

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1440/2009
PERMIT APPLICATION NO. P553/08

CATCHWORDS

Section 77 of the Planning & Environment Act 1987; Casey Planning Scheme; Residential 1 Zone; Two Dwellings; Tooradin Township; Neighbourhood Character; Coastal Hazard Vulnerability Assessment.

APPLICANT	E & G Owen
RESPONSIBLE AUTHORITY	Casey City Council
SUBJECT LAND	No. 1 Lyne Street, Tooradin
WHERE HELD	Melbourne
BEFORE	Margaret Baird, Senior Member
HEARING TYPE	Hearing
HEARING DATE	10 March 2010
DATE OF ORDER	23 March 2010
CITATION	Owen v Casey CC [2010] VCAT 522

ORDER

- 1 The decision of the Responsible Authority in relation to permit application no. P553/08 is affirmed. A permit is not granted and no permit is to be issued.

Margaret Baird
Senior Member

APPEARANCES

For Applicant	Mr J McCaffrey, consultant town planner.
For Responsible Authority	Mr R Stevenson of Hansen Partnership.

INFORMATION

Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act 1987</i> .
Description of Proposal	Construction of a double storey dwelling and a single storey dwelling. Unit 1, to the front, would be double storey with a double car garage. It would contain four bedrooms. Unit 2, to the rear, would be single storey with its double garage accessed from a second crossover and driveway. It would contain three bedrooms. Both dwellings would be finished in brick with weatherboard to the upper level of Unit 1.
Zone and Overlays	Residential 1 Zone.
Reasons Permit Required	Clause 32.01 for construction of three dwellings. Clause 55 applies.
Land Description	<p>The site is located on the south side of Lyne Street. It has an area of 644 square metres, a frontage of 20 metres and a depth of 32.2 metres. The land is vacant, having been filled some years ago in association with a subdivision permit. An easement extends along the rear boundary.</p> <p>Land to the east is vacant (this is land that was also considered in <i>Owen v Casey CC</i> [2005] VCAT 1134). To the south is a site owned by the City of Casey and used for depot purposes. A dense row of melaleucas is along the common boundary with the review site. To the west of the review site is a municipal reserve including tennis courts. To the north of the site is a dwelling that also has a frontage to the South Gippsland Highway as well as several other properties with vegetation. Several dwellings face Lyne Street to the west/north-west of the site.</p>
Cases Referred To	<p><i>Owen v Casey CC</i> [2005] VCAT 1134.</p> <p><i>Owen v Casey CC</i> (includes Summary) (Red Dot) [2009] VCAT 1946.</p> <p><i>W & B Cabinets v Casey CC</i> [2009] VCAT 2072.</p>
Tribunal Inspection	The site was known to the Tribunal from a previous Application (<i>Owen v Casey CC</i> [2005] VCAT 1134) and subsequent visits to and through Tooradin.

REASONS

What is this review about?

- 1 Approval is sought by E & G Owen to construct two units on lot in Lyne Street, Tooradin. The Casey City Council refused to issue a planning permit on multiple grounds that focus on the design's response to neighbourhood character, climate change and internal amenity considerations. All grounds are challenged by the Applicant including climate change for which a coastal hazard vulnerability assessment has been prepared.¹ Having considered all submissions, assisted by my knowledge of the site and locality, I will affirm the Council's decision for the reasons that follow.

What are the physical and planning contexts for an assessment?

- 2 I determined a previous application involving the review site, and abutting two vacant lots, in 2005.² The relevant themes in the policy framework in the Scheme relating to residential development, the Tooradin township and the Westernport coast remain essentially the same³ as is the site's physical context. I return to these matters shortly. Significantly, State policies relating to the climate change have been introduced more recently. I discussed those policies in my decision regarding the preliminary issue.⁴
- 3 While the review site is within the Tooradin township and zoned Residential 1, the policy context does not envisage a significant intensity of development. Diversity in housing opportunities is encouraged but the same outcomes as might be expected in other parts of the township and other parts of Casey are not anticipated in this part of Tooradin. As I observed in the previous case⁵, and noted by Member Keaney in *W & B Cabinets*⁶, there are distinct areas within Tooradin where different expectations apply.
- 4 The need for housing diversity and encouragement of infill development does not over-ride character outcomes in the context of this site where policy seeks modest growth that is respectful of the existing context. This is a coastal village with a discernible character to which new development must respond.⁷ That character includes low-scale and generally unobtrusive residences of lightweight construction materials on lots typically of some 1,000 square metres with generous setbacks and well spaced buildings facilitating coastal vegetation retention as described in *W & B Cabinets*.⁸ It is assisted by the gravel roads and wide informal road reserves. The design response in the newer parts of Tooradin may be different but, as also found in *W & B Cabinets*, a typically suburban outcome is not desired by policy to be inserted into the older parts of the coastal township.

