

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

planning and environment LIST	vcat reference No. P2836/2010 Permit Application no. PL10/223
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in the matter of	Bock v Moyne Shire Council
BEFORE	Bill Sibonis, Member

Nature of case	Application for a Review pursuant to Section 78(b) of the <i>Planning and Environment Act 1987</i> ('the Act') of a requirement for additional information under Section 54 Act.
REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE	
Practice or procedure – consideration of individual instance or systemic issues	Requirement for a preliminary assessment to determine whether a Coastal Hazard Vulnerability Assessment is warranted.
Application – significant, interesting or unusual use or development; application of policy, provision or principle; or circumstances	Consideration of whether a requirement for Coastal Hazard Vulnerability Assessment is justified.

Summary

An application has been made to subdivide the review site into four lots. As part of its consideration of the application, the Moyne Shire Council has requested a Coastal Hazard Vulnerability Assessment (CHVA).

I am satisfied that the location and elevation of the site justify consideration of its potential vulnerability to coastal hazards.

I have determined that a 'staged' approach to addressing this issue represents an appropriate course of action. Rather than requiring a comprehensive CHVA at the outset, the Applicant should have the opportunity to provide a preliminary assessment of whether a CHVA is warranted. If, having considered that preliminary assessment, the Council concludes that a CHVA is required, it must be provided before the application is considered.

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Permit Application no. PL10/223

APPLICANT	John Bock, PEMS Pty Ltd
RESPONSIBLE AUTHORITY	Moyne Shire Council
SUBJECT LAND	Part Lot 4 on Plan of Subdivision No. 54806 Cnr O'Reilly Street and Mills Crescent, Port Fairy
WHERE HELD	Melbourne
BEFORE	Bill Sibonis, Member
HEARING TYPE	Hearing
DATE OF HEARING	5 November 2010
DATE OF ORDER	22 November 2010
CITATION	Bock v Moyne SC [2010] VCAT 1905

Order

- 1 Pursuant to Section 85(1)(d)(iii) of the *Planning and Environment Act 1987* (the Act) the requirement for more information under Section 54 of the Act in Planning Application No. PL10/223 is changed to the following:

The Applicant must provide a written submission addressing the issue of whether a Coastal Hazard Vulnerability Assessment (CHVA) is required for the land. This submission must be prepared by a suitably qualified coastal engineer or coastal processes specialist (or other person who is suitably qualified to the satisfaction of the Responsible Authority).

The submission must:

- include the advice of the Department of Sustainability and Environment (DSE), and of the relevant flood plain management authority;
- have regard to the General Practice Note on Managing Coastal Hazards and the Coastal Impacts of Climate Change (DPCD, December 2008), including to the types of coastal hazards that must be addressed;
- have regard to the site's location and elevation relative to the coast and must consider the influences of geology, sea level rise of at

least 0.8m, storm tide and surges, and wave action.

- provide a preliminary view of the level of risk to the subject land from the coastal hazards of inundation by sea level rise not only from a rise of 0.8m by 2100, inclusive of tide swell and storm surge, but also from coastal erosion and other coastal processes.

If, having considered this submission, the Responsible Authority determines that a CHVA is required, a CHVA must be provided to its satisfaction before the application is considered. The CHVA must, as a minimum:

- be prepared by a suitably qualified coastal engineer or coastal processes specialist, with input if necessary from a qualified hydrologist or geotechnical engineer;
- consider local topography and geology;
- address coastal erosion, other coastal processes, storm tide and surge, sea level rise, coastal inundation and river inundation (as applicable);
- identify the risks and range of impacts at 2030, 2070 and 2100;
- state whether the proposed subdivision of the land is an appropriate development, with supporting reasons; and
- identify possible site specific mitigation options.

Bill Sibonis Member		
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APPEARANCES

Mr John Bock	In person.
For Moyne Shire Council	Ms L Hicks, Solicitor of DLA Phillips Fox.

