the more controversial elements is a roof top deck of approximately 8m by 4m located on the roof.

7. Split across three levels and the mezzanine floor, the dwelling would have a ground level footprint of some 34m by 10m. The projected height above natural ground level of various building elements and walls would range from 2.5m to 9.1m. The latter is the maximum height of the building form after accounting for the removal of the screen from the roof top deck, as would be required under the conditions of the Notice of Decision. Apart from this element the maximum wall and roof height is 8.25m above ground level. However such measurements do not properly describe the design response, and are in fact a matter of some dispute. I will return to these issues later in my reasons.

The site conditions

8. The subject land is a long thin lot with a width of 16m and depth of 61m.^[1] Its long axis is orientated north-south. The existing dwelling sits approximately in the centre of the lot, on top of a low east-west ridge that crosses the site. From the street, the land rises gently to this ridge then falls again before rising more steeply by approximately one metre to the northern boundary. Beyond the northern boundary, the land continues to rise as part of the foreshore primary dune system. The variation in topography results in varying heights being ascribed to the walls and roof levels when measured from the ground level.

^[1] The dimensions are rounded to the nearest metre.

9. Various scattered coastal banksias, tea-tree and a few eucalypts are present on the subject land, but for the most part, trees and bushes are concentrated in the northern third of the lot. The remaining two thirds is a largely open grassed area. One coastal banksia is required to be removed to accommodate the new dwelling. The Council and permit applicant agree that no planning permit is required for this tree's removal as it is subject to exemption under Clause 52.48 of the planning scheme.^[2] Consequently the removal of this tree does not form part of the planning permission application.

^[2] An exemption for bushfire protection measures that applies to dwellings constructed or approved before 10 September 2009 and so applies to the existing dwelling on the land.

10. The southern boundary of the subject land is to Silverleaves Avenue. To the east is a vacant lot containing scattered coastal vegetation and to the west is Ms Wilkinson's property which contains two double storey dwellings linked by an elevated deck. These two dwellings sit at the northern third of this lot.

11. More broadly the subject land is located in an area of residential/holiday dwellings that stretches westward of Cowes toward the spit of land lying between Western Port Bay, Observation Point and the Rhyll Inlet. Along this street, there is a mix of dwelling styles that range from modest holiday 'shacks' through to recently constructed, large contemporary coastal style developments. The scale of these existing dwellings range from single storey through to three levels. No-one scale predominates. A high proportion of dwellings include decks and open areas.
12. Many older dwellings lack formal, solid boundary fencing whereas more recent developments have sought to have more privacy. Overall the more common experience for the area is one of open views across properties.
13. While the objector/review applicants disputed the description of the range of building styles and forms, particularly the presence of more recent multi-storey dwellings, made by the Council and Ms Jackson, my site inspection confirmed the conditions they generally described.

THE TRIBUNAL'S CONSIDERATION OF THE OBJECTIONS

14. The above overview of the site conditions assists in understanding the context of the design response and my resolution of issues raised by the objectors. As I have set out in the introduction, Ms Johnstone and Ms Wilkinson say there are a number of reasons why this dwelling should not be granted a permit. Broadly these are:
 - The unacceptable environmental impacts from the intensified use and development of the land;
 - The unacceptable amenity impacts on neighbours, particularly from overlooking; and
 - The adverse impacts on the landscape and neighbourhood character.
15. In response to these grounds, the Council and Vimpat point to the fact that the proposal is for a single dwelling in a Township Zone, and so it does not require any use or development permissions under this zone. The sole reason for a planning permit is because the building heights exceeds seven metres above ground level and so requires planning permission under Schedule 1 of the Design and Development Overlay that also applies to this area.
16. As a consequence of this confined reason for needing a planning permit, Vimpat (and to a lesser degree the Council) argue that issues about environmental impacts and overlooking are not relevant to the decision making exercise ambit of discretion about whether the dwelling can be higher than seven metres above ground level.
17. I will first address the matters of the ambit of discretion and explain why Vimpat's submissions are correct and necessarily much of what was put to me by Ms Johnstone and Ms Wilkinson is in fact not relevant to the decision to be made in this proceeding.

