



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	65-2011
Applicant:	Jon Henry Dachs and Helen Fay Dachs
Assessment Manager:	Sunshine Coast Regional Council (Council)
Site Address:	90 Dixon Road, Buderim and described as Lot 24 on RP806809 – (the subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against Council's decision as Assessment Manager, dated 15 July 2011, to refuse a Development Application (DA) for building works (siting variation) for a class 1a dwelling.

Date of hearing:	3.00pm, Tuesday 13 September 2011	
Place of hearing:	The subject site	
Committee:	Ms Kari Stephens	– Chairperson
Present:	Mr Alan Thompson	– Council representative
	Mr Jon Dachs	– Owner
	Ms Helen Dachs	– Owner
	Mr Daryl Lawson	– Owner's Builder
	Ms Rebecca Reitano	– Observer

Decision

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager, and **directs** the Assessment Manager to **approve** the DA, subject to compliance with the following conditions:-

1. The dwelling shall be sited and constructed in accordance with the amended plans (in particular drawing no. 1003/2 "site plan" and section A, section B, and section C [issue A dated 18 September 2011]).
2. Battens which provide visual screening to at least 40 per cent of the undercroft shall be applied to that part of the building directly below bedrooms 4 and 5 (and their associated balconies).
3. Landscaping is to be provided along the Elizamay Close frontage in the vicinity of bedrooms 4 and

5. Trees and shrubs are to be of a type/species to achieve visual screening and softening of the undercroft within three years. Such landscaping shall comply with Council's Code for Landscaping Design.
4. Prior to the issue of the certificate of completion, the owner shall submit certification prepared by a qualified surveyor stating that the house does not exceed 10m in height as measured from ground level.
5. Construction shall be in accordance with the soil classification report by Geo Consulting (reference number S5458) dated March 2011.
6. Such other standard building conditions as Council deems appropriate.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 10 August 2011.
2. An inspection of the site and the locality, undertaken by the Chairperson.
3. The assessment manager's decision notice dated 15 July 2011.
4. Verbal and written submissions from the parties at the hearing.
5. The Planning Scheme for the former Maroochy Shire Council – in particular, code 4.1 "Code for the Development of Detached Houses and Display Homes".
6. The Queensland Development Code – Mandatory Part 1.2.
7. The Building Regulation 2006.
8. The *Sustainable Planning Act 2009* and its regulations.

Background

The subject site is located in the suburb of Buderim in an area characterised by detached residential dwellings, the majority of which are located on steep and sloping land. Dixon Road is a collector road which connects Buderim village to the Sunshine Motorway, Mountain Creek and Sippy Downs/Sunshine Coast University.

The subject site is located on the western side of Dixon Road, on the corner of Elizamay Close. The Dixon Road verge adjoining the subject site is unusually wide (approximately 20m) compared with a "normal" verge of 4-5m. As a result, the houses located on the western side of Dixon Road, are well set back from the carriageway, and are not visually prominent.

The subject site is located within a "Neighbourhood Residential" precinct in the Maroochy Plan 2000. The applicable code is Code 4.1 "Code for the Development of Detached Houses and Display Homes" (the Code), and overlays for steep land and land slip also apply. The maximum building height for residential dwellings is 10m (where slope exceeds 15 per cent, as is the case here).

The front part of the allotment (that area adjoining Dixon Road) is relatively flat and has a height of RL 87 AHD. This part of the site affords ocean views towards Caloundra as well as hinterland views to the west. The midsection of the site comprises a steep embankment and falls away sharply to approximately RL 81 AHD, before flattening out to the rear of the property at about RL 78 AHD.

The site is vacant and has an area of approximately 926m². This allotment size is fairly typical for the

area, although there are several much larger allotments, particularly where slope exceeds 20 per cent. The site is bounded by detached houses on the side and rear boundaries.

The proposed house is a two-storey elevated home comprising five bedrooms, a double garage and various service and living areas. The application the subject of this appeal, sought a relaxation (siting variation) of the side road boundary of 4.8m (rather than the 6m preferred in the Code).

Findings of Fact and Discussion of Issues

The Committee makes the following findings of fact:

The Council's Decision Notice, dated 15 July 2011 recommends refusal of the application because of on an alleged non-compliance with the various provisions of the Maroochy Plan 2000, namely:

- i) element 1, performance criteria 1, acceptable measure 1.2 (relating to building height);
- ii) element 1, performance criteria 2(b) (relating to buildings making a positive contribution to the streetscape);
- iii) element 2, performance criteria 1(a) and 1(c) (related to excavation and filling);
- iv) element 8, performance criteria 1(d) and 1(e) (relating to integration of the natural surroundings).