INFORMATION

Description of Proposal	Four lot subdivision.
Nature of Proceeding	Application under Section 78(b) of the <i>Planning and Environment Act 1987</i> .
Zone and Overlays	Residential 1 Zone. Design and Development Overlay (DDO21).
Permit Requirements	CI 32.01-2 (subdivision of land in the Residential 1 Zone). CI 43.02-3 (subdivision of land in the Design and Development Overlay).
Land Description	The review site is located on the south-east corner of O'Reilly Street and Mills Street in Port Fairy. It is a vacant parcel of land with an overall site area of 13,709 square metres.

REASONS

What is this proceeding about?

- 1 An application has been made for a permit to subdivide the land into four lots. The property is some 400 metres from the coast and has site levels of between approximately 2.0m AHD to 5.3m AHD. The Council has requested a coastal hazard vulnerability assessment (CHVA). This request has been made pursuant to Section 54 of the *Planning and Environment Act* 1987.
- 2 The Council requires that the CHVA be undertaken by a suitably qualified coastal engineer or coastal processes specialist. It must take account of the 1:100 year storm surge event; and assess (as applicable) coastal erosion, other coastal processes, sea level rise, storm surge and tide, and river inundation. The CHVA must state whether the development is appropriate; identify the risks and range of impacts at 2030, 2070 and 2100; and identify possible site specific mitigation impacts.
- 3 The Applicant, Mr Bock, has applied to the Tribunal for a review of this requirement.
- 4 The request for the CHVA is dated 23 September 2010. Mr Bock consulted the Glenelg Hopkins Catchment Management Authority (GHCMA) in relation to the potential flooding of the review site, by telephone, on 12 October 2010. A written response to Mr Bock's enquiry was provided by GHCMA on 19 October 2010. This response refers to Lot 1 TP201496, Parish of Belfast. This is not the review site, but "corresponds to the location details" provided by the Applicant. The GHCMA's advice is that that property is outside the area that would be inundated by 1% AEP floods from the Moyne River.
- 5 Council has accepted this advice from GHCMA as part satisfaction of its request for a CHVA. Council submits, however, that this flood advice does not address any impacts of increased inundation or changing sea level conditions on the drainage system to the land. Council advises that it is willing to substitute its present request for a "full CHVA" with a request for a "limited CHVA" as follows:

The plans included in the planning permit application (showing the 40 lot subdivision) show a drainage pump station situated adjacent to Powling Street and the proposed lot 39. We understand that water from the Powling Street wetland flows through this drain and out to the southern ocean. Council seeks information on the effect of changing sea level conditions and inundation from the coast on the workability of this drain.

In particular, how will this drain and the pump station be affected by any rise in sea levels? Is it possible in any circumstances for water to surge back into the drainage pump station, and if so, what will be done

to prevent this?

- 6 Mr Bock opposes a requirement for any CHVA, including the “limited CHVA”.
- 7 In support of this submission that a CHVA is not necessary, Mr Bock referred to the following:
 - The review site is separated from the ocean by a sand and rock barrier generally at 8.0m AHD upon which Ocean Drive is located.
 - The land in front of this barrier is protected by a continuous basalt (lava flow) barrier some 40 metres from the high water mark.
 - The review site does not fall within the Moyne River catchment and is not at risk from the effect of rising sea levels, storm surges and associated potential erosion.
 - The road adjacent to the review site is designed to have a drainage capability for a 1 in 100 flood event. The review site falls toward the road; it is well above any sea level rise/storm surges from the sea or Moyne River; and is therefore protected against a 1% flood event.
- 8 The significance of coastal hazard vulnerability assessments, and the importance of applying the precautionary principle in assessing proposals that may be vulnerable to such hazards has been commented on in a number of Tribunal decisions. I will not repeat the Tribunal’s comments here, suffice to say that I agree with the Council that the review site’s potential vulnerability to coastal hazards is a relevant consideration in the assessment of the proposed subdivision, having regard to its context. This view is supported by State policy, at Clause 13.01 of the Planning Scheme, which requires:
 - Planning for a sea level rise of not less than 0.8 metres by 2100, and allowing for the combined effects of tides, storm surges, coastal processes and local conditions such as topography and geology when assessing risks and coastal impacts associated with climate change.
 - The application of the precautionary principle to planning and management decision making when considering the risks associated with climate change.
 - Ensuring that new development is located and designed to take into account of the impacts of climate change on coastal hazards such as the combined effects of storm tides, river flooding, coastal erosion and sand drift.
 - Ensure that land subject to coastal hazards is identified and appropriately managed to ensure that future development is not at

