



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	21- 16
Applicant:	Kylie Robinson
Assessment Manager:	Nick Schofield, North Shore Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	8 Sandy Cove Crescent Coolum Beach described as Lot 35 on RP855046 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* against the decision of the Assessment Manager to refuse a Development Application for Building Work to undertake Alterations and Additions to an existing Dwelling the location of which conflicts with the acceptable siting measures of the regulatory framework at the direction of the Concurrence Agency.

Date and time of hearing:	11.00am, 29 July 2016.
Place of hearing:	The subject site
Committee:	Don Grehan – Chair Deanna Heinke – Member Peter Cardiff - Member
Present:	Kylie Robinson – Applicant and Property Owner Euan Robinson – Property Owner, Steve Rosenius – Council representative Andrew Zarb – Council represent

Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564 of the *Sustainable Planning Act 2009* (SPA), **sets aside** the decision of the Assessment Manager and **approves in part** and **refuses in part** the proposed Alterations and Additions to Dwelling subject to the following conditions and directions as considered appropriate:

1. **Approval** is given for reduced road boundary setback of 3150mm to the outer most projection of the first floor balcony;
2. **Approval** is given for reduced road boundary setback of 3800mm to the wall of the proposed first floor rumpus room;

3. The proposed setback of 1250mm to the outermost projection of the proposed upper floor bedroom 3 is **Refused**. The proposed addition to the dwelling is to be redesigned to achieve a south western side boundary clearance consistent with Acceptable Solution A2(a) of the Queensland Development Code Mandatory Part 1.2 (MP 1.2).
4. Subject to compliance with Condition 3, the proposed development shall be undertaken generally in accordance with Architectural Plans Sheets 1 to 4 marked BDDRC 21-16 (attached).
5. The proposed building must be sited strictly in accordance with the boundary clearances nominated herein. A set out certificate signed by a Licensed Surveyor, verifying setbacks from the prescribed property boundaries is to be submitted to the Assessment Manager prior to the placement of concrete for footings.
6. The maximum height of the building or structure is not to exceed the height limits prescribed in the Council's Planning Scheme. In this instance the maximum height shall not exceed 8.5m above either natural or finished ground level. A certificate signed by a Licensed Surveyor verifying the maximum height of the structure relative to both levels is to be submitted to the Assessment Manager prior to the issue of a Form 21 – Final Inspection Certificate
7. Unless noted otherwise, the Condition Time; requisite stages of inspection; requisite certificates of design; compliance, or aspect, together with any specific elemental conditions and details of any applicable self-assessable codes or further development approval required are to be nominated in writing by the Assessment Manager prior to the commencement of work. Such details are to be provided to the Applicant, Builder and Council.

Directions:

8. The property owner is to provide the Building Certifier's copy of the QBCC Home Warranty insurance documentation and receipt payment of the Q-Leave Levy to the Assessment Manager prior to the commencement of works.
9. The Property Owner and Council are reminded that the Conditions of this Decision are the Conditions of a Development Approval for Building Works and attach to the land binding the Property Owner, the Owner's successors in title, and any occupier of the land.

Background

The Assessment Manager refused a Development Application for Building Works to undertake Alterations and Additions to a Dwelling the siting of which would result in side and road boundary setbacks that were contrary to the acceptable siting measures of the regulatory framework following receipt of a Concurrence Agency Response from the Council.

The Council, directing the refusal, considered that the proposed development did not comply with, and could not be conditioned to comply with the Performance Outcome PO3 of the Dwelling House Code of the Sunshine Coast Regional Council Planning Scheme and/or Performance Criteria P2 of the QDC MP 1.2.