The ambit of discretion under the applicable planning controls

18. It is now well established planning law that the ambit of discretion to be exercised by the decision maker when deciding whether to grant a planning permit is limited to how or why that discretion

is conferred. This principle was set out in the *National Trust* [3] matter (commonly referred to as the National Trust Principle) which was later considered and adopted by (then) Morris J in the *Victorian National Parks Association* proceeding. [4] More recent decisions such as *Boroondara City Council v 1045 Burke Road Pty Ltd* [5] have not sought to disturb this principle but rather considered further the range of matters that might be relevant (i.e. the ambit of discretion) where one or more permissions are required under one application. The extent to which the breadth of planning policy is relevant has also been considered in these judgements.

[3] *National Trust of Australia (Victoria) v Australian Temperance and General Mutual Life Assurance Society Ltd* [1976] VR 592.

[4] *Victorian National Parks Association Inc & Anor v Southern Grampians SC & Horsham Rural CC, Iluka Resources Ltd & Wimmera Mallee Water Authority* [2004] 16 VPR 98.

[5] [2015] VSCA 27.

The purposes and objectives of DDO-1 in this application

19. In this application one permission is required and that is for a building height of seven metres or more above ground level. This is required because of the application of a Design and Development Overlay to this land. Adopting the above principles about the ambit of discretion, the matters to be considered in determining whether such a building is acceptable must necessarily be directed toward the issue of the building height tested against the objectives of DDO1, the decision guidelines under this overlay and the general decision guideline of Clause 65 that are appropriate to this question of height. It is also appropriate to consider State and Local planning policies that are relevant to this permission.

20. The purposes of the Design and Development Overlay are to:

...implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

...identify areas which are affected by specific requirements relating to the design and built form of new development.

Any schedule to an overlay is required to include a statement of design objectives.[6] The design objectives of Schedule 1, designated 'residential areas near the coast', are fivefold:

To protect views from the coast to adjacent residential areas.

To protect views to the coast from adjacent residential areas.

To minimise the impact of development along the coastline.

To protect and enhance the visual amenity and landscape of the coastal area.

To respond to the potential coastal impacts of climate change.

21. It can be seen from the above that majority of the design objective of DDO-1 are intended to address and manage the interface of development along the coastline, particularly the impact on views of the coastline. The other objective is to respond to the potential impacts of climate change, through the building design.
22. I will deal first with the landscape design objectives.

Landscape values and design responses

23. The design objectives reflect planning policy at a State and Local level for developments along Victoria's coasts and within the Bass Coast shire. As summarised in the Council's submissions, these policies, [7] amongst other outcomes, seek to address coastal landscape values by:
 - Directing development into existing urban or developed areas and avoid the intrusion of future development and infill between urban areas along the coastline;
 - Managing the height and form of future residential development so that it is sensitive to the coastal setting, particularly when viewed from the foreshore; and
 - Setting development back from the coast to retain the dominant natural character and avoid the loss of coastal vegetation.

[7] In particular Clauses 11, 12.02, 21.05, 21.06, 21.08 and 21.10-5.

24. That said, the design responses that DDO-1 seeks to control by the mechanisms of requiring a planning permit are limited to specific matters which are locality dependant, i.e.
 - Within the area of Pioneer Bay, Grantville and Coronet Bay, where:
 - o Any development other than a shed, carport or rainwater tank occurs on land that is below 5m AHD; or
 - o Any development on land that is above 5m AHD that would have a height of seven metres or more above ground level.
 - In all other areas covered by DDO-1, where a building would have a height of seven metres or more above ground level.
 - Subdivisions in all areas covered by the DDO-1.
25. Thus while a range of design controls may have been applied under DDO-1 for Silverleaves, a deliberate decision has been made to control and respond only to proposals for building above a

certain height. The application of the decision guidelines of DDO-1 to this application needs to be taken in this context. The difficulty of course is that these decision guidelines have been drafted to cover all of the possible permit scenarios under this DDO.

