



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	53 - 10
Applicant:	Dale Harvey
Assessment Manager:	Burnett Country Certifiers
Concurrence Agency: (if applicable)	Bundaberg Regional Council
Site Address:	212 Walker Street, Svensson Heights and described as Lot 5 on RP58058 — the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Burnett Country Certifiers, as the Assessment Manager, at the direction of Bundaberg Regional Council (Council) as Concurrence Agency, to refuse a Development Application for a Class 10a covered deck.

Date of hearing:	2pm - Wednesday 14 September 2011	
Place of hearing:	The subject site	
Committee:	John Panaretos Stan Spyrou	– Chair – Referee
Present:	Wallace Kenney Rick Drew Bradley Geaney Stephen Curran	– Burnett Country Certifiers – Burnett Country Certifiers – Bundaberg Regional Council – Bundaberg Regional Council

Decision:

The Committee, in accordance with section 564 of the SPA **sets aside** the decision appealed against and **directs** the Assessment Manager to **approve** the application in accordance with the submitted plan (Drawing No. SP-1063-11 dated 14.05.2011) subject to the following conditions:

- The structure shall be setback a minimum of 3 metres from the front alignment to the balustrade of the deck;
- Any other conditions deemed appropriate by the Assessment Manager.

Background

The original house was setback just over 6 metres from the front alignment. Its immediate neighbours are set back at least 6 metres. The owner has constructed a roofed deck, part of which encroaches into the front setback, leaving a 3 metre setback. The remaining setback is heavily landscaped. Aesthetically, the gabled deck projects in front of the original gable of the house.

The owner has sought to legitimise the unauthorized building work. The grounds for appeal state that the *“deck had been built by the previous owner”* but this was contradicted at the hearing. Council is concerned that the work is symptomatic of a ‘build it first and Council will have to approve’ attitude.

Material Considered

The material considered in arriving at this decision comprises:

1. ‘Form 10 – Appeal Notice’, grounds for appeal and correspondence and supporting material accompanying the appeal lodged with the Registrar on 27 June 2011.
2. Decision notice issued by the Assessment Manager dated 15 June 2011.
3. Concurrence Agency response dated 8 November 2010.
4. Site Plan No. SP-1063-11 dated 14 May 2011 (including elevations).
5. Verbal submissions made by the applicant and applicant’s representatives at the hearing.
6. Verbal submissions made by Council representatives at the hearing.
7. QDC 1.2 Design and Siting Standard for single detached housing – on lots 450 m2 and over.

Findings of Fact

The Committee makes the following findings of fact:

- The site is rectangular, 809m² in area.
- The covered deck in question has been largely constructed in accordance with the site plan, with minor work to be done to reach completion.
- Buildings on either side of the subject site are setback 6 metres from the street alignment.
- Walker Street is a long straight street characterised by a mix of residential and non-residential buildings of varying ages and varying setbacks to the street alignment.
- Council representatives pointed out at the hearing that reduced front setbacks of buildings on other properties in the streetscape were either carports or the result of the age of those buildings.
- Council representatives also noted that the structure could be located elsewhere on the site.
- The Walker Street streetscape in the vicinity of the subject site is unusual in that:
 - Properties and buildings on the north side of Walker Street are skewed to the street alignment and many have two street frontages, facing George Street and presenting their rear to Walker Street;
 - Walker Street includes non-residential buildings and houses of varying age with varying setbacks.

Reasons for the Decision

Although the adjoining houses are set back at least 6 metres, the streetscape is characterized by varied setbacks, with buildings from different eras. The deck is generally consistent in style with the original house and largely transparent. With a 3 metre setback, the deck allows for front landscaping, consistent with most other houses in the streetscape. The deck also maintains a low profile, being raised less than 1 metre above ground level. The bulk and scale of the structure are acceptable in the varied streetscape. The structure does not impact severely on neighbours' views and it does not raise issues of safety or nuisance.

The Committee considered Council's argument that the structure could have been positioned differently on the site. However, the streetscape arguments took primacy in this case. Council's (reasonable) concern about unauthorized building work is a matter for enforcement action, whereas each siting variation is to be considered on its merits.

John Panaretos
Building and Development Committee Chair
Date: 17 October 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:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248