



## Building and Development Dispute Resolution Committees—Decision

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### ***Sustainable Planning Act 2009***

<b>Appeal Number:</b>	<b>20 - 14</b>
<b>Applicant:</b>	Dr David Williams and Lee Williams
<b>Assessment Manager:</b>	Don Grehan -Pacific BCQ
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council (Council)
<b>Site Address:</b>	18 Boongala Avenue, Montville and described as Lot 23 on RP 96071 – the subject site

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### **Appeal**

Appeal about a deemed refusal of a development application under section 527 of the *Sustainable Planning Act 2009 (SPA)* which states: *(1) An applicant for a development application may appeal to a building and development committee against any of the following:*

- (a) a refusal, or the refusal in part, of the application*
  - (e) a deemed refusal of the application*
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<b>Date and time of hearing:</b>	Thursday, 26 June 2014 at 10:00am
<b>Place of hearing:</b>	The subject site -18 Boongala Avenue, Montville
<b>Committee:</b>	John Brannock– Chair
<b>Present:</b>	Dr David Williams and Lee Williams – Applicants Don Grehan – Assessment Manager, Pacific BCQ Andrew Zarb – Council Representative Julie Edwards – Council representative Michael Rolton – MRA Design for Applicant Jason O’Hara – Builder for Applicant

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 (2)(d)(i) of the SPA:

- order the Assessment Manager to decide the application within three (3) business days from receipt of this decision, and
- direct the Assessment Manager to provide the Committee with written notice of compliance with the above order as required under section 568 of the SPA.

## Background

The Applicants lodged an Application for a preliminary approval for building works to demolish an existing dwelling and construct a new dwelling and detached garage (classification 1a and 10a) with the Assessment Manager on 28 April 2014 (Application No. 20130414). The Application was refused as per the Assessment Manager's Decision Notice dated 6 June 2014. The Assessment Manager was required to refuse the Application in accordance with section 286(2) of the SPA (a 'deemed refusal') due to the failure of Council as Concurrence Agency to provide a response within the required assessment period under the SPA.

The Application was made to, and accepted by Council, for a request for Concurrence Agency Advice (RAB – Referral Agency Building) on the 11 April 2014 and was upgraded by Council to a RAP – Referral Agency Planning on the 28 April 2014. As per Schedule 15 of the Sustainable Planning Regulation 2009 (SPR), the Referral Agency assessment period for building assessment work for a single detached class 1(a)(i) building, class 1(a)(ii) building comprising not more than 2 attached dwellings or a class 10 building is 10 business days. At the date of the Assessment Manager's Decision Notice on 6 June 2014, 38 business days had elapsed without Council issuing an information request pursuant to Section 276 of the SPA; or requesting to extend the referral agency's assessment period pursuant to Section 284 of the SPA; or provide a Concurrence Agency response pursuant to Section 285 of the SPA.

Following issue of the Decision Notice by the Assessment Manager, the Applicant lodged an appeal with the Committee Registrar on 12 June 2014. The appeal was against the deemed refusal of the Application triggered by Section 286(2) of the SPA on the following grounds:

1. The proposed Dwelling and Garage satisfy the Performance Criteria of elements 1 (P3), 8 (P2) and 15 of the Code for the Development of Detached Houses and Display Homes (Code 4.1) of the Maroochy Plan 2000 (as applicable at the date the Application was properly made to the Assessment Manager) as documented in the "Request for Concurrence Agency Response" dated 11 April 2014.
2. By inviting third party input from the adjoining property owner, Council has by default elevated the level of assessment to the equivalent of impact assessment without affording the principles of natural justice and procedural fairness to the Applicant.
3. By requesting third party input from the adjoining property owner, Council as the Concurrence Agency is taking into account irrelevant considerations in so far that the consent of the adjoining property owner' does not form part of the performance criteria of the relevant elements of the Code for the Development of Detached Houses and Display Homes of the Maroochy Plan 2000 (the Code).

The relevant Code in this Application is *Development of Detached Houses and Display Homes* (Code 4.1) of the Maroochy Plan 2000 from the planning scheme that was in force at the time of Application lodgement. The new Council Planning Scheme 2014 was adopted on 22 May 2014 however, the SPA provides that the Application be assessed against the planning scheme in force at the time of lodgement.

The subject site for the Application is located within the Montville Rural Residential Precinct (Sustainable Rural Residential Precinct Class) within the Blackall Range Planning Area.

The stated purpose of Code 4.1 is "*to facilitate and encourage the development or a range of Detached house...types...in ways that integrate new premises with...the character and amenity of surrounding premises*".