26. The decision guidelines under the general DDO umbrella reinforce the design objectives by calling for a consideration of relevant State and Local Planning Policy Frameworks, the design objectives of the schedule, any relevant policies and urban development guidelines, the design compatibility with the character of adjacent buildings, streetscape or area, as well as the style, form proportion and scale of identified heritage places if and when they are present in the area.
27. The decision guidelines under DDO-1 reflect similar design guidance with the majority of the decision guidelines addressing landscape impacts. This includes matters such as whether vegetation is to be removed or the need for new landscaping, which given the design objectives, are relevant to how a design proposal fits within the particular landscape setting. Such guidance is consistent with the design objectives.
28. There is however a guideline that calls for consideration of 'the impact of human activity that the coastal landscape and environment can sustain'. Such a matter is couched in somewhat curious terms for a control that seeks to manage development. The term 'human activity' suggests that the land use is relevant and the phrase 'that the landscape and environment can sustain' suggests the intensity of that use is also relevant. It would appear from submissions from the objectors that this how they read this guideline.
29. However in the context of when a permit might be required under this DDO-1, i.e. the ambit of discretion as discussed above, I do not consider that this decision guideline should be read in this way when the only permission being sought is for a building of seven metres or more. In my view, the matter of 'intensity of human activity' has little if any relevance or weight to that particular exercise of discretion. It is more likely to have relevance in an application for subdivisions or arguably for the specific geographic locations established under DDO-1 where the control applies to the wider range of buildings and works.
30. Further to this, if it was intended for this schedule of the DDO to manage the intensity of development of a single dwelling on a lot in other than the circumstances I have referred to, then as set out in the head DDO clauses, it could include design requirements for setbacks, plot ratios, site permeability and building coverage requirements and the like, all matters that are relevant to the 'intensity' of development. This DDO-1 does not require such matters to be addressed.
31. For these reasons, I conclude that in this particular application, the ambit of decision making discretion under DDO-1 is aimed squarely at assessing what would be the impacts of a building on the coastal landscape if it were to be permitted to have a height of seven metres or more. As such the impacts of 'human activity' is of no weight to the exercise of that discretion.

Coastal hazards

32. Although not raised in the grounds of the objections, I have considered the design response to the issue of coastal hazards given the objective of DDO-1. This is relevant because in part the design response for raised floor levels arises from the need to address potential inundation from future sea level rises and flooding conditions.

33. State policy seeks to address coastal hazards from these effects of climate change. In the situation of this application, where development is proposed within an existing settlement area, policy directs consideration of sea level rises of 0.2m above current 1 in 100 year flood levels by 2040.^[8] This is a design response rather than strategic response to whether the land use is appropriate or not.

^[8] Clause 13.01-1.

34. Local policy seeks to manage climate change impacts by avoiding coastal development that will be susceptible to possible future impacts and avoiding development outside of town boundaries that are susceptible to such impacts. The local area policy for Silverleaves seeks to avoid further development east of Coghlan's Road, including the existing urban area, until a Coastal Vulnerability Study has been undertaken because of the low lying nature of this area.^[9] I was not referred to any such study having been completed. However in its permit application, Vimpat commissioned a coastal hazard assessment, even though one is not specifically required under the DDO-1. I have considered this assessment and design response in the context of the above policy, the objectives of DDO-1 and the relevant decision guidelines directed to the issues of coastal hazards. My findings on this aspect of the DDO control are set out later in my reasons.

^[9] Clauses 21.05, 21.07 and 21.10-5.

The question of environmental impacts arising from this proposal

35. Ms Johnstone and Ms Wilkinson submit that this proposed dwelling is insensitive to the environmental and coastal setting values, generating an intensity of activity that would impact on the coastal woodland environment, impact on vulnerable native fauna including the Hooded Plover which nests in the nearby foreshore dunes, as well as impact on the wider environment such as Rhyll Inlet. They point to the recent removal of valued coastal vegetation and habitat from the site as an impact that has already been experienced as a result of this proposal.
36. In affect they argue that the proposal is an overly intensive development of the site that will be unacceptable because of wide ranging environmental impacts. They also believe that if approved it will set a precedent for more intensive developments within Silverleaves and so compound these environmental impacts.
37. Having considered these submissions, and relying on my reasons above about the ambit of the permission required in this application under DDO-1, I do not find these submissions to be relevant to this application. The grounds of the objectors that this development will cause environmental harm to nearby sensitive environments such as the Rhyll Inlet or be a threat to species such as the Hooded Plover are not proportionate to or relevant impacts that can be attributed to the fact that permission being sought is for a development that exceeds seven metres in height.

