

## RED DOT DECISION SUMMARY

The practice of VCAT is to designate cases of interest as 'Red Dot Decisions'. A summary is published and the reasons why the decision is of interest or significance are identified. The full text of the decision follows. This Red Dot Summary does not form part of the decision or reasons for decision.

### VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

#### ADMINISTRATIVE DIVISION

#### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS. P3368/2007; P3369/2007;  
P3370/2007; P3372/2007; P3373/2007; & P3374/2007  
PERMIT APPLICATION NOS. 2006/227; 2006/351;  
2006/167; 2006/439; 2006/533; & 2006/355

#### IN THE MATTER OF

Gippsland Coastal Board v South Gippsland  
Shire Council

#### BEFORE

Helen Gibson, Deputy President  
Ian Potts, Member

<b>NATURE OF CASE</b>	Dwellings in Farming Zone; land subject to flooding and likely inundation due to sea level rise as a result of climate change
<b>REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE</b>	
<b>POLICY – interpretation or application of policy</b>	Location of rural living dwellings not related to agricultural uses in Farming Zone and outside settlement in coastal area – impact of sea level rise and risk of coastal inundation – impact of climate change – application of precautionary principle

#### SUMMARY

This case involved six permit applications for dwellings on lots 2-4 ha in area. The land is in an old crown township in a Farming Zone close to the coast. We find that the land is unsuitable for residential development. The overwhelming weight of planning policy discourages residential development in this area. The dwellings are not reasonably required for the operation of agricultural activities conducted on the subject land and consequently are contrary to the purpose of the Farming Zone. The cumulative impact of the development will adversely affect the ongoing use of the area for productive agriculture and detract from the visual quality of the landscape contrary to policy and the Environmental Significance Overlay affecting the land. The construction of dwellings on land subject to inundation is contrary to policy and not a good planning outcome.

The case is of particular interest because of potential sea level rises due to the effects of climate change. We conclude that sea level rise and risk of coastal inundation are relevant matters to consider in appropriate circumstances. We accept the general consensus that some level of climate change will result in extreme weather conditions beyond the historical record that planners and others

rely on in assessing future potential impact. The relevance of climate change to the planning decision making process is still in an evolutionary phase. Each case concerning the possible impacts of climate change will turn on its own facts and circumstances. However, in the present case, applying the precautionary principle, we consider that increases in the severity of storm events coupled with rising sea levels create a reasonably foreseeable risk of inundation of the subject land and the proposed dwellings, which is unacceptable.

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**CATCHWORDS**

Residential development in Farming Zone – coastal area – land outside settlement boundaries – application of precautionary principle – effect of climate change – risk of inundation due to sea level rise

**APPLICANT**

P3368/2007; P3369/2007; Gippsland Coastal Board  
P3370/2007; P3372/2007;  
P3373/2007; & P3374/2007

**RESPONSIBLE AUTHORITY** South Gippsland Shire Council

**RESPONDENT**

P3368/2007 & P3370/2007 Leonie Lyne Building Designer  
P3369/2007 Chris and Ian Dubignon  
P3372/2007 R La Greca  
P3372/2007 S J Allsop  
P3374/2007 Estate of N M Semmens

**SUBJECT LAND**

P3368/2007 CA 38 Grip Road Toora  
P3369/2007 Lot 107 Irelands Road Toora  
P3370/2007 CA 34 Acklands Road Toora  
P3372/2007 Lot 2 Toora Jetty Road Toora  
P3373/2007 CA 37 Grip Road Toora  
P3374/2007 CA 39 Grip Road Toora

**WHERE HELD**

Melbourne

**BEFORE**

Helen Gibson, Deputy President  
Ian Potts, Member

**HEARING TYPE**

Hearing

**DATE OF HEARING**

13 May 2008

**DATE OF ORDER**

29 July 2008

**CITATION**

Gippsland Coastal Board v South Gippsland  
SC & Ors (No 2) (includes Summary) (Red  
Dot) [2008] VCAT 1545

## ORDER

- 1 The decisions of the Responsible Authority are set aside.
- 2 In permit applications 2006/227, 2006/351, 2006355, 2006/167, 2006/439 and 2006/533 no permits are granted.