The Applicant, dissatisfied with the refusal, lodged an appeal with the Committees Registry on the 14th of July 2016 against the Decision of the Assessment Manager

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 14 July 2016.
2. Assessment Managers Decision Notice, Reference No. 15-046 dated 16 June 2016.
3. Sunshine Coast Regional Council's Concurrence Agency Response, Reference No. RAB15/0800 dated 18 April 2016.
4. Verbal submissions from the Applicant and Property Owners at the hearing.
5. Verbal submissions from Council's representative at the hearing.
6. The *Sustainable Planning Act 2009* (SPA).
7. The *Sustainable Planning Regulation 2009* (SPR).
8. The *Building Act 1975* (BA).
9. The Dwelling House Code of the Sunshine Coast Regional Council Planning Scheme 2014.
10. Queensland Development Code Mandatory Part 1.2 - MP 1.2 – Design And Siting Standard for Single Detached Housing on Lots 450m² and Over. (QDC MP1.2)
11. Building Setback Diagram, Issue B, dated 15 April 2016 as provided by Sunshine Coast Regional Council.

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is a 923m² allotment situated in an established residential neighborhood. The allotment slopes steeply upwards to the North West from the street level and its topography is such that construction towards the rear of the property is not considered reasonably possible.
- An existing Class 1A dwelling and Class 10A attached garage are constructed on the subject site.
- The boundary setbacks to the existing Class 1A dwelling are generally consistent with the acceptable siting measures of the regulatory framework, as is the south-western side boundary setback of 700mm to Class 10A attached garage however, the Class 10 attached garage has a reduced setback to the road boundary of 1550mm previously approved by Council.
- The property owner proposed to undertake alterations and additions to the existing dwelling the siting of which would result in:
 - (1) A road boundary setback of 3150mm to the outer most projection of the upper floor verandah;
 - (2) A road boundary setback of 3800mm to the wall of the upper floor rumpus room; and
 - (3) A south-western side boundary setback of 1250mm to the outermost projection of the proposed upper floor bedroom 3.

- In May of 2015, the Applicant made a Development Application for Building Work to the Assessment Manager in relation to the proposed Alterations and Additions
- In assessing the Development Application for Building Work, the Assessment Manager identified that the proposed boundary setbacks were contrary to both Acceptable Outcome AO3 of the Dwelling House Code of the Sunshine Coast Regional Council Planning Scheme and Acceptable Solution A2(a) of QDC MP 1.2 and, in accordance with Schedule 7 of the Sustainable Planning Regulation 2009, requested Council's response to the proposal as a Referral Agency for assessment against the relevant aspects of the specified Codes.
- In relation to the jurisdiction of the Concurrence Agency, the relevant aspects of the specified Codes are:
 - (1) Performance Outcome PO3 of the Dwelling House Code of the Sunshine Coast Regional Council Planning Scheme; and
 - (2) Performance Criteria P2 of the QDC MP 1.2.
- Performance Outcome PO3 of the Dwelling House Code of the Sunshine Coast Regional Council Planning Scheme requires that:

Where located in a residential zone, the dwelling house is set back from any road frontage so as to:

 - (a) *achieve a close relationship with, and high level of passive surveillance of, the street;*
 - (b) *create a coherent and consistent streetscape, with no or only minor variations in frontage depth;*
 - (c) *make efficient use of the site, with opportunities for large back yards;*
 - (d) *provide reasonable privacy to residents and neighbours on adjoining lots; and*
 - (e) *maintain reasonable access to views and vistas, prevailing breezes and sunlight for each dwelling house.*
- Performance Criteria P2 of the QDC MP 1.2 requires that:

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.*
- The Assessment Manager requested Council's response to the siting of the proposed building works as a Referral Agency for assessment against the relevant aspects of the specified Codes on two occasions, RAB15/0353 submitted on the 12th of June 2015 and RAB15/0800 submitted on the 27th of November 2015.
- Referral Agency Request RAB15/0353, was initially supported by Council however, the accuracy of the location of and setbacks from the south-western allotment boundary was disputed and Council subsequently withdrew support.
- The Applicant has had the boundaries of the subject site identified by a Licensed Cadastral Surveyor and the accurate location of the south-western side boundary is confirmed.
- In deciding Referral Agency Request RAB15/0353800, Council considered that the proposed development did not comply with and could not be conditioned to comply with the following aspects

Performance Outcome PO3:

- (1) The creation of a coherent and consistent streetscape, with no or only minor variations in frontage depth;
- (2) The provision of reasonable privacy to residents and neighbours on adjoining lots; and
- (3) The maintenance of reasonable access to views and vistas, prevailing breezes and sunlight for each dwelling house.

