



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	19 - 17
Applicant:	Taylor'd Distinction (Peter Taylor)
Assessment Manager:	Bruce Milgate, Private Building Certifier (A17121)
Concurrence Agency: (if applicable)	Sunshine Coast Council
Site Address:	21 Coongarra Esplanade, Wurtulla , Qld 4575, Lot 94 CP W9326 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse alterations to a Class 1 building. The Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building works as the dwelling side setbacks did not comply with the Performance Criteria P2 of the Queensland Development Code (QDC).

Date and time of hearing:	22 August 2017 at 10.00 am
Place of hearing:	The subject site - 21 Coongarra Esplanade, Wurtulla , Qld 4575, Lot 94 CP W9326 – the subject site
Committee:	Mr Ain Kuru – Chair Mrs Debra Johnson – Member
Present:	Mr Frank Campbell – Property owner Mr Peter Taylor, Taylor'd Distinction – Applicant Mr Peter Chamberlain – Council representative, Sunshine Coast Council Mr Vince Whitburn – Council representative, Sunshine Coast Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA confirms the decision of the Assessment Manager to refuse extensions to the Class 1 building at the direction of Council as a Concurrence Agency.

Background

Subject Site

The site is a regular shaped residential lot with an area of 555 m². Council advises the existing house and outbuilding were constructed prior to 1980. Subsequent improvements include a carport in 2010, new covered outdoor dining area and internal renovations in 2014, and the current proposal which involves further alterations and a swimming pool, which have already been constructed.

The site and the dwelling generally has a southern outlook to Crummunda Park and Currimundi Lake on the opposite side of the road. Surrounding development consists mostly of single and double storey houses, set within established landscaped gardens.

The Proposed Development

The proposed development involves alterations and additions to the existing dwelling and a new swimming pool. The work comprises:

- Raising the existing ground floor slab;
- Internal alterations to the ground floor of the existing house and raising the wall height from 2.4 to 3 metres;
- Enclosing the front balcony;
- Extending the rear of the house;
- Construction of a new upper floor, providing a 2.7 metre ceiling height on the upper level;
- Extending the upper level over the top of the existing carport;
- Building a new skillion roof and surrounding parapet wall, with a maximum height of 8.26 metres;
- Building an outdoor storage and laundry area along the western boundary;
- A swimming pool, deck and associated block walls at the rear of the dwelling;
- Demolition of the outdoor dining area roof; and
- Building an entry portico and sun deck at the front of the dwelling.

Application Process

Caloundra Building Approvals issued a Decision Notice approving the proposed alterations and additions to the dwelling and a new swimming pool on 27 September 2016. There was no overall height shown on the approved drawings, however scaling of the drawings indicates the proposed height is approximately 7.5 metres. The side boundary setback is shown on the approved plans as 2.0 metres on the west boundary, and 2.1 metres on the east boundary. Condition 41 of the Decision Notice states that the certifier may require a height certificate at the frame stage to ensure the dwelling does not exceed 8.5 metres above natural ground level.

The Committee requested details of frame inspections. These were undertaken on the 24 October 2016 and 28 October 2016. A frame inspection was also undertaken for the garage on the 28 October 2016, although building work for a garage did not form part of the approved plans.

In response to a request for a copy of the height certificate, the Assessment Manager advised the parapet was not constructed at the time of inspection.

In December 2016 the Council contacted the Applicant following a complaint. The Committee understands that this related to the height of the building relative to the side boundary, which was determined to be higher than indicated on the approved drawings.

A new application for building work was subsequently lodged with Caloundra Building Approvals for the existing work along with a site survey. The documents for this application indicate the maximum height of the parapet wall around the roof at 8.26 metres high above natural ground level. The west parapet wall is sited between 1.99 and 2.02 metres from the boundary, and the east wall is sited between 1.89 and 1.91 metres from the boundary. The side boundary setbacks for this site are determined by the provisions of the QDC. Acceptable Solution A2 (a) (iii) states:

The side and rear boundary clearance for a part of the building or structure is –where the height is greater than 7.5m - 2m, plus 0.5m for every 3m or part exceeding 7.5m. side boundary setbacks are determined.

As the setback of the parapet wall is not in accordance with the relevant Acceptable Solutions of the QDC, the certifier was not able to decide the application without Council's agreement. The

application was subsequently referred to the Council for consideration against the Performance Criteria of the QDC.

On 10 May 2017 the Council subsequently directed the certifier to refuse that part of the application relating to the parapet walls pursuant to Performance Criteria P2 item (c) which in part states:

*Buildings and structures –
(c) do not adversely impact on the amenity and privacy of residents on adjoining lots.*

The specific reasons given by Council were:

The parts of the building over 7.5m high and within 2.5m of the side boundaries may appear to be minor, however the non-compliant areas may have a significant effect on both side neighbours with overshadowing also visual nuisance and property sale:-

Overshadowing

- *Being on the western and eastern sides of the neighbouring properties, the parapet may cast unwanted shadows onto the neighbouring properties*
- *Shadows may be of benefit in the summer but may reduce the warmth of the neighbouring houses in the winter months.*
- *There is a concern that the solar panels on the roof at No. 23 may be slightly affected in the morning.*

Visual nuisance and Resale

- *The parapet being closer to the boundary than required by the QDC Acceptable Solutions, creates an “in your face situation” which may cause a visual nuisance to the adjacent neighbours.*
- *This also may affect the resale of the neighbouring property due to the visual closeness to the neighbouring properties.*

The private building certifier issued a Decision Notice on the 10 May 2017, refusing that part of the application relating to the height of the parapet walls.