Helen Gibson  
**Deputy President**

Ian Potts  
**Member**

## APPEARANCES

For Applicant

Mr Mark Bartley, solicitor of DLA Phillips Fox.

For Responsible Authority

Ms Adeline Lane, solicitor of Maddocks.

She called as a witness:

- Mr Andrew Prout, Civil Engineer, of URS Australia Pty Ltd.

For Respondents

In P3368/2007, P3370/2007, P3372 & P3373/2007, Mr Gary Chisholm, town planner of Beveridge Williams. He called as a witness:

- Mr John Lawry, wastewater consultant, of EWS Pty Ltd.

In P3369/2007 Mr Ian Dubignon in person.

In P3374/2007 Mr Leigh Summers and Mr Gary Whelan.

## INFORMATION

Description of Proposal

The permit applications are for the use and development of six separate lots of land each for one dwelling.

Nature of Application

In all matters Section 82 *Planning and Environment Act 1987*

Zone and Overlays

Farming Zone (Clause 35.07)

Land Subject to Inundation (Clause 44.04)

Environmental Significance Overlay 3 (Clause 42.01 - Schedule 3)

Permit triggers

Clause 35.07-1 (use of a lot for dwelling).

Clause 42.01-2 (buildings and works).

Clause 44.04-1 (buildings and works).

Inspection

16 June 2008

## REASONS

### INTRODUCTION

- 1 Each of these applications is to review the decision of the council to grant a permit for a dwelling on crown allotments in the Grip Road area, Toora. Each of the lots is approximately 3 – 4 hectares in area.
- 2 The township of Toora is located approximately 2.5 kilometres from the coast on the northern side of Corner Inlet. The area south of Toora in the vicinity of Grip Road is made up of more than 100 old crown allotments originally created in the 1890's. Most of the allotments have been held as part of larger tenements until recently when a number have been sold into separate ownership. There are now 20 dwellings in the area.
- 3 The Grip Road area is open farmland outside the developed area of the Toora township and in a Farming Zone. It is low-lying, prone to high water tables and water logging, subject to flooding, and is at risk of inundation from sea level rise and coastal subsidence. It has been identified as potentially containing coastal acid sulphate soils.
- 4 Our finding is that this land is unsuitable for residential development. The overwhelming weight of planning policy discourages residential development in this area. These dwellings are not reasonably required for the operation of agricultural activities conducted on the subject land and consequently are contrary to the purpose of the Farming Zone. The cumulative impact of the development will adversely affect the ongoing use of the area for productive agriculture and detract from the visual quality of the landscape contrary to policy and the Environmental Significance Overlay affecting the land. The construction of dwellings on land subject to inundation is contrary to policy and not a good planning outcome. This area is also at risk of inundation due to sea level rises resulting from climate change.
- 5 At every level therefore, good planning would dictate that these permits be refused. The difficulty is that by refusing these permits, the plans of individual owners and their economic stake in the land are adversely affected.
- 6 The submissions put to us on behalf of individual landowners focussed on the attributes of the land for rural residential development, the unsuitability of individual lots for agricultural use and the personal aspirations of owners. It may be personal factors such as these that have led the council to deal with the Grip Road area differently to the way it treats other old and inappropriate subdivisions within the municipality.<sup>1</sup>

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<sup>1</sup> For example, at a meeting on 15 November 2006, the South Gippsland Shire Council resolved to support the South Gippsland Planning Scheme when recommendations are made to refuse development of new dwellings in the old crown township areas *except Grip Road* where applications fail to comply with