The relevant Elements pertaining to the Performance Criteria of the Code which must be satisfied are:-

<i>Element 1:</i>	<i>Height and Siting of Buildings and Structures;</i>
<i>Element 2:</i>	<i>Excavation and Filling;</i>
<i>Element 8:</i>	<i>Steep or Unstable Land;</i>
<i>Element 15:</i>	<i>Blackall Range.</i>

Prior to the hearing, Council provided the Committee with copies of correspondence between the adjoining property owner (neighbour) and Council and the neighbour and local Sunshine Coast Regional Councillor Jenny McKay. This correspondence, dated 15 & 17 May and 23 June 2014 outlined the neighbour's objections to the Application.

At the hearing, Council provided a copy of a Council report on the Application. Stefan Martin, Development Planner for Council, compiled and signed a Delegated Report on 22 May 2014 for Terri McCullough's approval as the Co-ordinator, Planning Assessment. The report is supported by carefully argued reasons setting out in considerable detail the facts relating to the matter and recommends to "*Approve with Conditions*". It should be noted however that this recommendation is not yet approved by Terri McCullough as required by the Council delegations adopted on 12 December 2009.

The Committee, upon receiving an email invitation from the adjoining property owner, viewed the proposed development from the neighbouring property during the hearing so that an assessment of the neighbour's concerns could be considered.

Taking into consideration the above Council report (noted this has not been approved); all the material presented to the Committee including the written objections to the Application from the adjoining property owner; and the verbal presentations and written material presented at the hearing, it is my view that Code 4.1 is generally satisfied.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 12 June 2014.
2. The Refused Decision Notice (dated 6 June 2014) and Plans (elevations, site plan, floor plans/layout and 3D sections) lodged with the Committees Registrar on 12 June 2014.
3. Development of Detached Houses and Display Homes Code (Code 4.1) of the Maroochy Plan 2000.
4. The Schomburgk Planning Pty Ltd Correspondence with Sunshine Coast Regional Council 'Re: Proposed Dwelling House – 18 Boongala Avenue, Montville' (dated 3 June 2014) prepared by Chris Schomburgk, received 25 June 2014.
5. Email Correspondence from the adjoining property owner, Barb Stevens, on 24 and 25 June 2014.
6. Documentation from the Council received 25 June 2014- correspondence between the adjoining property owner and Council; and the adjoining property owner and the Sunshine Coast Regional Councillor Jenny McKay.
7. Sunshine Coast Regional Council 'Delegated Report' prepared by Stefan Martin – Development Planner, received 26 June 2014.

8. 'Northern Elevations – 10m Line' as provided by Don Grehan – Assessment Manager, received 26 June 2014.
9. Plans for 'RAP14/0032 – 18 Bongoola Avenue' (including cross section and elevations) prepared by Sunshine Coast Regional Council, received 26 June 2014.
10. Presentation '18 Boongala Avenue, Montville: Proposed Re-Build' (including aerial, chronology, purpose and overall outcome, plans and images) presented by Dr David Williams, received 26 June 2014.
11. *Sustainable Planning Act 2009* (SPA)
12. Sustainable Planning Regulation 2009 (SPR)

## **Findings of Fact**

The Committee makes the following findings of fact:

- The Applicants lodged an Application for a preliminary approval for building works to demolish an existing dwelling and construct a new dwelling and detached garage (classification 1a and 10a) with the Assessment Manager on 28 April 2014.
- The Application was refused by the Assessment Manager on 6 June 2014 due to the failure of Council as Concurrence Agency to provide a response within the required assessment period under the SPA (a 'deemed refusal').
- The adjoining property owner objected to the Application and on 15 & 17 May and 23 June 2014 the neighbour corresponded with Council officers and Councillor Jenny McKay of the local Sunshine Coast Regional Council.
- Stefan Martin, Development Planner for Council, compiled and signed a Delegated Report on 22 May 2014 for Terri McCullough's approval as the Co-ordinator, Planning Assessment. The report recommendation is "*Approve with Conditions*". This recommendation is not yet approved by Terri McCullough as required by the Council delegations adopted on 12 December 2009.
- The Applicant lodged an appeal with the Committee Registrar on 12 June 2014. The appeal was against the deemed refusal of the Application triggered by Section 286(2) of the SPA.

## **Reasons for the Decision**

Given the appeal is a deemed refusal of a development Application, the Committee under section 564 (2)(d)(i) of the SPA :

- order the Assessment Manager to decide the application within three (3) business days from receipt of this decision, and
- direct the Assessment Manager to provide the Committee with written notice of compliance with the above order as required under section 568 of the SPA

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**John Brannock**  
**Building and Development Committee Chair**  
**Date: 8 July 2014**

## **Appeal Rights**

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Committee's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees  
Building Codes Queensland  
Department of Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**