

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P545/2010  
PERMIT APPLICATION NO. PA0919366

**CATCHWORDS**

Hobsons Bay Planning Scheme, Section 77 Planning s & Environment Act 1987, Four attached Dwellings, Climate Change, Neighbourhood Character, Bulk and Mass

**APPLICANTS**

C Restall, M Fava and E Restall.

**RESPONSIBLE AUTHORITY**

Hobsons Bay City Council

**SUBJECT LAND**

25 Beach Street, Seaholme

**WHERE HELD**

Melbourne

**BEFORE**

E. Bensch, Member

**HEARING TYPE**

Hearing

**DATE OF HEARING**

6 August 2010

**DATE OF ORDER**

10 August 2010

**CITATION**

Restall & Ors v Hobsons Bay CC [2010]  
VCAT 1348

**ORDER**

- 1 There being no objections Mr Wayne Barnaby was joined as a party to the proceedings.
- 2 For the purposes of this hearing, the amended plans prepared by Active Design dated the 6<sup>th</sup> of July and numbered S1, S2, S3, E1, E2, P3, and P4 are adopted.
- 3 The decision of the Responsible Authority is set aside. In permit application No. PA0919366 a permit is granted and directed to be issued for the land at 25 Beach Street, Seaholme. The permit allows construction of four two storey attached dwellings in accordance with the endorsed plans and subject to the following conditions as set out in Appendix 1.

E Bensch  
Member

## APPEARANCES

For Applicant	Mr Dom Scally, solicitor of Best Hooper who called Mr Peter English, town planner of Peter English and Assoc.
For Responsible Authority	Ms Louise Lunn, town planner of Louise Lunn Planning.
Respondents	S Johnson, T & J Marion, J & L McKey, W Barnaby all appeared in person

## INFORMATION

Description of Proposal	To construct four two storey attached dwellings
Zone and Overlays	Residential 1 zone Design and Development Overlay(DDO4)
Reason(s) Permit Required	Clause 32.01-6 (Buildings and Works in a R1Z) Development in a DDO4 Overlay Area.
Land description	The site is located on the north west corner of Garden Grove and Beach Street, Seaholme and has a total area of 484.83 square metres with a frontage to Garden Grove of 57.91 metres and a frontage to Beach Street of 15.24 metres. The site currently contains a single storey dwelling garage and carport. The site is generally flat and on the opposite side of Beach Street is the WD Kresser Reserve and Port Phillip Bay.
Cases referred to	Cadzow Enterprises Pty Ltd v Port Phillip CC [2010] VCAT 634 and Owen v Casey CC [2009] VCAT 1946.

## REASONS

### What is this review about?

- 1 LS Planning Pty Ltd on behalf of the land owners, C Restall, M Fava and E Restall lodged an application with Hobsons Bay Council to develop the subject site for four two storey attached dwellings. Following receipt of a number of objections from adjoining property owners Council refused the application on a range of grounds. The permit applicant has appealed that decision.

### Preliminary matters

- 2 Mr Wayne Barnaby made application to be joined as a party to the proceedings, he lodged an application to the proposal during the advertising period, however due to family illness was unable to provide a statement to the Tribunal within the required time. There being no objections to his being joined as a party Mr Barnaby was duly joined to the proceeding.
- 3 In response to requests for further information the permit applicant lodged amended plans with the council and circulated these plans to the other parties with the aim of addressing some of the concerns raised. For the purposes of this hearing, the amended plans prepared by Active Design dated the 6<sup>th</sup> of July and numbered S1, S2, S3, E1, E2, P3, and P4 are adopted for the purposes of this hearing.
- 4 By letter dated 9 July 2010, Hobsons Bay City Council foreshadowed that they wish to rely upon an additional ground of refusal to those set out in the original notice. That additional ground is as follows:
  - That having regard to the sea levels and the proximity of the land to the coast, the site might be vulnerable to coastal hazard an inundation arising from a possible future rise in sea level due to coastal climate change and from storm surges.
- 5 The parties agreed to this ground of refusal being added to council's original notice of refusal and submissions were made in relation to it.

### The issues to be determined

- 6 From having viewed the site, and heard the submissions as part of this hearing I consider the matters to be addressed as follows.
  - Vulnerability of the site to sea level rise.
  - Neighbourhood character.
  - Bulk and mass of the proposed development.
  - Other Issues.

- 7 There was no dispute among the parties that the site was well located in relation to all services and was a suitable site for some form of medium density development. I agree with this assessment so will not make further comment on this topic.