- 7 It can seem harsh to discount personal circumstances, but the role of decision makers in planning is clearly set out in clause 11.01 of the State Planning Policy Framework:
- The purpose of State policy in planning schemes is to inform planning authorities and responsible authorities of those aspects of State level planning policy which they are to take into account and give effect to in planning and administering their respective areas. It is the State Government's expectation that planning and responsible authorities will endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 8 To achieve net community benefit, there will be occasions when the interests of individuals must take second place to the broad interests of the community as a whole.
- 9 With respect to sustainable development, clause 11.01 directs that:
- Planning, under the Planning and Environment Act 1987, is to encompass and integrate relevant environmental, social and economic factors. It is directed towards the interests of sustainable development *for the benefit of present and future generations*, on the basis of relevant policy and legislation. ... (Tribunal's emphasis)
- 10 For this reason, it is imperative that planning decision makers are guided by relevant policy. It is not appropriate to exempt individual decisions from the application of policy because it is only through the consistent application of policy that objectives leading to net community benefit and sustainable development will be achieved.
- 11 Our decision to refuse planning permits in each of these applications is primarily based on policy. The key policy issues relate to the Farming Zone provisions, planning for coastal areas and the impact of climate change. We will now address each of these issues.

## **AGRICULTURE AND FARMING ZONE**

- 12 We were told that the Grip Road area was originally subdivided in the 1890's in order to be used as small farming lots. However, the allotment size proved to be too small for viable agricultural use and they were subsequently bundled together and reallocated as larger land holdings. The land has been used for agricultural purposes since that time. It is presently an active farming area which is used for cropping and grazing. Our inspection confirmed this. Notwithstanding the fragmentation of some of the larger land holdings into separate ownerships, it seems that the practice of leasing land for agricultural use is not uncommon.

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the existing policy framework of the South Gippsland Planning Scheme. It resolved that applications for development in the Grip Road area continue to be assessed on a case by case basis.

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- 13 The LPPF in the South Gippsland Planning Scheme acknowledges the importance of agriculture, which has always been the major industry within the Shire. Strategies to achieve the scheme's objective to maintain a viable and sustainable agricultural industry as the cornerstone to the Shire's economy and its future well-being include<sup>2</sup>:
- Protect high quality agricultural land for primary production.
  - Discourage rural living in high quality agricultural areas.
  - Discourage the development of houses in old Crown township areas except where such lots form part of a sustainable farm or are adjacent to existing urban/serviced areas.
- 14 The Farming Zone aims to provide for the use and retention of land for agriculture. A permit is required for a dwelling on a lot size of less than 40 hectares. There are a range of decision guidelines that must be considered before granting a permit. With respect to dwelling issues, they include (among other things)<sup>3</sup>:
- Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
  - Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.
  - The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.
- 15 It is not just the subdivision of land or the dispersal of large holdings into separate ownerships that result in the loss or fragmentation of productive agricultural land. When land is converted to rural living it is often likely to be lost to agriculture. As noted, it is common for vacant paddocks to be leased to farmers, which means they are kept in production even though in separate ownership. But construction of a dwelling means there is less likelihood that land not occupied by the curtilage of the dwelling will be separately leased or used for farming, especially when the lots are only 2-4 hectares as found in the Grip Road area.
- 16 We are not satisfied in any of these cases that the proposed dwellings are reasonably required for the operation of agricultural activity conducted on the land. Indeed, it was admitted by Mr Chisholm that approval of the dwellings would continue a trend of allowing for rural living lots in the area generally. In terms of the potential for the proposals to lead to a concentration or proliferation of dwellings in the area, he considered that *"this particular area has probably passed the point of no return in regards to the change from rural to rural living."*
- 17 The council too was of the view that fundamentally the Grip Road area is a rural residential area and submitted that the subject land is suitable for

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<sup>2</sup> Clause 21.04-2

<sup>3</sup> Clause 35.07-6



dwellings having regard to the lot size, rural residential character of the area and proximity to Toora. It suggested that any potential for the proposals to lead to a concentration or proliferation of dwellings in the area *“is triggered by the underlying subdivision pattern, disparate ownership and established rural residential character, not the approval of any of these specific proposals per se.”*