38. Further, even if I were to think them relevant, the extent of the impacts they suggest and the remedy sought for a redesigned development, in my view misapprehends the extent of impacts that might be attributed to permitting this dwelling with a height of seven metres or more. The kind of impacts complained of could easily be attributed to a wide range of existing or future residential use of the land along this part of the coast.
39. In fact, in contradiction to their submissions about the sensitivities and impacts, their own submissions highlight the nesting of the Hooded Plover still occurs within the dune notwithstanding the residential nature and existing development of Silverleaves. Further, the siting of the proposed dwelling is almost 18m from the coastal Crown land and foreshore dune system and does not seek to disturb any vegetation that forms an interface to this dune and its heavy screen of vegetation. This is a design response that is in keeping with the objectives of the DDO-1, the decision guidelines and relevant planning policy.
40. Further, as much as the objector applicants made submissions about the sensitivity of the environment, this land and its surrounds are zoned Township and a purpose of this zone is for residential land use. No permission is required for residential use under this zone. In times past a strategic decision was made by the planning authority that human activity on this land associated with residential living is acceptable.
41. As the Council observed the Silverleaves area is now a modified residential area. Within this residential area, the DDO-1 seeks to control the form of development and in this particular application, it is only whether the height of the proposed dwelling at more than seven metres is acceptable.
42. For these reasons, impassioned as they are, the submissions made by the objector applicants about environmental impacts arising from the development of this parcel of land for a residential use are not relevant.

Overlooking and views

43. For the same reasons about the ambit of discretion to be exercised under the DDO-1 and the permission being sought, the issues raised about overlooking to Ms Wilkinson's property are also not relevant. The DDO-1 does not call up or rely on overlooking as a relevant matter nor seek to invoke standards and objectives of Clause 54.
44. In terms of views, the design objectives of DDO-1 are to protect views from the coast to adjacent residential areas and from residential areas to the coast.
45. In its present condition, due to the rising ground of the foreshore dunes and the height of the Coastal Banksias and tea-trees on top of the dune system, there are no open views from the site to the edge of the coast or beach. With a building setback of almost 18m from the edge of the dune and its thick vegetation and the relative location with the two dwellings on Ms Wilkinson's property, views toward the coast, as they are now seen from the public domain or those from Ms Wilkinson's decks, yard areas and dwelling will be unaffected.

The Design response to the coastal setting

46. The objector applicants maintain that the height of the building is some 10m above ground level and that at this height it will be seen from beachside of the foreshore dunes, will be seen above the tree line and will tower over Ms Wilkinson's dwellings, her private open space areas and views from her decks and key habitable room windows.
47. The Council and Vimpat refer to the application plans to support their case that the top of the roof line of the main building is no more than 8.25m above ground level and that under the proposed conditions to remove the screen from the roof top balcony, the highest element of the building will be no more than 9.25m above ground level.
48. To assess the visibility of this building, the Council requested Vimpat erect two sight line poles on the lot. This was done and Council observed these poles from key vantage points. The Council states that the poles could not be seen from directly in front of the site due to the height of the dune vegetation. It acknowledges that more distant glimpses of the building may be visible from locations along the beach to the west of the subject land.
49. Although she did not have the advantage of the height poles, Ms Jackson's evidence accords with the submissions from the Council about the likely visibility of the building.
50. I have carefully reviewed the application plans. I agree with Vimpat and the Council that measurements from the scaled plans and dimensions indicate that the roof top height of the proposed building does not exceed 8.25m. Indeed it is my observation from the plans that for the most part, there is only a limited section at the northern end the building that will be above 8m height. For the most part the building height would be around 7.8m to 7.9m above ground level. Much of the variation to the height is due to the undulating ground levels.
51. The additional element to 9.25m will be the proposed balustrade on top of the roof. However to a large degree this balustrade will be hidden because it is set back from the building's western, eastern and southern side walls. It will be a lightweight element that will only be seen where glimpses of the northern edge of the building are visible.
52. When viewed directly from the street, whether at the property boundary or from the other side of Silverleaves Avenue, an assessment of sight lines indicates that the lower southern projecting elements of the building, at 6.5m, will screen views of the higher form that sits behind. At oblique angles this higher form may be visible however there will be filtering effects from boundary vegetation as well as screening from the projection of the forward section side walls. The articulation of the eastern façade along with the mix of façade finishes and window placements along both sides of the building will provide relief from excessive bulky built form of the higher elements.
53. Therefore, in terms of the massing and bulkiness of the building form, I do not find the height of the building to be unacceptable.
54. I accept the submissions of the Council and the evidence of Ms Jackson that the building will only be visible from the beach side of the foreshore dunes in oblique western views. Taking into account the 18m setback along with the depth and height of the dune vegetation, along with the 8.25m and 9.25m high building elements, my site inspection confirmed this position. Further, the Council photographs of the site when the height poles were in place support this position.