### **Vulnerability of the site to sea level rise**

- 8 Clause 15.08 required the consideration of climate change on development in close proximity to Port Phillip Bay and the permit applicant was aware that sea level rise would be a matter that could impact upon the proposed development and sought advice from Melbourne Water in relation to this issue. However, I note that Melbourne Water was not a formal referral authority in this instance. But, by detailed letter in response to this request, Melbourne Water recommended that the floor heights of the proposed dwellings be increased to 2.4 metres above Australian Height Datum (AHD) and the fixed floor level of the garage be increased to 1.9 metres to AHD to address this issue. These requirements being included in the permit conditions under the section dealing with Melbourne Water requirements. Amended plans based on these requirements were prepared and this consequently increased the overall height of the building.
- 9 Melbourne Water considered that the property will be effected by the rise of 0.8 metres in the mean sea level of Port Phillip Bay by 2100 and would therefore be potentially affected by flooding from the bay.
- 10 The issue of vulnerability to sea level rise has been dealt with in the recent past by a number of Tribunal decisions and I was taken to two recent decisions that are most relevant to a Port Phillip Bay side location. These being Cadzow Enterprises v Port Philip and Owen v Casey.
- 11 The general practice note “Managing coastal hazards and the coastal impacts of climate change (December 2008)” suggests that “coastal vulnerability assessments can be undertaken by suitably qualified coastal engineer or coastal process specialist to assist with understanding, erosion rates and developing appropriate setbacks or protection works”.
- 12 Melbourne Water in their response indicated that it would be sometime before the analysis of the impact of the mean sea level rises in areas around both Port Phillip Bay and Westernport is complete and that as a precautionary measure the finished floor levels recommended by Melbourne Water would be an appropriate response to this issue.
- 13 I consider this issue is consistent with the policy of applying “the precautionary principle” in decision-making when considering risks associated with climate change such as a sea level rise.
- 14 It was put to me that in this instance this is the best available knowledge to the Tribunal is that from Melbourne Water. Having read the decisions that were drawn to my attention I consider that the situation in the Cadzow case in Broadway, Elwood is appropriate as it is a Port Phillip Bay location and Melbourne Water’s advice was accepted. I draw the distinction between the

two cases that the Owen's case was a rural situation on the coast in Tooradin and not within Metropolitan Melbourne fronting Port Phillip Bay.

Therefore, I accept the recommended raised floor levels for the buildings as required by Melbourne Water and will not require a further Hazard Assessment be undertaken.

### **Neighbourhood character**

- 15 The subject site is within Precinct 8 of the Hobsons Bay South Neighbourhood Character policy. This policy description describes the precinct as follows:

This precinct was originally home to modest, low scale 1950's and 60's dwellings; however this area has been transformed through the development of many sites with larger, contemporary style dwellings. Despite the architectural mix, there is a consistency to the streetscape due to uniformly large front setbacks, low front fencing and sparse garden planting. Open bay views and a row of Norfolk Island Pines reflect the unique beach side location of the precinct.

- 16 I consider that although statement acknowledges the changing character of the area it is now some years old and does not reflect the levels of recent development that have occurred and the lack of highly vegetated front gardens. The other variants that I note are that the setbacks in the immediate area of the site show a variation along Beach Street ranging from 4.4 metres to 11.3 metres.
- 17 The aim of the policy is to maintain the existing dwelling pattern encouraged innovative architecture that reflects the coastal setting. There is considerable diversity in built in forms in the immediate vicinity of the site, some of which are large relatively boxy forms and there is scope for development on the site that could also respect the prevailing built form. This situation is particularly evident upon Beach Street however, when one turns into Garden Grove there is less new development and the dwellings are dominantly still single storey in style.
- 18 The permit applicant put to me that the presentation of the development of Beach Street provides for a modern articulated building form that also presents a range of lightweight building materials with a butterfly roof to break up the height and bulk of the building.
- 19 Landscaping is acknowledged as not a significant characteristic of the surrounding residential properties fronting Beach Street with the majority of the significant contributions to landscaping being within the public realm.
- 20 There are no specific controls in the Design and Development Overlay that require the protection of shared view lines to the public realm. This issue was raised particularly in relation to the adjacent dwelling in Garden Grove that has a large balcony that would currently have views over the rear

garden of the subject site, and this will be affected in part by the two-storey development adjacent on the subject site.