The Committee received the application for appeal, Form 10 from the applicant on the 12 May 2017.

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 May 2017;
2. Assessment Manager Amended Decision Notice, Caloundra Building Approvals Reference Number 7117, dated 10 May 2017 partly approving and partly refusing alterations and additions to the existing dwelling and a new swimming pool.
3. An e mail dated 22 August 2017 from Peter Taylor attaching electronic copies of drawings submitted with the building application.
4. An e mail dated 23 August 2017 from Peter Taylor attaching electronic copies of:
 - a. the *3D Visualisation – Solar Study – As Constructed* dated June 2017;
 - b. Assessment Manager Decision Notice, Caloundra Building Approvals Reference Number 7117, dated 27 September 2016 approving alterations and additions to the existing dwelling and a new swimming pool; and
 - c. An aerial photo showing construction of the alterations (undated).

5. An e mail from Sunshine Coast Council dated 1 September 2017 enclosing copies of the following approved building work applications on the subject site:
 - a. PC10/2337 – Alterations and Additions of Carport to Existing Dwelling
 - b. PC16/4406 - Alterations to Existing Dwelling - Swimming Pool And Fence
6. An e mail from Sunshine Coast Council dated 8 September 2017 enclosing a copy of its Concurrence Agency Response Ref RAB 14/0126 approving an outdoor dining area and entry portico.
7. An e mail dated 12 September 2017 from Peter Taylor enclosing copies of frame inspection certificates.
8. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
9. Verbal submissions at the hearing from all parties to the appeal;
10. The Sunshine Coast Planning Scheme 2014;
11. The Queensland Development Code MP 1.2;
12. The *Sustainable Planning Act 2009*;
13. The *Building Act 1975*.

Findings of Fact

The Committee makes the following findings of fact:

The site is located in the Low Density Residential Zone in a LDR1 Precinct (Protected Housing Area) The proposal involves building work as defined by the SPA. The Sunshine Coast Planning Scheme defines the development as a dwelling house and therefore *Table 5.7.1 Building Work* applies. This Table refers to the Dwelling House Code. As the Code does not prescribe side boundary setbacks, the Queensland Development Code (QDC) applies, as provided by section 33 of the *Building Act 1975*.

The height of the parapet wall around the roof as-built is between 8.16 and 8.26 metres high above natural ground level. The west parapet wall is sited between 1.99 and 2.02 metres from the boundary, and the east wall is sited between 1.89 and 1.91 metres from the boundary. As a result, the application must be assessed against the Performance Criteria of the QDC relating to element P2 which states:

P2 Buildings and structures –

(a) provide adequate daylight and ventilation to habitable rooms; and

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.

(c) do not adversely impact on the amenity and privacy of residents on adjoining lots.

Reasons for the Decision

Daylight and Ventilation

At the hearing, the Applicant submitted detailed solar diagrams showing the impact of the proposed house on the adjoining houses. This was accompanied by solar diagrams showing the impact of a second proposal with the parapet walls partly removed so they were compliant with the allowable setbacks in the Acceptable Solutions of the QDC.

The point made by the Applicant was that the solar impact on the adjoining buildings of the proposed as-built house varies little from the impact of the house if it was built in accordance with the allowable setbacks of the QDC. The Committee accepts the Applicant's submission in this regard as the extent of shadowing is only marginally greater. Similarly the Committee does not believe there will be any impact to ventilation of adjoining buildings.

Amenity and Privacy

Having carried out a site inspection the Committee observed the proposed parapets that have already been constructed. The Committee finds that the structure in itself does not impact on the privacy of adjoining residents.

Assessing whether a development has an adverse impact on amenity is more subjective than assessing other environmental impacts such as noise and pollution. In considering whether there is an adverse impact on amenity, the Committee took note of the existing streetscape and neighbouring development.

The surrounding area comprises detached houses with established landscaping. According to the documentation provided to the Committee, the current dwelling and associated outbuildings cover 47.7% of the subject site, which is less than the allowable 50 percent site cover. (ref: QDC A3). However, by site inspection, the Committee noted that instead of soft landscaping, the subject site had been extensively developed with hard landscaping such as decks, a swimming pool, block walls and paved areas. In many cases, this hard landscaping was built to the side and rear boundaries of the property. The Committee therefore finds that the subject site has been significantly more developed than adjoining and nearby properties.

In this context, the Committee believes that the extent and height of the parapet walls will have an adverse impact on the amenity of residents on adjoining lots, given their proximity to the two side boundary lines. The parapet roof structure is imposing given the extent of built form. There is now limited ability for landscaping to effectively ameliorate the height and bulkiness of the parapet and therefore the effect on adjoining residents.

Ain Kuru
Building and Development Committee Chair
Date: 11 September 2017

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) 1800 804 833 Facsimile (07) 3237 1248