- 18 We disagree with this assessment for several reasons. According to information supplied by the council there are 20 dwellings in the area, half along Grip Road, and three other permits for dwellings not yet constructed. If there are over 100 allotments in this immediate area, there is still less than a quarter that have been developed. We consider that the character of the area remains one of open farming land rather than a developed rural residential area. However, approval of an additional 6 dwellings would erode that character and begin to tip the balance. Moreover, if they were approved, it would be difficult to refuse further applications. We therefore consider that there is a strong potential for these proposals to lead to a proliferation of dwellings in the area, which will further detract from the use of land in the area for productive agriculture.
- 19 Despite the views or wishes of council and the permit applicants, the Grip Road area is not land zoned for rural living use or identified as suitable for this purpose in any policy or strategy. Quite the reverse. The land is in a Farming Zone. Introduction of the Farming Zone has made it tougher to obtain permits for dwellings but this is not unintended.
- 20 Victoria’s agricultural land is a valuable and finite resource that makes a significant contribution to the economy of this State and individual municipalities. Its significance is recognised in clause 17.05 of the SPPF. It needs to be retained. One of the purposes of the Farming Zone is to ensure that non- agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture. It is not a purpose of the zone to provide for residential use unrelated to agricultural uses, which is a reason why a dwelling on a lot less than 40 hectares<sup>4</sup> requires a permit and must respond to the decision guidelines for dwellings in the zone. Undoubtedly, these stringent requirements may affect the value of land in a Farming Zone. This may have positive benefits for farmers seeking to expand their holdings and improve productivity but negative effects for the owners of small lots. Nevertheless, effect on value is not a reason for granting a permit when the purpose and decision guidelines of the zone are not met.
- 21 Our conclusion is that the proposals for a dwelling on each piece of land are inconsistent with the purpose and decision guidelines of the Farming Zone and should be refused on this basis alone. As it is, the proposals also conflict with coastal policy and are unacceptable from an environmental perspective. We will now deal with each of these issues.

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<sup>4</sup> Or other area specified in a schedule to the zone

## DEVELOPMENT OUTSIDE SETTLEMENT AREAS

- 22 The State Planning Policy Framework sets out planning policy and objectives for Victoria's coastal areas. In particular, clause 15.08-2 provides that planning for coastal areas should (among other things):
- Identify a clear settlement boundary around coastal settlements to ensure that growth in coastal areas is planned and coastal values protected. Where no settlement boundary is identified, the extent of a settlement is defined by the extent of existing urban zoned land and any land identified on a plan in the planning scheme for future urban settlement.
  - Direct residential and other urban development and infrastructure within defined settlement boundaries of existing settlements that are capable of accommodating growth.
  - Avoid linear urban sprawl along the coastal edge and ribbon development within rural landscapes and preserve areas between settlements for non-urban use.
  - Protect non-urban areas for their visual landscape, environmental, agricultural and recreational qualities.
  - Encourage opportunities to restructure old and inappropriate subdivisions to reduce development impacts on the environment.
  - Identify and avoid development in areas susceptible to flooding (both river and coastal inundation), landslip, erosion, coastal acid sulfate soils, wildfire or geotechnical risk.
  - Avoid development within the primary sand dunes and in low lying coastal areas
- 23 There is no specific local policy in the LPPF relating to coastal areas. However, pressure for development along the coast is acknowledged as a key influence<sup>5</sup>. Actions for implementation include the development of Local Structure Plans for each small town (including Toora) to coordinate future development in and around the towns, and investigating the need to apply a restructure overlay over the land south of Toora in the vicinity of Grip Road<sup>6</sup>.
- 24 To date, a Local Structure Plan has not been developed for Toora. Nor has a restructure overlay been applied to the Grip Road area despite recommendation to this effect by a planning panel in 1992<sup>7</sup>. There has been no settlement boundary established either, but clause 15.08-2 provides that in such circumstances the extent of a settlement is defined by the extent of existing urban zoned land. The Grip Road area is in a Farming Zone not an urban zone.

