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Owen and Another v Casey City Council
 Baird (Senior Member)

18, 25 September 2009. Melbourne

Development Assessment - Environmental impact assessment - Small scale development - Proposal for two dwellings in Residential 1 Zone - Land Subject to Inundation Overlay - Whether coastal hazard vulnerability assessment required - Planning and Environment Act 1987 (Vic), s 77

The **Casey City Council** (the council) refused to grant a permit for a proposal for two double storey dwellings in a Residential 1 Zone - Land Subject to Inundation Overlay. The permit application was lodged before Amendment VC52 (VC52) was introduced into all Schemes.

Held: (1) A coastal hazard vulnerability assessment for small scale unit developments or a two lot subdivision could seem unduly onerous for a proponent. Assessments would add to time and cost. Changes to proposals may be needed although it is clearly preferable for plans to be pre-

pared after an assessment so that the design response can be informed by the findings.

(2) These considerations do not, however, mean that a coastal hazard vulnerability assessment should be avoided even where a permit application has pre-dated VC52 and the application has yet to be determined.

(3) State policy makes it clear that the wider risks and consequences for the community demand that coastal hazard vulnerability be addressed in permit applications and in decision-making.

(4) There are uncertainties with respect to coastal and river hazards but the risks are such that the relevant Scheme had sought to direct decision-makers via its cl 15.08. Actual impacts would vary dependent on a range of factors including local geology, topography and hydrology.

(5) A coastal hazard vulnerability assessment for the subject land is required to be prepared by the applicant.

Cases Cited

The following cases are cited in the judgment:

[Ronchi v Wellington Shire Council \[2009\] VCAT 1206.](#)

[Myers v South Gippsland Shire Council \[2009\] VCAT 1022.](#)

Preliminary question

These proceedings concerned whether a coastal hazard vulnerability assessment was required for a two-dwelling proposal on land subject to an Inundation Overlay. The facts of the case are set out in the judgment.

Applicants in person

R Stevenson, for the council

Cur adv vult

25 September 2009

Baird (Senior Member)

What is this preliminary question about?

1 Mr and Mrs **Owen** propose two double storey dwellings on a site in Tooradin. The **Casey City Council** determined to refuse to grant a permit for the proposal, a decision that the **Owens** have applied to be reviewed by the Tribunal.

2 Prior to the hearing, the Council sought advice from the Tribunal as to whether a coastal hazard vulnerability assessment is required for the subject land. Written advice was given through the Registrar that such an assessment was required although no correspondence relating to that question was filed on behalf of the applicant and a copy of the Registrar's letter was not sent to the applicant.

3 Hansen Partnership, for the Council, subsequently advised the Tribunal and applicant that it would seek to raise this question as a preliminary matter at the merits hearing. It did so. I indicated to the parties I would hear submissions on the question as to whether a coastal hazard vulnerability assessment is required for the subject land before determining whether such an assessment would be directed by the Tribunal. Having heard submissions, I reserved my decision on this preliminary question. I now set out the reasons for my decision to direct the preparation of an assessment.

What are the relevant circumstances of the subject land and proposal?

4 The review site is 646 square metres in area and located on the south side of Lyne Street. It is within a Residential 1 Zone under the Casey Planning Scheme and also affected by a Land Subject to Inundation Overlay.

5 Melbourne Water has stated that the applicable flood level is 2.7 metres AHD. (1) In its referral response to the Council,(2) Melbourne Water stated it would not object to the permit application subject to conditions including finished floor levels being a minimum of

600mm above the applicable flood level. Garage floor levels were required to be 300mm above the same flood level. The plans show the dwellings' ground floor level at 3.3 metres.(3)

In summary, what are the parties' positions?

6 Mr Stevenson submitted a coastal hazard vulnerability assessment is required. He referred to the land's position and said an assessment is needed before assessing the merits of the permit application because design changes may be required. He noted correspondence from Melbourne Water and relied on two Tribunal decisions(4) in support of Council's position.

7 Mr McCaffrey submitted the land involved in the two Tribunal decisions had a different context with different issues, for example, erosion is unlikely at the *405 subject land in this case. He said those cases involved locations where the flood plain manager did not have the same knowledge and resources as Melbourne Water. Mr McCaffrey said that the Intergovernmental Panel on Climate Change identified an upper limit of sea level rise of 0.8 metre by 2100 and, taking into account the economic life of the units of 40-50 years, and with floor levels of 0.6m above the flood level, the development would not be fatally affected by sea level rise. He said sea level rise will affect many areas and a two unit development in this location should be kept in perspective and does not warrant a coastal hazard vulnerability assessment.