55. Taking all these matters into account, I agree that the visibility of this building will be limited to views from the west of the dune. This is primarily due to the sharp break in the foreshore dune vegetation in front of the adjoining three dwellings to the west of the site. It will certainly not be as visible as these dwellings nor the three storey, steeple form further to the west at No 101. This westerly glimpse of the proposed dwelling will be no more than a corner of the form and certainly would not be of the entire building. It will be neither offensive to the objectives of DDO-1 or out of character with the occasional glimpses of building form observed from other higher built form along Silverleaves Avenue. It will certainly be more concealed and less obvious than the adjoining dwellings to the west.
56. Given these findings I conclude the design objectives of DDO-1 have been met. There will be minimal impact to the coastal landscape from this proposed dwelling at the proposed heights of the overall building form and the roof top balustrade element. Views to and from the coastline and the amenity of these views will be protected and maintained, and as such the elements of seven metres or more above ground level will not have an adverse impact along the coastline.

COASTAL HAZARDS FROM CLIMATE CHANGE

57. As set out earlier, although not mandatory under DDO-1 for this development proposal, Vimpat's permit application included an assessment of coastal hazards and vulnerability.
58. As the Council noted in its submission, State and local planning policy [\[10\]](#) and the design objectives of DDO-1 seek to address this issue and ensure such risks are appropriately addressed. In urban infill situations such as this proposal, State policy directs that in planning for possible sea level rise, an increase in 0.2m to 1 in 100 year flood level by 2040 should be applied. The coastal hazard and vulnerability assessment identifies that Melbourne Water has established a projected flood level of 3.5m AHD for Western Port Bay. Other storm-tide levels for scenarios in 2030, 2070 and 2100 were also considered.

[\[10\]](#) Clauses 13.01-1, 21.05- and 21.07-3.

59. The assessment indicates that while the site may be subject to inundation under a variety of future storm-tide flood events, habitable areas of the proposed dwelling will be above these levels. Flooding from the lower reaches of Rhyll Inlet is considered the more likely flood scenario that would impact the site rather than impacts from direct coastal inundation because of the elevations of the foreshore dune. The assessment concludes that while the site may be subject to increased risk to flood events, its vulnerability to coastal hazards such as storm erosion is so low as to be insignificant.
60. The overall vulnerability of the site is rated to be insignificant to low under the proposed development and present day sea level rise and climate change scenarios. In respect to coastal hazards from future inundation scenarios, the elevated building form is considered sufficient to address this low level of vulnerability. I accept this conclusion.

CONCLUSION

61. For the reasons explained above, I conclude that the decision of the Responsible Authority to grant a permit should be affirmed. However my order will direct that the decision will in fact be varied. This is because during the course of the hearing the Council indicated that some of the wording within the Notice of Decision conditions contained clerical mistakes. To correct these errors I will therefore direct that a permit be issued subject to the conditions set out in the Appendix to this order.

Ian Potts
Senior Member

APPENDIX A

PERMIT APPLICATION NO: 140180

LAND: 127 Silverleaves Avenue, Silverleaves

WHAT THE PERMIT ALLOWS:

· Development of a building that is seven metres or more in height above ground level under the Design and Development Overlay – Schedule 1

in accordance with the endorsed plans and the permit conditions.

CONDITIONS

Requirements before development plans endorsed

- i. Before the development plans are endorsed for the development hereby approved under this permit, a full set of plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The set of plans must be drawn to scale with dimensions and three copies must be provided. The required set of plans must be consistent with the plans prepared by San Remo Building Design & Drafting, Revision G Dated 4/12/2005 but amended to show:
 - (a) Deletion of the 1.8m privacy screen on the roof top balcony, and where removed, replaced with a balustrade using materials that are satisfactory to the Responsible Authority;
 - (b) A full colour schedule for all external materials and finishes to be used in construction;
 - (c) A landscape plan as required by condition 3 of this permit; and

- (d) Civil Construction Plans as required by condition 5 of this permit.

Endorsed plans not to be altered

2. The development as shown on the endorsed plans must not be amended, altered or modified (whether or not in order to comply with any statute, statutory rule or for any other reason) without the further approval (in writing) of the Responsible Authority.