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<sup>5</sup> Clause 21.02-1

<sup>6</sup> Clause 21.04-10

<sup>7</sup> Panel report for South Gippsland Planning Scheme Amendment L20 (1992) pp 28-29

- 25 The principle that growth and residential development in coastal areas should be directed to existing settlements is further emphasised and expanded upon in the Victorian Coastal Strategy 2002, the Coastal Action Plan<sup>8</sup> and Coastal Spaces Recommendations<sup>9</sup>. We find it is not necessary to delve into these documents in any detail because the relevant policy is clearly set out in clause 15.08.
- 26 The council submits that based on the qualities of the Grip Road area, which it says distinguish this part of the Shire from other areas in which crown township subdivisions can be found, any interpretation of state policy that would treat the Grip Road area as necessarily falling outside the township boundary must be seriously questioned. We disagree with this submission.
- 27 If the council considers that the boundary of Toora township should not terminate at the edge of the urban zoned land, but include the Grip Road area, this needs to be implemented by way of a planning scheme amendment. Until that occurs, there is no justification for treating the Grip Road area as a rural residential area. As the planning controls and planning policy for coastal areas currently stand, treating the Grip Road area as a de facto rural living zone is contrary to both the actual zone provisions and coastal policy.
- 28 In our view, the Grip Road area, lying as it does between the township of Toora and Corner Inlet, must be characterised as a coastal area to which the objectives and strategies set out in clause 15.08 of the SPPF apply. Clause 15.08 discourages residential development outside defined settlement boundaries. These permit applications cannot be considered in isolation. They are part of a larger area that should be treated consistently. The whole area is outside defined settlement boundaries. We consider that approval of dwellings on the subject lots and other lots within the Grip Road area would be contrary to this aspect of coastal policy.
- 29 Cumulatively, we find that dwellings in the Grip Road area will erode the visual landscape, environmental and agricultural qualities of this area, which is also contrary to coastal policy.
- 30 Further, we note that it is policy to avoid development in areas susceptible to flooding and in low-lying coastal areas. A Land Subject to Inundation Overlay covers all the subject land. It is clearly in a low-lying coastal area and potentially susceptible to inundation. Development for dwellings will be contrary to this aspect of policy too.
- 31 Equally importantly, the development will be at risk of inundation due to possible rises in sea levels because of global warming. We will now deal with the extent to which this issue counts against the grant of permits for dwellings.

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<sup>8</sup> *Integrated Coastal Planning for Gippsland – Coastal Action Plan*, Gippsland Coastal Board (2002) section 5

<sup>9</sup> *Coastal Spaces Recommendations*, Department of Sustainability and Environment (2006)

## SEA LEVEL RISE

- 32 In the grounds of objection raised by the Gippsland Coastal Board, Mr Bartley identified two grounds of environmental concern in respect to the proposed dwelling developments:
- They pose an unnecessary and unacceptable risk to the coastal environment; and
  - They are inappropriate in light of climate change studies undertaken by the CSIRO on behalf of the Board.
- 33 His submissions go on to elaborate on these grounds, relying on studies undertaken by the CSIRO that have attempted to quantify the level of sea level rise that may occur under increased wind surges and more generally as a result from sea level rises in combination with storm surges.<sup>10</sup> We note that these studies are of a preliminary nature as to the effects of climate change.<sup>11</sup> Nevertheless, the studies indicate that whatever the degree of impact, greatest wind and storm surge effects will be felt in the northern portion of Corner Inlet, including the coastline of the Grip Road area south of Toora.

### Is sea level rise a valid consideration?

- 34 The first question we have asked ourselves is how relevant is the matter of sea level rise and risk of coastal inundation?
- 35 The specific consideration of sea level rises, coastal inundation and the effects of climate change are not set out within the Victorian Planning Provisions. This is to be compared to the situation in South Australia as set out in *Northcape Properties Pty Ltd v District Council of Yorke Peninsula*<sup>12</sup>. In the *Northcape* case, development planning policy specifically calls for consideration of sea level rises in the first 100 years of a development's life.<sup>13</sup> The Supreme Court of South Australia upheld the relevant planning authority's decision to refuse development permits on the grounds of failing to account for recession of the coastline under projected rising sea levels. This decision had the benefit of complex scientific evidence as to the effects sea level rise.
- 36 In this matter, we have neither the benefit of specific planning provisions or policy relating to coastal recession or sea level rise. However, section 60(1)(e) of the *Planning and Environment Act 1987* sets out that:

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<sup>10</sup> *Climate Change in Eastern Victoria Stage 2 Report: The effect of climate change on storm surges*, CSIRO (June 2005); and *Climate Change in Eastern Victoria Stage 3 Report: The effect of climate change on extreme sea levels in Corner Inlet and the Gippsland Lakes*, CSIRO (August 2006).