Performance Criteria P2

- (1) Not adversely impact on the amenity and privacy of residents on adjoining lots.
- On the 18th of April 2016, Council issued a Concurrence Agency Response directing the Assessment Manager to refuse the Development Application for Building Work.
 - On the 16th of June 2016, the Assessment Manager issued a Decision Notice refusing the Development Application for Building Work solely at the direction of the Concurrence Agency.

Reasons for the Decision

- The Committee acknowledges that Council has considered previous requests for Concurrence Agency Advice relating to this Development however, the Committee is satisfied that this Appeal arises from a subsequent and separate application and accordingly decides the matter on the merits of the most recent request..
- The Committee is satisfied that, given the variance in road boundary setbacks to other buildings and structures within the vicinity of the subject site, the proposed reduced road boundary setback of 3150mm to the outer most projection of the first floor balcony:
 - (a) In the comparative context, creates a coherent and consistent streetscape and represents a minor variation in frontage depth;
 - (b) Provides for reasonable privacy to residents and neighbours on adjoining lots; and
 - (c) Maintains reasonable access to views and vistas, prevailing breezes and sunlight.
- The Committee is satisfied that, given the variance in road boundary setbacks to other buildings and structures within the vicinity of the subject site, the proposed reduced road boundary setback of 3800mm to the wall of the proposed first floor rumpus room:
 - (a) In the comparative context, creates a coherent and consistent streetscape and represents a minor variation in frontage depth;
 - (b) Provides for reasonable privacy to residents and neighbours on adjoining lots; and
 - (c) Maintains reasonable access to views and vistas, prevailing breezes and sunlight.

- The Committee is not satisfied that, given the location of adjacent outdoor living spaces, the proposed south-western side boundary setback of 1250mm to the outermost projection of the proposed first floor bedroom 3 does not adversely impact on the amenity and privacy of residents on adjoining lots.

Don Grehan
Building and Development Committee Chair
Date: 31 October 2016

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:

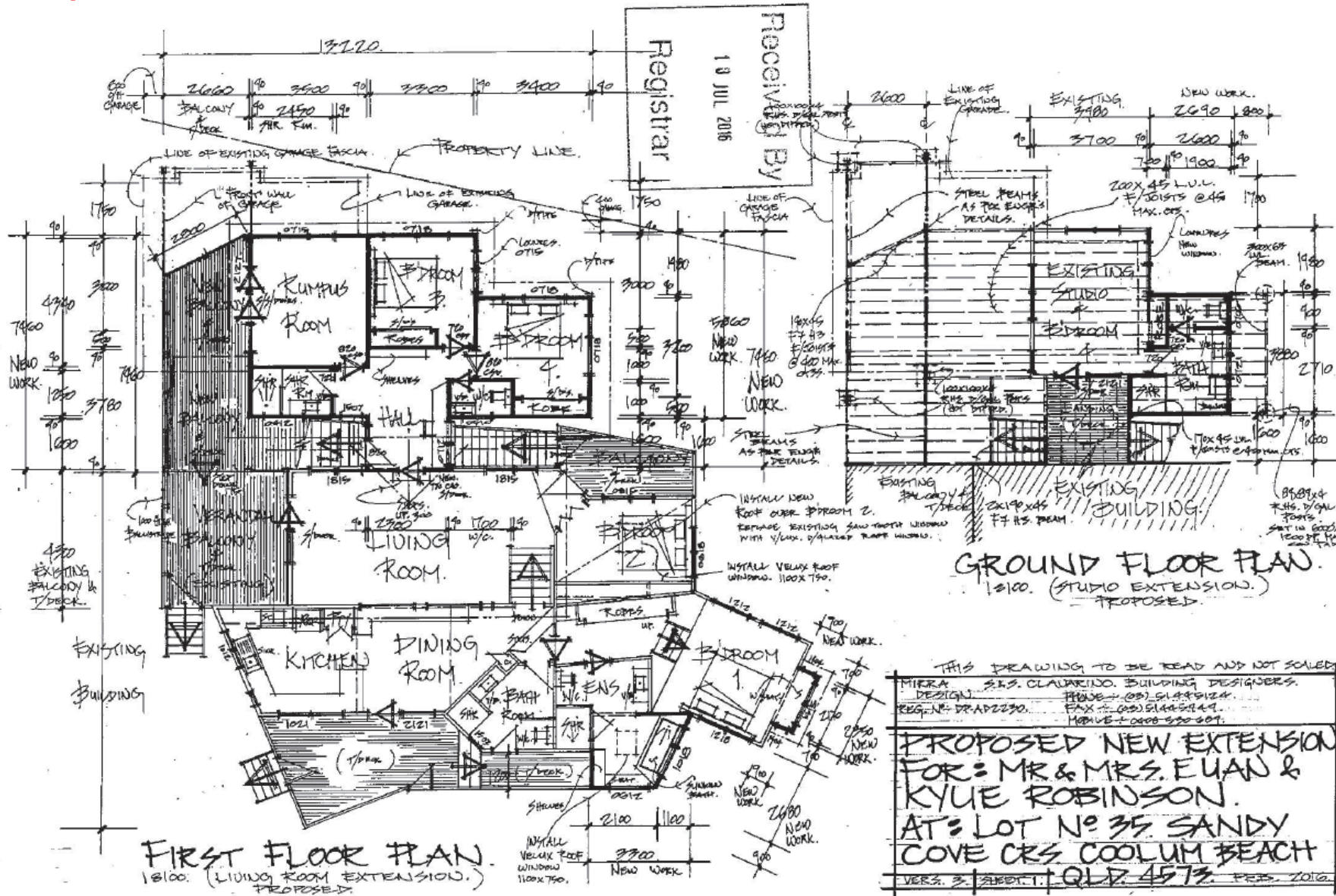
- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

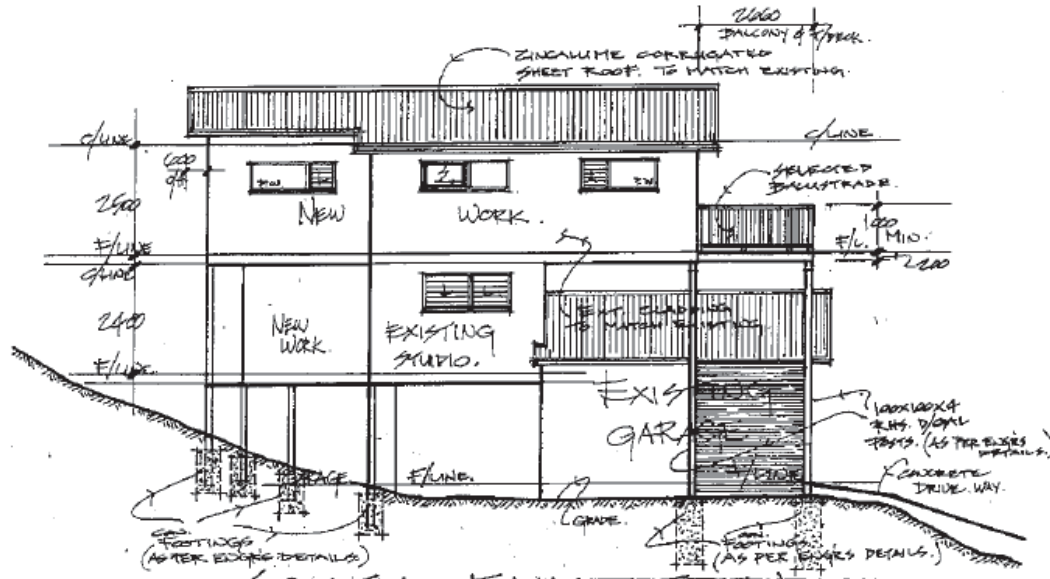
The appeal must be started within 20 business days after the day notice of the Committee's decision is given to the party.