The Decision Notice then states as follows:

It should be noted that the application for the proposed dwelling has not demonstrated compliance with the maximum 10m height allowance. Based on plans submitted, the height of the dwelling roof/parapet arrangement over the south-west corner of the upper level bedroom 2 is approximately 10.5m above the corresponding contour below. In addition, Council is unable to determine the amount of earthworks (fill) in place and so cannot accurately determined that building height in relation to the natural ground level.

Council advises that the applicant has not provided the information from which an accurate determination of the building's earthworks height can be calculated. Determination of the building height is critical to the form of assessment Council would adopt.

Following written and verbal submissions at the hearing, the Assessment Manager's issues can be summarised as follows:

- i) The overall height of the building may exceed the 10m permitted under the planning scheme. Insufficient information was provided to the Council to allow them to determine natural ground level and/or maximum building height.
- ii) The building character and appearance, combined with the requested setback variation, is such that the building may not positively contribute to the streetscape.

During the hearing, issues relating to slope, natural ground level, building height and the appearance/character of the building were discussed at length. In the Committee's view, the amount of information provided with the application was probably insufficient to enable an accurate understanding of the building height and natural ground level. There was also some conjecture as to whether fill had been imported to the site, how much, and when. The owners explained that no fill would be necessary for the construction of the dwelling, and that the ground floor would extend over the sloped land by way of a platform suspended above steel posts.

At the hearing, the Committee asked both parties to provide further information. The Council was asked to provide historical contour information from the original subdivision. The property owners were asked to provide three cross sections at various locations through the building and to investigate the option of re-

siting the building to achieve a 6m setback (rather than the 6.64m setback originally proposed). It was hypothesised that moving the building forward by 0.64m would assist in reducing the amount of the building affected by the steep drop-off, and therefore height above ground level.

On 16 September 2011, Council provided a plan (undated) of the subdivision of Elizamay Close. The subject site was not part of the subdivision, although the site is shown on the plan. A spot level at RL 87.44m AHD is shown on the front part of the site, and contours at 80m and 85m are also shown. The contour information, although not detailed, is generally consistent with the levels currently on the site. The adjoining house on Dixon Road (estimated to be approximately 15 years old) is constructed on land with a similar landfall, although it is difficult to determine whether or not filling/benching has occurred.

Furthermore, there are mature trees and tree stumps on the site which indicate the existing levels have been in place for quite some time. The Committee is satisfied if any benching has occurred, or if there is any fill, then it has been there for a substantial period of time (in excess of 15 years). Given the landform of the site is not inconsistent with the adjoining land, and in the absence of any other evidence to the contrary, the Committee is willing to accept the existing levels as natural ground level for the purposes of this appeal.

On 20 September, the property owners provided a series of plans including a new siting plan showing a setback of 6m from the front boundary and three cross sections. The cross-sections demonstrate that the building height of the house is within 10m of natural ground level. The property owners also provided a perspective of the house as viewed from Elizamay Court (the elevation subject to the siting variation).

In the Committee's opinion, the elevation demonstrates good visual and physical articulation, with architectural blades above and beside the upper storey windows and recesses on the ground floor to accommodate ground floor terraces and balconies. It is considered this elevation has suitable opportunities for texture, shadow and depth which will add visual interest, and significantly reduce the potential for an unsympathetic (box-like) appearance of the finished product.

In summary, the additional information provided by both parties, and the slight amendments to the plan, appear to substantially address the issues of this appeal.

Reasons for the Decision

The submission of additional cross sections and the re-siting of the building to a 6m front setback indicate that the proposal will comply with the 10m building height limit required by the planning scheme. In addition, the Committee recommends the inclusion of a condition specifying that the height of the house must not exceed 10m as certified by a surveyor, prior to the issue of the certificate of completion.

In terms of the proposal's impact on character and amenity, the design, whilst modern, is not inconsistent with the emerging Sunshine Coast style. The Elizamay Court elevation, which is the subject of the siting variation (to 4.8m) demonstrates good visual and physical articulation and has suitable opportunities for texture, shadow and depth. The Committee is of the opinion that a reduction of the setback to 4.8m for this side boundary will not have an adverse effect on either the character, appearance or the amenity of the neighbourhood.

This decision includes conditions relating to provision of battens to the undercroft of the building, a requirement for screening landscaping adjacent to the undercroft of the building, and construction of the building in accordance with the soil classification report.

It is the Committee's opinion that the decision of the assessment manager be **set aside** and replaced with a decision incorporating the conditions mentioned above, plus the "standard" building conditions that the Council deems to be appropriate.

Kari Stephens
Chairperson
Building and Development Committee Chair
Date: 22 September 2011

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:

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