<sup>11</sup> At page 26 of the Stage 3 Report, it is noted that the analysis is intended to 'provide only broad guidance as to the relevant effects of the different climate change scenarios on the degree of inundation that may occur'.

<sup>12</sup> [2008] SASC 57 (4 March 2008).

<sup>13</sup> *Ibid* at [13] and [14].

60(1) Before deciding on an application, the responsible authority must consider—

....

- (e) any significant effects which the responsible authority considers the use or development may have on the environment *or which the responsible authority considers the environment may have on the use or development.*  
(Tribunal's emphasis)

37 While sea level rise may not result in such dramatic effects as Mr Bartley's submitted photos of North American coastal recession, the CSIRO studies are sufficient to demonstrate that rising sea levels are likely and will have an influence on the future shape of the Victorian coastline. It is our view that the requirement of section 60(1)(e) is sufficiently broad to include the influence that climate change and coastal processes may have on the proposed developments.

38 Given that it is legitimate to consider the issue, what then arises is the question as to what extent may the sea level rise and will it have the potential to impact on the developments to such a degree to warrant refusal? It is these matters that we next consider.

#### **What is the extent of sea level rise?**

39 We do not have the benefit of expert evidence other than the CSIRO reports. These reports set out a number of factors which may influence rises in storm surges, erosion of the coastline and inundation of the subject land. The August 2006 study reports that:

- Climate change forecasts indicate a possible decrease in the number of storm events, but an increase in their intensity and hence rainfall and other extreme weather conditions. There is an expectation that storm events will be more severe.
- Storm surge levels may be 0.3m higher under climate change conditions within the next 100 years.
- There is an acknowledged level of uncertainty as to what the conditions will be like and the time period over which climate shifts may occur.

40 It is not our intention to adopt these findings. They have not been subject to any rigorous examination in this proceeding. Nevertheless, we have had regard to the broader picture that there is a general consensus that some level of climate change will result in extreme weather conditions beyond the historical record that planners and others rely on in assessing future potential impacts. It is, in our view, no longer sufficient to rely only on what has gone before to assess what may happen again in the context of coastal processes, sea levels or for that matter inundation from coastal or inland storm events.

**Is the potential risk of sea level rise acceptable?**

- 41 Given what we have set out above, how then can we address the potential risk issues contained within the Board's grounds of objection? Mr Bartley urges the Tribunal to take a precautionary approach. We take this to be a reference to the precautionary principle<sup>14</sup>. The precautionary principle requires, amongst other matters, a gauging of the consequences and extent of intergenerational liability arising from a development or proposal and if found to be warranted, appropriate courses of action to be adopted to manage severe or irreversible harm.
- 42 We accept that there is growing evidence of sea level rises and risks of coastal inundation. While we acknowledge that there is uncertainty as to the magnitude of the sea level rise, it is evident that the consequences of such rises in level will be complex due to the dynamic nature of the coastal environment. Put plainly, rising sea levels are to be expected. The range of impacts may well be beyond the predictive capability of current assessment techniques. In the face of such evidence, a course of action is warranted to prevent irreversible or severe harm.
- 43 Mr Bartley asserts that with rising mean sea levels and storm surges the sea wall along this portion of the coast will be under attack. If it fails, low lying areas, such as the subject land, will be at greater risk of inundation. Alternatively, it is the Board's position that with increasing risk there will be pressure to increase the degree of protection afforded by the sea wall. In either case, there is a longer term risk of intergenerational liability that can and should be avoided in the absence of no imperative or higher order need for the development that overrides these potential liabilities.
- 44 Having inspected the subject land and a portion of the adjoining coast, it is apparent to us that the sea wall amounts to no more than what was described by Mr Bartley, an earthen wall. It is our view, informed by the site inspection and submissions of other parties, that this 'sea wall' is likely to have been a part of overall works to improve the drainage condition of the subject land, being constructed along with drains to move and control floodwater, and win coastal flood plain for farming purposes.
- 45 While much is made of the historical nature of the structure by Messrs Dubignon and Whelan, this gives us no comfort as to its capacity to protect the land from future sea level conditions and storm events. Its nature and historical purpose heighten our concern that a reliance on this structure for future protection from coastal inundation goes beyond its intended purpose. We consider that with increases in the severity of storms events coupled with rising sea levels, there exists a real risk of dynamic changes in coastal conditions and the failure of this supposed 'sea wall'. What follows from

