



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 73 – 11
Applicant: Michael & Leanne Hodges
Assessment Manager: Cairns Regional Council
Concurrence Agency: N/A
Site Address: 38 Janett Street, Yorkeys Knob, Lot 1 on RP726429

Appeal

Appeal under Section 564 of the *Sustainable Planning Act 2009* against the decision of Cairns Regional Council to issue a Preliminary Approval requiring the redesign and relocation of the proposed dwelling.

Date of hearing: Friday 21 October 2011
Place of hearing: Cairns Regional Council Chambers
Committee: Malcolm Edmiston – Chair
Robert Henwood – General Referee
Present: Tony Lawson – Building Designer representing the Applicants
Bob Colefax - Applicants' Engineer–ColefaxRogers Cons Engr

Trish Read - Cairns Regional Council - Planner
Gary Warner – Cairns Regional Council – Team leader
Laurie Phipps – Cairns Regional Council–Manager Development
Peter Roma - Cairns Regional Council - Engineer
Lachlan Rankin – Cairns Regional Council – Engineer (Site only)
Kylie Nolan - Cairns Regional Council - Observer

Decision:

The Committee, in accordance with section 564 (2) of the *Sustainable Planning Act 2009*, **changes** the decision appealed against by deleting Section A and replacing it with the following Section A:

- A. The Council approves a Preliminary Approval for a Development Application for a House (in excess of 7.5 metres, Hillslope and Vegetation Conservation Overlays) over land described as Lot 1 on RP726429, located at 38 Janett Street, Yorkeys Knob, subject to the following

additional requirements being met:

- 1 The building shall not exceed 17.5 metres high at the outermost projection.
 - 2 The footings of the dwelling shall be bedded into bedrock.
 - 3 The owner is to engage a RPEQ to design the footings, slabs and suspended slabs based upon the engineering geotechnical report.
 - 4 The owner shall engage the design engineer to produce a construction method to be used by the builder to ensure there is no damage to the embankment during construction.
 - 5 The owner is to require the builder to follow the engineer's construction methodology.
 - 6 The owner is to engage a RPEQ to design a method of stabilising the embankment over the rock base below the dwelling to eliminate the likelihood of slip. The design is to take account of the Council sanitary sewer crossing the site to maintain and/or improve its stability. The owner is to cause such a design to be implemented.
 - 7 All roofwater is to be piped to the kerb and channel.
 - 8 Surface stormwater falling on the paved surfaces that do not run to the kerb and channel are to be collected via grates and/or pits and piped to a 4000 litre stormwater tank.
 - 9 The stormwater tank shall have mechanism to automatically commence pumping water to the kerb and channel when the tank is 2/3 full. The tank will have a manually operated system to release water to a manifold system which will distribute the water over the site in such a manner as not to erode the stabilised embankment or adversely affect neighbouring properties.
 - 10 Any overflow of the tank due to the pump not coping with the rate of downpour shall discharge through the manifold distribution system.
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Background

The proposed dwelling which is the subject of this appeal is a large three-storey pole house located at the last vacant block on the crest of the seaward side of the street. The site is on the top of a steep slope. The site is subject to the Residential 1 Planning Area Code, the Hillslopes Code Vegetation Conservation Code of the Cairns Regional Council Planning Scheme which came into effect in July 2009.

The applicant submitted an application for Code Assessment in March 2011.

The construction of the dwelling out over the hillslope would create a maximum height of 17.5 m at the outermost projection exceeding maximum height permitted by A2.1 Acceptable Measures of the Residential 1 Planning Area Code. The dwelling has a maximum 2 storey frontage to the street. Many of the other dwellings existing at Yorkeys Knob that were constructed prior to the current Planning Scheme exceed 7.5 metres high out over the hillslope.

Due to a previous land slip on this site and other land slips around Yorkeys Knob Council was concerned that the design of this dwelling would cause additional land slip with a likelihood of damage to Council's sanitary sewer which traverses the site below the proposed dwelling.

Council sought to meet compliance with these Codes by requiring a redesign of the dwelling to step the dwelling down the site.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Application for appeal/declaration dated 12 September 2011
 2. The Council Decision Notice with covering letter dated 10 August 2011.
 3. The Cairns Regional Council Planning Scheme and Local Laws.
 4. The application material including drawings.
 5. The applicant's grounds for appeal against the Assessment Manager's reasons for the decision.
 6. Written and verbal submissions made at the hearing by the applicant's agent / building designer and engineer.
 7. Written and verbal submissions made at the hearing by Council's representatives.
 8. The *Sustainable Planning Act 2009* and associated regulation.
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Findings of Fact

The Committee makes the following findings of fact:

The development is subject to the Residential 1 Planning Area Code, the Hillslope Code Category 1 (Urban) and Vegetation Conservation & Significant Waterway Code Vegetation Category 2.

The site has a steep slope towards the sea (north east) with uncontrolled fill over a large portion of the site.