- 21 The Design and Development Overlay – Schedule 4 requires a permit for buildings and works, and discourages building forms higher than two storeys. The objectives and decision guidelines are consistent with the neighbourhood character policy and I consider the proposal is consistent with the decision guidelines of the overlay in that it provides a modern articulated building form that is consistent in height with surrounding developments, although slightly elevated due to the raised floor levels required by Melbourne Water. In general terms it provides appropriate transition to adjoining buildings particularly the unit development to the east.

### **Bulk and mass of the proposed development**

- 22 The development is presented in the form of two attached pairs of dwellings. Two of those dwellings fronting Beach Street and two fronting Garden Grove. Three of the units in fact have access from Garden Grove. The developer has endeavoured to recess the garages for each dwelling to ensure that they are not a dominant element in the streetscape and there is some secluded private open space at ground level. Although the majority of the open space is located at first floor level in the form of balconies, obviously to maximise the view towards the foreshore and the bay, and it is these balconies that in part intrude into the setback that was of particular concern to the resident objectors in the area. Mr English pointed out that these balconies were of lightweight construction with glazed balustrades to minimise their appearance.
- 23 To deal with some minor areas of non compliance with ResCode and to reduce the apparent bulk of the development Mr English proposed a number of minor changes to the proposal and these are:
- Screen the first floor west-facing living room associated with unit 4.
  - Reduce the width of the stairs within the single garages to 500 millimetres, and 380 millimetres for the double garage.
  - The western ground floor wall associated with unit 4 be lowered to a maximum height of 3.6 metres.
  - The western first floor wall associated with unit 4 living room be setback a minimum of 1.9 metres from the western boundary.
  - Increase the size of the bedroom window associated with bedroom 2 of unit 3.
- 24 With these changes proposed by Mr English to address some of the design issues (supported by Council) and a further change that I would discuss in the conditions section I am satisfied that there is sufficient articulation, use of materials and overall design which is appropriate to a beach side location and will have minimal impact upon adjoining property owners.

## Other issues

- 25 The residents were concerned about the setbacks of the dwellings and I consider that in this instance Beach Street is the primary frontage to the property and the buildings are setback 4.4 metres from the street consistent with the adjoining dwelling to the north. I consider that the balconies with their lightweight structure and appearance are a suitable intrusion into the setback at first floor.
- 26 Because the site is situated on a corner the required setback to Garden Grove is 3 metres and the setback of units 3 and 4 comply with this standard.
- 27 With regard to site coverage and permeability, the proposed site coverage is 56% and this figure complies with the relevant standard of ResCode that suggests a maximum site coverage of 60%.
- 28 The residents raised concerns regarding car parking and vehicle access to the site noting that due to its proximity to the railway station there were parking restrictions of two hours on street.
- 29 Car parking in the form of garages has been provided to each unit with a double garage to unit 2, and single garages for the remaining dwellings with tandem spaces as well. These garages are setback sufficient from the boundary to allow an additional tandem space and I note that unit 2 in fact has the ability to park three cars on the site. Because four dwellings are proposed there is no requirement for a dedicated on site visitor space, and with the requirement that electronically operable garage doors be provided to each of the units I do not consider that there would be traffic difficulties due to cars entering the site being able to do so without having to prop into the street and manually open garage doors.
- 30 Due to the elevated floor plate for each dwelling there is a potential for overlooking to the north and west. Moreover, this has been addressed particularly to the north with windows being set at a minimum height of 1.7 metres or are screened to a height of 1.7. There is the potential for some overlooking from ground floor areas however, I note the screening has been provided to the decks associated with units 3 and 4, and the remaining overlooking would be into service yards at ground level to the adjoining dwelling which I do not consider to be in need of detailed attention.
- 31 A draft landscape plan was submitted as part of Mr English's submission, and I note that Coastal Banksias are proposed in the front setbacks to the dwellings, however these trees can grow to a mature height of 8 metres and I consider that the genus selected may need to be modified in the final landscape plan as at maturity they will obscure views from the deck areas and will probably be pruned by future residents to retain those views with less than satisfactory outcomes