Landscape Plan

3. Before the development plans are endorsed, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and three copies must be provided. The landscaping plan must be prepared by a landscape architect. The plan must show:

- (a) The areas to be landscaped, including substantial landscaping within the site's frontage;
- (b) a survey (including botanical names) of all existing vegetation to be retained;
- (c) details of surface finishes of pathways and driveways;
- (d) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;

All selected species must be to the satisfaction of the Responsible Authority.

4. When the landscape plan required by condition 3, is approved and endorsed, it will form part of the planning permit.

Infrastructure

5. Before the works commence, detailed Civil Construction Plans must be prepared to the satisfaction of the Responsible Authority for endorsement by the Responsible Authority. All construction plans submitted for approval must be consistent with this permit and must conform with the requirements of all relevant servicing and road authorities, and in particular drainage, gas, water, sewerage, telephone and power authorities, VicRoads and Council. The Civil Construction Plans must be drawn to scale with dimensions and three copies must be provided. The Civil Construction Plans must show:

- (a) drainage of the subject land to the satisfaction of the Responsible Authority including:
 - (i) compliance with the *Best Practice Environmental Management Guidelines for Urban Stormwater* and *Bass Coast Shire Stormwater Management Plan (2003)* and any quality treatments proposed in accordance with these Guidelines.
 - (ii) a drainage absorption system designed to contain storm water drainage on site in accordance with the Land Capability Assessment report submitted with the application.

- (iii) consideration of any buildings and works and landscaping in relation to any detrimental impacts to underground drainage pipes located on any existing or proposed drainage or sewerage easement.
- (b) vehicle and pedestrian access and car parking to the satisfaction of the Responsible Authority including:
 - (i) concrete or paved driveway crossovers.
 - (ii) car parking areas and access ways to be designed, constructed and sealed with an all-weather seal or sealed pervious pavement (concrete pavers) to the satisfaction of the Responsible Authority.
 - (iii) building envelopes (existing or proposed), service authority assets on site, all easements (existing, proposed and implied) and other building, drainage and access restrictions / obstructions as applicable.

All works must be constructed or carried out in accordance with the endorsed plans.

6. Vehicle and pedestrian access and drainage to serve the subject land must be located, constructed and maintained free of defects to the satisfaction of the Responsible Authority including a concrete driveway cross-over in accordance with the Council's Standard Drawings.
7. No buildings or works must be constructed on any existing or proposed easement (including implied sewer, drainage, telephone, power and water easement) without the further approval in writing of the Responsible Authority and / or the relevant service provider.
8. The dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available, all wastewater from the dwelling must be treated and retained within the lot in accordance with the State Environment Protection Policy (Waters of Victoria) under the *Environment Protection Act 1970*.
9. The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply, with appropriate storage capacity, to the satisfaction of the Responsible Authority.
10. The dwelling must be connected to a reticulated electricity supply or have an alternative energy supply to the satisfaction of the Responsible Authority.

Melbourne Water

11. During the development of the land hereby permitted, pollution and sediment laden runoff must not be discharged directly or indirectly into Melbourne Water's drains or waterways.
12. The finished floor level for the Ground Floor of the dwelling must be constructed no lower than 3.1 metres to Australian Height Datum (AHD).

13. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.

Occupation of the development

14. The development hereby permitted must not be occupied until:
 - (a) the landscaping shown on the endorsed plans has been completed to the satisfaction of the Responsible Authority. Thereafter landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority. Any dead or dying plants must be replaced to the satisfaction of the Responsible Authority;
 - (b) all redundant infrastructure associated with the development is removed and the area reinstated to the satisfaction of the Responsible Authority; and
 - (c) all works required by the conditions of this permit have been completed to the satisfaction of the Responsible Authority.

Amenity

15. The development must be managed during construction so that the amenity of the area is not detrimentally affected through the:
 - (a) transport of materials, goods or commodities to or from the land;
 - (b) appearance of any building, works or materials;
 - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, litter, dust, waste water, waste products, grit or oil; and
 - (d) presence of vermin or animals.
16. No mud, dirt, sand, soil, clay, stones, oil, grease, scum, litter, chemicals, sediments, gross pollutants, animal waste or domestic waste must be washed into, allowed to enter or discharged to the stormwater drainage system, receiving waters or surrounding land and road reserves, during the construction works hereby approved, all to the satisfaction of the Responsible Authority.

Permit Expiry

17. This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two years of the issued date of this permit.
 - (b) The development is not completed within four years of the issued date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

--- End of Conditions ---