¹ That arises from my decision on a preliminary issue in *Owen v Casey CC* (includes Summary) (RedDot) [2009] VCAT 1946.

² *Owen v Casey CC* [2005] VCAT 1134.

³ Clauses 11, 12, 14.01, 15.01, 15.02, 15.08, 16.02, 19.03, 21, 22.02, 22.04, 22.05, 22.15, 55 and 65.

⁴ *Owen v Casey CC* (includes Summary) (RedDot) [2009] VCAT 1946 at paragraphs 8 – 14 inclusive.

⁵ *Owen v Casey CC* [2005] VCAT 1134 at paragraphs 8 – 10 inclusive.

⁶ *W & B Cabinets v Casey CC* [2009] VCAT 2072 at paragraphs 41-46.

⁷ I have noted the description in the 2007 Neighbourhood Character Study. The site in Precinct 2 Evan Inlet Foreshore.

⁸ *W & B Cabinets v Casey CC* [2009] VCAT 2072 at paragraph 54.

Is the proposal respectful of neighbourhood character?

- 5 A critical issue in this proceeding is the scale and positioning of the built mass associated with the proposed development and whether the two dwellings sufficiently respect the character outcomes being pursued by the Council through the Scheme.
- 6 It may be possible to achieve two quite small dwellings on this confined site but if three to four bedroom accommodation is desired then the land can only achieve one dwelling while respecting the character of the locale. I reach that conclusion because I agree with the Council's submission that the extent of development proposed in this permit application is too great. In the previous case, I was critical of the lack of spacing between dwellings and concerns about hard surfaces arising from multiple crossovers and driveways that limit planting opportunities. I also referred to the matter of spacing around dwellings for planting. The current proposal involves only two dwellings on one lot, but it demonstrates many of the same features that fail to respond to the character of the area and policy context.
- 7 My main criticisms focus on the intensity of the development in terms of building footprint, minimal setbacks between the dwellings, construction to site boundaries and little room for meaningful landscaping around the dwellings. The outcome would be too much building on a lot that is much smaller than most in the environs even though compliance is achieved with a number of numerical Clause 55 standards such as B17. More specifically, I am concerned about the combined impact of the following elements:
- At a ground level front setback 4.1 – 5.8 metres, and upper level front setback 6 – 6.7 metres, Unit 1 is too close to the street with insufficient setback to absorb the two storey form.
 - Unit 1's fairly prominent front garage, and dual concrete driveways to double garages, together increase paving and hard surfaces; this departs from the obvious pattern of informality and limits the ability to plant vegetation to contribute to the coastal/landscaped character.
 - The units' elevated position as a result of fill and raised floor levels accentuates the extent to which the intense form would be perceived in the public realm. Unit 1 would be above 7.5 metres referred to in Clause 22.04 and, even though a modified roof profile could reduce the height, the problem is a prominent two storey form on a filled lot.
 - There is limited spacing between the units.
 - Unit 2 is constructed boundary to boundary with a 2.65 – 3 metre setback from the southern boundary. The dense melaleuca row along the southern boundary would be impacted, if not fully destroyed, by pruning and/or suburban style fencing.
 - The use of brick to the ground level of both dwellings contrasts with the generally lightweight appearance of dwellings and accentuates the suburban design approach.