Is a coastal hazard vulnerability assessment required?

8 This permit application is one of many that will raise the same question; is a coastal hazard vulnerability assessment needed? The permit application was lodged before Amendment VC52 was introduced into all Schemes. It seems the design has not been informed by any information relating to impacts of climate change although it was modified through the application process to address the floor level specifications of Melbourne Water.

9 The Tribunal's decisions in [Myers](#) and [Ronchi](#) have drawn attention to the Scheme's obligation to consider and assess risks arising from inundation from ocean waters and/or river catchments with an expectation of impacts from processes such as sea level rise, varied tide ranges and storm surges. Even though the Intergovernmental Panel on Climate Change may identify

an upper limit of sea level rise of 0.8 metre by 2100, Clause 15.08 of the Scheme refers to a sea level rise of "not less than 0.8 metre by 2100". The level in the Scheme is that to be adopted for our purposes at this time.

10 As I said in [Ronchi](#), changes to State policy through Amendment VC52 place a much more significant onus on both permit applicants to consider risks in design and on decision makers to take climate change into account.

11 The General Practice Note Managing coastal hazards and coastal impacts of climate change(5) provides guidance with respect to an assessment of applications for permits as well as rezonings.

12 A coastal hazard vulnerability assessment for small scale unit developments or a two lot subdivision can seem unduly onerous for a proponent. Assessments will add to time and cost. Changes to proposals may be needed although it is clearly preferable for plans to be prepared after an assessment so that the design response can be informed by the findings.

13 These considerations do not, however, mean that a coastal hazard vulnerability assessment should be avoided even where a permit application has pre-dated VC52 and the application has yet to be determined. Rather, State policy makes it clear that the wider risks and consequences for the community demand this matter to be addressed in permit applications and in decision-making. There are uncertainties with respect to coastal and river hazards but the risks are such that the Scheme has sought to direct decision-makers via Clause 15.08. Actual impacts in will vary dependent on a range of factors including local geology, topography and hydrology.

14 In the same way as aboriginal cultural heritage assessments are now more common place, coastal hazard vulnerability assessments will too become more routine in the planning process. They are likely to be one measure in a suite of planning responses to climate change. Assessment models can be expected to be *406 refined over time and, as indicated by the Victorian Coastal Strategy and the General Practice Note, State policy may be reviewed as more scientific data becomes available. Development controls and/or policies can also be expected to emerge to hopefully provide clarity and guidance in the local context,

achieving consistency in approach. In the meantime, and even though the form of an assessment may still be embryonic, it is necessary to proceed on the best available information.

15 With respect to three other points made by Mr McCaffrey, I comment as follows.

16 First, do not accept that the purported economic life of the proposed units of 40-50 years gives a basis to depart from the direction being pursued by State policy.

17 Second, I do not accept Melbourne Water's lack of objection leads to an automatic conclusion that risks are properly managed in the current design. Rather, as stated in the General Practice Note with respect to existing urban areas, an assessment of impacts is advisable for sites immediately adjacent to the coast or in/near an existing floodplain. Location specific information is required to inform a localised coastal vulnerability assessment and the development of appropriate land suitability, set back or design responses.

18 Third, the very recent gazettal of Amendment C118 that exempts single dwellings from a planning permit in a Land Subject to Inundation Overlay is not determinative in this case although it could potentially raise some considerations about differences in approach for single houses versus multiple units (a matter I commented on in [Ronchi\(6\)](#)).

19 For the above reasons, I find that a coastal hazard vulnerability assessment for the subject land is required to be prepared by the applicant.

So ordered

J Veneziano

FN(1) Letter tendered by Mr Stevenson dated 14 September 2009.

FN(2) Letter to the Council dated 18 August 2008 and reiterated in a letter to the Registrar 20 July 2009.

FN(3) There is no indication on the plans of stairs, retaining walls or the like, or floor levels for garages.

FN(4) [Myers v South Gippsland Shire Council \[2009\]](#)

[VCAT 1022](#) and [Ronchi v Wellington Shire Council \[2009\] VCAT 1206](#).

FN(5) Department of Planning and Community Development, December 2008.

FN(6) [Ronchi v Wellington Shire Council \[2009\] VCAT 1206 at \[18\]](#).

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