The site has a Council sanitary sewer crossing it near its north eastern boundary with a 60° bend two thirds across the site.

The hill has a slightly weathered medium strength siltstone base with a sandy silty clay layer and uncontrolled fill at various depths across the site. This leaves the site subject to landslip and creep at the steeper parts of the site. Such slip would most likely impact upon the Council sewer.

Reasons for the Decision

The proposal does not comply with Acceptable Measure A2.1 the Residential 1 Planning Area Code in that the building exceeds the prescribed 7.5 m in height when measured from natural ground level. Performance Criteria P2 requires "The height of buildings must be in keeping with the residential character of the areas and the height of buildings must not adversely affect the amenity of residential neighbourhoods." The proposed dwelling will present a two storey elevation when viewed from Janett Street which is identical to the dwellings either side of it. The building on the adjoining allotment to the north-west is three storeys plus an undercroft area when viewed from the sea. The dwelling on the adjoining allotment to the south-east is stepped down the hill with a large deck with a colonade between the upper and lower two storey buildings creating a four to five storey view from the sea. The elevation of the proposed residence when viewed from the sea will be three stories plus an undercroft area containing natural ground that will be landscaped as part of the stabilisation of the subject land. It will also be a pole house type construction reducing the visual impact. It is considered that the proposed dwelling will have less impact on the visual amenity of the locality than the existing residential buildings and is in keeping with residential character and amenity of Yorkeys Knob. Accordingly it is considered the proposed residence satisfies Performance Criteria 2 of the Planning Scheme Residential 1 Planning Area Code.

Cairns Plan 2009 Hillslopes Code Part B performance Criteria P1 requires:

Development:

- a) does not have a detrimental impact on slope stability or erosion potential of the land; and
- b) maintains the safety of people, property and hazardous materials manufactured or stored in bulk, from the risk of landslide

In view of the history of landslides in the Yorkeys Knob locality, Council Officers expressed concern about potential landslip problems with the subject land and proposed residence.

It was acknowledged the slope stability, excavation, provision of services and safe access are matters requiring an engineering solution. These matters were discussed in detail with the applicant's consulting engineer and Council's engineers to their mutual satisfaction. It was agreed that stepping the building down the site would be more detrimental to slope stability than the proposed design and the new conditions are based on that agreement.

It was agreed the new conditions will ensure compliance with Acceptable Measures A1.2, A1.3, A1.4, A1.5, A2.1, A2.2 and A2.3 of the Hillslope Code.

Acceptable Measure 2.4 of the Hillslope Policy states that "*Development does not alter the skyline*" The development is on the ridgeline as are all the dwellings in Janett Street, and do not comply with Acceptable Measure A.2.4. of the Cairns Regional Plan, as all existing structures protrude above the skyline of Yorkeys Knob when viewed from a distance. The proposed dwelling will be constructed on the last remaining vacant allotment on the seaward side of Janett Street and therefore will fill in a void between the existing dwellings as viewed from the sea.

It is therefore considered the proposed residence will comply with Performance Criteria P2 of the Residential 1 Planning Area Code as it will be in keeping with the residential character of the area and the height of the proposed residence will not adversely affect the amenity of the residential neighbourhood.

The development will comply with Acceptable Measures A2.5, A2.6, A2.7, A2.8, A2.9, A2.10 and A2.11 Hillslope Code. Excavation or filling may not fully comply with A2.12 but as minimal excavation is to occur due the location of the proposed house on the subject land it is considered to comply with Performance Criteria P2.

It is noted that Acceptable measures A2.13 and A2.15 may be seen to conflict with each other. As the building is post and beam (pole house construction) it complies with A 2.15 and as it minimises excavation and filling which also complies with A2.13 Hillslope Code.

The roofline of all buildings on this side of the street protrudes above the ridgeline. Accordingly, A2.16 (reference Acceptable Measure 2.4 above) is discounted as the development is considered as complying with Performance Criteria P2.

Council's remaining conditions cover Acceptable Measures A2.17 to A2.21 of the Hillslope Code which relate to building work, and are not raised as an issue and have not been considered by the Committee.

The new conditions ensure compliance with Acceptable Measures A3.1 to A3.5 and particularly address the issue of stormwater on the driveway.

It is considered the proposed dwelling will result in appropriate development for the subject land and will be consistent with the character and visual amenity of the locality. This assessment is based on the existing residential developments in the locality, the visual impact of those residential developments on dominant landscape feature of Yorkeys Knob, the visual impact of the proposed residence when viewed from the ocean, which will be softened by the post and beam pole house construction and the landscaping and screening that has been conditioned by Council.

Council issues particularly in respect to the stability of the site and protection of its infrastructure are considered a valid concern. The new conditions addressing these matters will ensure the best outcome to improve the stability of the site which in its current state is potentially prone to landslides.

Malcolm Edmiston
Building and Development Dispute Resolution Committee Chair
Date: 22 November 2011

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a building and development committee may appeal to the Planning and Environment Court against the Tribunal'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:

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