- 8 Some of the criticisms identified by the Tribunal in *W & B Cabinets* are similar to those I find in the design before me even though the facts of each case can clearly be distinguished, such as in terms of lot size and number of proposed dwellings.
- 9 Mr McCaffrey drew attention to the site's relationship to public land and its somewhat isolated context in terms of abutments and the sideage/rear of properties on the north side of Lyne Street. These elements of the site's context do not change my view that the development outcome is unacceptable and a more respectful solution is required involving less built area. The small lot size and easement limit the amount of floor area that can be achieved while respecting the area's character.
- 10 I have also considered modifications referred to by Mr McCaffrey at the hearing such as minor adjustments to setbacks. These could offer some marginal improvement but I do not think they overcome the primary concerns arising from the combined size of the two dwellings that are sought to be accommodated on a relatively small lot.
- 11 For these reasons, I am not persuaded the proposal sufficiently meets the objectives of Clauses 55.02-1 and 55.03-1 of the Scheme.

Is the coastal hazard vulnerability assessment adequate?

- 12 At my direction that a coastal hazard vulnerability assessment would be required⁹, the Applicant decided to have an assessment prepared. The assessment, dated December 2009, addressed the review site and abutting two vacant lots to the east that are in the same ownership and were considered in the previous case heard by me in 2005.
- 13 Mr Stevenson submitted the assessment does not go far enough to address the design included in the permit application and drew attention to recommendations that "*the design process consider a detailed risk analysis of the relevant individual components of the design as a precautionary approach*". Mr McCaffrey explained that this recommendation relates to section 6.2.2. of the report. He submitted the report demonstrates the site has a low vulnerability to coastal flooding from the western arm of the inlet channel from 2050 onwards and the requirements of Melbourne Water¹⁰ with respect to floor levels of 800mm above ground level can be achieved.
- 14 I have considered the assessment. While I appreciate the extent of work undertaken, I am concerned that the report does not address the stated risk of inland or riverine flooding in addition to coastal flooding. I am aware that Melbourne Water has identified a level of 3.5 metres AHD as providing "*a floor level freeboard margin against current flood levels and the anticipated incremental rises in mean sea level*" based on its preliminary work.

⁹ Owen v Casey CC (includes Summary) (RedDot) [2009] VCAT 1946.

¹⁰ Based on its latest letter to Hansen Partnership dated 5 March 2010. There is also a need to ensure floor levels are to the satisfaction of Melbourne Water based on a covenant that applies to the land (and abutting vacant lots).

- 15 I am also mindful of the approach taken in *W & B Cabinets* where the Tribunal determined relied on advice from Melbourne Water as the relevant floodplain management authority based on the *General Practice Note Managing coastal hazards and the coastal impacts of climate change*.¹¹ Melbourne Water has not objected to the current permit application and, as noted already, has revised its requested floor level to 800mm above the designated 1:100 year flood level of 2.7AHD. I give weight to its views. However I am conscious of firstly, the site's location on the inlet side of the South Gippsland Highway unlike the land involved in *W & B Cabinets* and secondly, the risk of riverine flooding identified in the coastal hazard vulnerability assessment. Thus, to be satisfied on this matter, I would have been assisted by further information from Melbourne Water or the author of the vulnerability assessment to address the identified risks associated with riverine flooding as well as changed groundwater cited in the assessment. However, given my findings with respect to neighbourhood character, I have not pursued these matters at this time. Such information would assist a revised proposal.

Would any other matters warrant refusal of the permit application?

- 16 A number of other matters were raised in opposition to the proposal and identified by me at the hearing. Given my findings with respect to neighbourhood character considerations, I will only briefly summarise my conclusions on several additional issues arising:
- Private open space for Unit 2. The south-facing private open space is 2.65 – 3 metres wide and would be excessively shadowed.¹² It is too tightly squeezed to the rear of the lot. Its useability would be affected by stairs and potentially retaining walls given the raised ground levels.
 - Grades within the site are unclear, such as to access the front door and courtyard for Unit 1, and the driveway to Unit 2. The small land size and extent of fill require levels to be certain.
 - Other plan details. Other details such as levels associated with open spaces are not shown and there are some minor errors such as with respect to window positions.

Conclusion

- 17 I find that the proposal is not acceptable having regard to the site's context and directions of the Casey Planning Scheme. No permit is to issue.

Margaret Baird
Senior Member

¹¹ *W & B Cabinets v Casey CC* [2009] VCAT 2072.

¹² It would not comply with Standard B29 of Clause 55 and I am not satisfied the objective would be met.