## Conditions

- 32 During the discussion regarding conditions to this development council indicated that they would be satisfied with the adoption of the recommendations put forward by Mr English in his submission that dealt with screening and adjusted setbacks.
- 33 I however have one concern relating to the apparent bulk of the buildings as they address Garden Grove. This concern is in relation to unit 2 and in particular bedroom 4 that fronts Garden Grove. I do not have an issue at ground level which would be occupied by a study however the first floor is very long in length and bedroom 4 steps into the separation proposed between unit 2 and unit 3. I will therefore require that bedroom 4 for dwelling 2 be deleted which would leave the main living area, kitchen and balcony at first floor with the study, three bedrooms and amenities at ground floor.
- 34 Unit 2 and 3 are separated by the double garage to unit 2 accessed off Garden Grove so there is continuous built form along the length of the site by the Garden Grove setback. To further minimise the impact of this length of built form I will require that the raked roof to the double garage be amended to a flat roof form that would minimise and further recess its appearance when viewed from Garden Grove. I can understand why this element was introduced to pick up the butterfly roof elements in the other units however, I consider this adds to the perception of bulk and can be deleted without loss to the integrity of the design.

## Conclusion

- 35 It follows from the above reasons that it is my conclusion that the decision of the Responsible Authority should be set aside and a permit granted.
- 36 In deciding the conditions to be included on the permit I have had regard to the draft conditions provided to the Tribunal by the Responsible Authority and the submissions and evidence by the parties in addition to the matters that arise from my reasons.

E Benz  
Member



## APPENDIX 1

### Preamble

Construction of four attached double storey dwellings in accordance with the endorsed plans

### Conditions

1. Before the development starts, three copies of revised plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit.

The plans must be substantially in accordance with the plans submitted with the application, but modified to show to the satisfaction of the Responsible Authority:

- a) A survey plan of the subject land prepared by a licensed land surveyor showing the location of existing boundary fences and any other relevant land features in relation to the title boundaries. Any discrepancies between the plans submitted for endorsement and the survey plan must be rectified to the satisfaction of the Responsible Authority.
- b) A schedule of all external materials and finishes. The schedule shall show the materials, colour (including two sets of colour samples) and finish of all external walls, roof, fascias, window frames and paving (including car parking surfacing). The driveways are required to incorporate a high quality finish and not plain concrete.
- c) The positioning of all plant and equipment (including air-conditioning units, heating units, hotwater systems, etc) which is proposed to be located externally. Such plant and equipment must be positioned to prevent unreasonable noise and visual impact.
- d) Nomination of a Tree Protection Zone in accordance with Condition 5 of this permit.
- e) The location of all service meters generally located in the front of each dwelling.
- f) The location and design (including elevations) of any structure to be sited within the front setback required to accommodate an electricity meter box. The structure must be a maximum height of 1.2 metres and designed to minimise the visual impact on the streetscape and possible impacts on pedestrian safety and vehicle traffic.

- g) A Sustainable Design Assessment, detailing sustainable design initiatives to be incorporated into the development must be submitted to, and approved in writing by the Responsible Authority. The Sustainable Design Assessment must outline proposed sustainable design initiatives within the development such as (but not limited to) energy efficiency, water conservation, storm water quality, waste management, material selection and greenhouse emissions. Upon approval the Sustainable Design Assessment must be incorporated into the development.
  - h) Confirmation that the garage door of each dwelling is remote opening.
  - i) The upper level north facing kitchen window of Dwelling 1, the upper level north facing ensuite window of Dwelling 2 and the upper level west facing living room window of Dwelling 4 screened to satisfy the requirements of Standard B22 (Overlooking objective - Clause 55.04-6) of the Hobsons Bay Planning Scheme. Use of adhesive film to obscure glass is not acceptable.
  - j) The ground level north facing bedroom, bathroom and laundry windows of Dwelling 1 screened to satisfy the requirements of Standard B22 (Overlooking objective – Clause 55.04-6) of the Hobsons Bay Planning Scheme. Use of adhesive film to obscure glass is not acceptable.
  - k) Screen the first floor west facing living room associated with dwelling 4
  - l) Reduce the width of the stairs within the single garages to 500 millimetres, and 380 millimetres for the double garage
  - m) The western ground floor wall associated with dwelling 4 be lowered to a maximum height of 3.6 metres.
  - n) The western first floor wall associated with dwelling 4 living room be setback a minimum of 1.9 metres from the western boundary.
  - o) Increase the size of the bedroom window associated with bedroom 2 of dwelling 3
  - p) Delete bedroom 4 to dwelling 2.
- 2 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 3 Prior to the endorsed plans being made available a bank guarantee or bond of \$2000 must be lodged by the owner with the Responsible Authority to ensure the satisfactory establishment of landscaping works. Once landscaping has been completed in accordance with the endorsed landscaping plan, Council must be notified so that a site inspection can