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<sup>14</sup> The precautionary principle is included in the Inter-Governmental Agreement on the Environment. It states that where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environment degradation. Clause 11.03-2 of the SPPF establishes that this National agreement forms part of the framework for decision making concerning the environment.

this, in our view, is that there is a reasonably foreseeable risk of inundation to the subject land and the proposed dwellings. In the face of no urgent or overriding need for the dwellings to be located on this land, we cannot say that such a longer term and reasonably foreseeable risk is acceptable.

### **Conclusion about sea level rise**

- 46 We conclude that sea level rise and risk of coastal inundation are relevant matters to consider in appropriate circumstances. We accept the general consensus that some level of climate change will result in extreme weather conditions beyond the historical record that planners and others rely on in assessing future potential impact.
- 47 The relevance of climate change to the planning decision making process is still in an evolutionary phase. Each case concerning the possible impacts of climate change will turn on its own facts and circumstances.
- 48 In the present case, we have applied the precautionary principle. We consider that increases in the severity of storm events coupled with rising sea levels create a reasonably foreseeable risk of inundation of the subject land and the proposed dwellings, which is unacceptable. This risk strengthens our conclusion that this land and land in the Grip Road area generally is unsuitable for residential development.

### **FLOODING ISSUES**

- 49 Apart from possible inundation due to sea level rises, there are more immediate issues associated with inundation of the subject land from flooding. The most obvious is the potential flooding of the dwellings and access ways. Another risk is the failure of on-site wastewater management systems. These are all matters to be considered under the Land Subject to Inundation Overlay<sup>15</sup> and the use of dwellings in a Farming Zone<sup>16</sup>.
- 50 In our view, the risks presented in these applications go beyond an acceptable degree of reasonableness. We do not accept the evidence of Mr Lawry that elevated mounds and complex systems for wastewater disposal are a satisfactory design to adopt in a floodplain, especially when the degree of inundation is yet to be sufficiently defined and there remains a real possibility that forward projections drawn from historical records may underestimate the magnitude of such events.
- 51 Similarly, we are not satisfied as to the protection and safety of dwellings and accessways to and from such dwellings in times of flood, and the impost this may have on the community and more specifically on emergency services.<sup>17</sup>

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<sup>15</sup> Clause 44.04-6 Decision guidelines.

<sup>16</sup> Clause 35.07-2.

<sup>17</sup> These are matters to be considered under Clause 44.04-6. A requirement for the use of land for a dwelling in the Farming Zone (clause 35.07-2) is that access to the dwelling must be provided via an all-weather road. This means a road should be above flood level, which is not the case with all roads in the Grip Road area.

- 52 The decision guidelines of the Land Subject to Inundation Overlay call for consideration of locating developments on alternative sites where possible. It is our view that the subject land's floodplain environment is not conducive to the proposed development, considering the associated risks we have outlined in regard to on-site wastewater management and general flooding issues. Better alternatives are available on land which is zoned for rural living and which is not subject to flooding.

### **CONCLUSION**

- 53 Aside from the policy issues of locating rural living dwellings on Farming Zone land and outside settlements in coastal areas, we conclude that the impacts that the environment may have on these dwellings are unacceptable and make the land unsuited for the proposed development. For all these reasons, we conclude that the decisions of the responsible authority should be set aside and no permits should be granted.

Helen Gibson  
**Deputy President**

Ian Potts  
**Member**