Enquiries

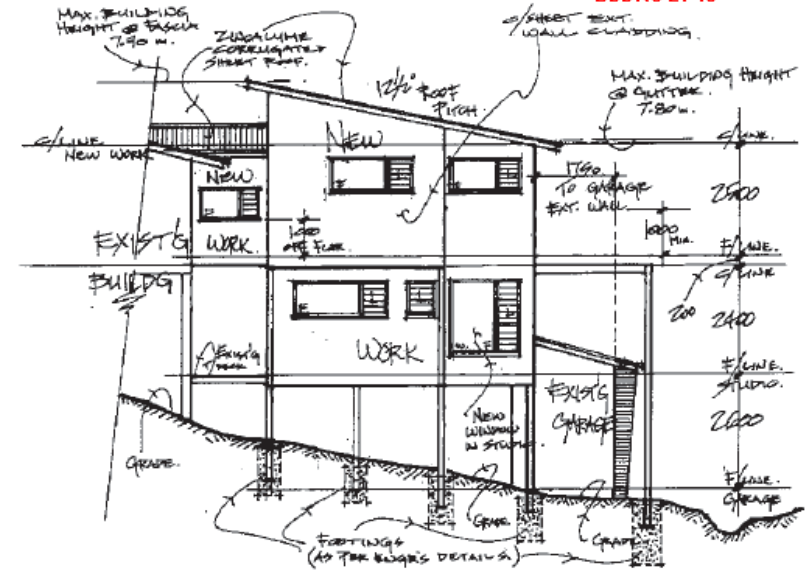
All correspondence should be addressed to:

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

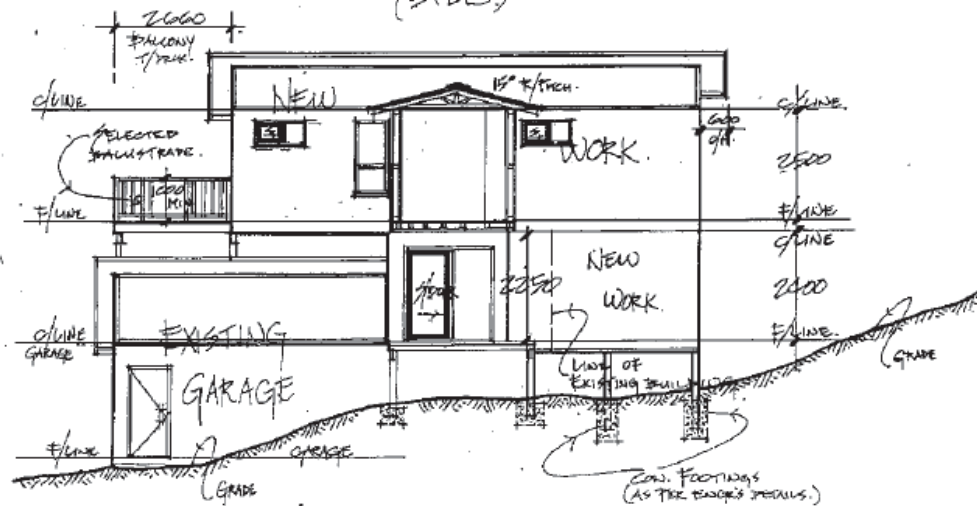




SOUTH ELEVATION 18100 (SIDE)



WEST ELEVATION 18100 (REAR)



NORTH ELEVATION 18100 (SIDE)

Received By
 18 JUL 2016
 Registrar

THIS DRAWING TO BE READ AND NOT SCALED.

MIRCA SW. CLAVARINO BUILDING DESIGNER.
 DESIGN. PHONE (08) 514459
 REG. No DP-AP 2230 FAX (08) 5144619
 MOBILE 0408590689

PROPOSED NEW EXTENSION.
 FOR MR & MRS. EVAN & KYLIE.
 ROBINSON. AT NO 8 SANDY COVE
 CRESCENT, COOLUM BEACH QLD.

VERS. 3 SHEET 21 4573. FEBRUARY 2016.