risk.

- Avoid development in identified coastal hazard areas susceptible to inundation (both river and coastal), erosion, landslip/landslide, acid sulphate soils, wildfire and geotechnical risk.
- 9 This policy is echoed in the General Practice Note on Managing Coastal Hazards and the Coastal Impacts of Climate Change (DPCD December 2008). The Practice Note states that planning for the impacts of climate change on coastal hazards needs to be considered for development of individual parcels of land within existing zoning and overlay provisions within planning schemes.
 - 10 It appears that both the Council and the Applicant have placed significant weight on the comments of the GHCMA. It is important to note, however, that the GHCMA's response only addresses flooding from the Moyne River. It does not address coastal inundation, nor does it comment on other potentially relevant matters such as coastal erosion or other coastal processes. It is also significant that the advice of the GHCMA is based on a telephone conversation, and it does not relate specifically to the review site. While the information contained in the GHCMA letter is useful, in my view it should not be relied upon as confirmation that a CHVA is not required.
 - 11 Mr Bock referred to a number of matters including the design details of the roads and drainage in the locality, the level of Ocean Drive and the local geology. As correctly pointed out by Ms Hicks, this information was provided by way of submissions, and not as evidence that could be tested in cross-examination. This has a bearing on the weight which I am able to give to this information.
 - 12 Mr Bock confirmed that he had not sought the views of GHCMA in respect to coastal inundation. Further, he has not sought advice from the Department of Sustainability and Environment (DSE) as to whether a CHVA is necessary.
 - 13 Based on the information before me, I am not satisfied that a CHVA is not required in this instance. The proximity of the review site to the coast and its elevation above sea level suggest that it is potentially vulnerable to coastal hazards. In my view, the information provided by the GHCMA should not be taken as indicating that the land is not susceptible to such hazards. The GHCMA's response needs to be considered with a degree of caution as it does not relate specifically to the review site and only addresses inundation from the Moyne River. Further, no evidence about the geology of the locality has been provided to support the submissions that it will protect the review site from coastal inundation or coastal processes such as erosion and coast regression.
 - 14 I acknowledge Council's desire to modify its request to solely address drainage issues. I do not consider this change in the Council's position on

this matter is justified. It appears to be based entirely on the comments received from the GHCMA and, as I have already indicated, these comments have limitations in terms of their relevance to the issue at hand. In my view, the circumstances of this application justify a more considered approach to the issue of the potential vulnerability to coastal hazards.

- 15 I believe that a ‘staged’ approach is warranted. The Applicant should be provided with the opportunity to demonstrate to the Council whether a CHVA is required for the review site. This preliminary assessment should take account of the site’s location and elevation relative to the coast and consider the influences of geology, sea level rise of at least 0.8m, storm and tide surges, and wave action. It must provide a preliminary view of the site’s vulnerability to coastal and flood inundation, including the incremental risk from any erosion of the coastline that may be expected to occur under sea level rise.
- 16 If, having considered this preliminary assessment, the Council determines that a CHVA is required, then the Applicant will need to provide this to Council’s satisfaction before the application is considered.

Bill Sibonis Member		
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