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

- 4 Prior to the occupation of the buildings hereby permitted, landscaping works as shown on the endorsed plans must be completed and thereafter must be maintained to the satisfaction of the Responsible Authority.
- 5 Prior to commencement of works, the following provisions relating to the protection of the existing street trees must be undertaken to the satisfaction of the Responsible Authority:
  - i) A suitable Tree Protection Zone of 2 metre radius with barrier fence must be established around the street trees on the Beach Street and Garden Grove frontages.
  - ii) The Tree Protection Zone must be enclosed using a 2 metre high temporary cyclone fence or similar, which must remain in place through all stages of the development. This fence must not enclose the footpath which must be kept clear for pedestrian access and a sign must be erected on the fence informing that the fence is a 'Tree Protection Zone'.
  - iii) The area within the Tree Protection Zone must not be disturbed by any means including parking of vehicles or storage of plant & equipment, materials, soil or waste.
  - iv) No excavation is allowed within the Tree Protection Zone except with the consent of Council's Town Planning Department and under the supervision of a qualified Arborist.
- 6 Street numbers contrasting in colour to the background must be fixed at the front boundary of the property as near as practicable to, or on the letterboxes. Separate unit numbers must be placed adjacent to the front entrance of each dwelling, such numbers must be clearly legible from the access driveway.
- 7 All service pipes, (excluding downpipes), fixtures and fittings must be concealed on exposed elevations to the satisfaction of the Responsible Authority.
- 8 Any alteration of soil level involving an increased or decreased level at the boundary must be retained by the provision of an adequate retaining wall, constructed of brick or masonry or other suitable alternative approved by the Responsible Authority, to buttress the soil against the possibility of shift. The construction of this retaining wall must be carried out by the

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

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

Parking areas and access lanes must be kept available for these purposes at all times.

- 11 All basic services, including water, electricity, gas, sewerage and telephone must be installed underground and located to the satisfaction of the Responsible Authority.
- 12 Before any construction or demolition works commence on the site, a secure fence must be provided around the perimeter of the site to prevent access to the site from unauthorised persons. This fence must be maintained for the duration of the construction and demolition, be a minimum height of 1.5m (or such alternative height as is approved in writing by the Responsible Authority), and be constructed to the satisfaction of the Responsible Authority. The gate or opening to the fence must be securely locked at all times when work has ceased on the site.
- 13 The owner must meet the costs of all alterations to and reinstatement of, the Responsible Authority and other Public Authority Assets deemed necessary and required by such Authorities for the development. The owner must obtain the prior specific written consent of the Council or other relevant Authority to such alterations and reinstatements and must comply with conditions required by the said Authority in relation to the execution of such works.
- 14 Any vehicle crossings must be constructed in the location shown on the endorsed plan to a standard satisfactory to the Responsible Authority. The relocation of any services including electricity poles, drainage pits, Telstra pits, fire hydrants and the like must be at the expense of the owner and approved by the appropriate authority prior to undertaking such works.

Consent for such crossings must be obtained through Council's City Maintenance and Cleansing Department prior to construction.

- 15 Prior to commencement of the development the owner must prepare stormwater drainage design plans to the satisfaction of the relevant Building Surveyor. An application to Council must be made for a Legal Point of Discharge for the disposal of stormwater from the subject land and to determine the relevant Council standards for the stormwater drainage system design. An on-site storm water detention system will be required if the volume of stormwater exceeds the capacity of the legal point of discharge.
- 16 If the nature strip is damaged during construction of the development approved or during the construction of any services, it must be reinstated and made good, including the planting of grass at the cost of the owner to the satisfaction of the Responsible Authority.
- 17 The garages authorised under this permit must have either a panel lift door or a roller door and be remote opening to the satisfaction of the Responsible Authority.
- 18 Boundary fences must be replaced to the satisfaction of the Responsible Authority at no less than 1.8 metres and no more than 2.0 metres in height and at the full cost of the owner unless otherwise agreed to in writing by the Responsible Authority.
- 19 This permit will expire if one of the following circumstances applies:
  - (a) The development is not started within two years of the date of this permit.
  - (b) The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

#### Melbourne Water

- 20 No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
- 21 Any new dwelling or building must be constructed with finished floor levels a minimum of 2.4 metres to Australian Height Datum (AHD).

- 22 Any new garage must be constructed a minimum of 1.75 metres to Australian Height Datum.
- 23 Imported fill must be kept to a minimum on the property and should only be used for the sub floor areas of the dwellings, garages and driveway ramps.

E. Bensch  
Member