



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>38-11</b>
<b>Applicant:</b>	Simon and Rachael Patterson
<b>Assessment Manager:</b>	Caloundra Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council (Council)
<b>Site Address:</b>	11 Stewart Way, Shelly Beach and described as Lot 11 on RP 102748 – the subject site

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the assessment manager to refuse a building development application for a proposed house. The refusal was directed by Council as the concurrence agency on the grounds that the proposed house does not meet the Performance Criteria of the *Queensland Development Code* (the Code).

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<b>Date of hearing:</b>	10:00am on Thursday 19 May 2011
<b>Place of hearing:</b>	Council offices – 1 Omrah Avenue, Caloundra and the subject site
<b>Committee:</b>	Ain Kuru – Chair
<b>Present:</b>	Simon Patterson – Applicant Chris van der Pol – Town Planner Peter Taylor – Designer (Vision Design Planning) Richard Prout – Council representative Gordana Culibrk – Council representative

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### **Decision**

The Committee, in accordance with section 564 of the SPA, **confirms** the decision of the assessment manager to refuse the application as directed by Council.

### **Background**

The applicant wishes to build a two storey house on the subject site. The property is a corner lot with two frontages, and measures about 17 m by 35 m with an area of 607 m<sup>2</sup>. The proposed house is set back 6 m from the nominated frontage and about 2.1 m to the outer most projection along much of the secondary boundary, reducing to 1.828 m in the south west corner.

The proposed secondary boundary setback is less than permitted under the acceptable solutions of the Queensland Development Code MP1.2 (the Code), and therefore the assessment manager referred the application to the Council as a concurrence agency so it could be assessed under the performance criteria of the Code.

The Council directed that the application be refused due to its bulk and impact on the streetscape, its impact on the outlook of neighbouring residents and that there are no constraints on the property preventing the proposed building from complying with the acceptable solutions (ie the prescribed standards) of the Code.

The assessment manager subsequently issued a decision notice refusing the application.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. Request for referral agency response for building work including a submission prepared by Vision Design Planning and drawings by Peter Taylor – Designer made by the assessment manager (Caloundra Building Approvals Pty Ltd, 22 March 2011);
2. Information request from Council dated 24 March 2011.
3. Response to Council's information request by the assessment manager, including a submission prepared by Vision Design Planning (Caloundra Building Approvals Pty Ltd, 7 April 2011);
4. Concurrence agency response from Council directing the application be refused (Sunshine Coast Council, 14 April 2011);
5. Development application decision notice refusing the application (Caloundra Building Approvals Pty Ltd, 21 April 2011);
6. Form 10 – Application for Appeal including grounds for appeal and submission (21 April 2011);
7. Appeal Response submitted at the hearing (Sunshine Coast Council, 18 May 2011);
8. *Request for Relaxation Submission* re-submitted at the hearing (Vision Design Planning, 17 March 2011);
9. Various photographs submitted at the hearing;
10. *Queensland Development Code* (the Code) MP 1.2;
11. Relevant legislation including the *Sustainable Planning Act 2009* and *Building Act 1975*;
12. Verbal submission from the Council representatives at the hearing stating that:
  - (a) The building has considerable bulk which will dominate the streetscape;
  - (b) The house will interrupt the views and outlook of neighbouring residents, particularly the house at the top of Stewart Way;
  - (c) The secondary street setback would allow a future adjoining building to be also sited closer to the road under section A1 of the Code;
  - (d) There are no constraints on the lot which could be taken into consideration; and
  - (e) There may be some reduced secondary boundary setbacks in the area as the former Caloundra Council had treated these as boundaries rather than street frontages.
13. Verbal submission from the applicant's representatives at the hearing stating that:
  - (a) There is an existing house which is sited 4.3 m from the front boundary and 1.828 m from the secondary frontage measured from the outer most projection. This is shown as 1.751m on the drawing due to eave being removed;

- (b) The proposed building will comply with the 6m frontage setback in the Code and therefore this improves the streetscape on this frontage;
- (c) The current house only provides for one parking space on site, and the proposed house provides for three, which will reduce the demand for on-street parking;
- (d) The proposed building will have no impact on sightlines as it is located in a similar position to the existing house in respect of the road boundaries. A detailed view analysis prepared by Vision Design Planning shows that the footprint of the proposed building did not have a discernable impact on views;
- (e) The Code requires that a building facilitates an acceptable streetscape while the Council's information request refers to the proposed building not having a positive effect on the amenity of the area;
- (f) The building does result in an acceptable streetscape and there is no unacceptable loss of views and outlook;
- (g) The design of the house, including its articulation, colours and textures and design will contribute positively to the streetscape, and will therefore improve the outlook for neighbouring residences; and
- (h) There are other houses in the street which have a reduced setback so there is a precedent.

## Findings of Fact

The Committee makes the following findings of fact:

1. The proposed house is assessable building work under the SPA and BA;
2. The *Caloundra Planning Scheme* does not contain siting standards for separate houses in this zone and therefore building setbacks default to the Code (*MP 1.2 Design And Siting Standard for Single Detached Housing – On Lots 450m<sup>2</sup> and Over*) under section 33 of the BA;
3. The acceptable solution for the secondary boundary setback under the Code is 4.4 m and this was agreed by all parties at the hearing;
4. The proposed house does not meet the acceptable solution for the secondary boundary setback under the Code as the proposed road boundary setback is 1.828 m at the closest point but about 2.1 m along much of the boundary;
5. Therefore the dwelling must be referred to Council for concurrence agency advice before the assessment manager can assess it under Schedule 7 (Table 1, Items 17 and 19) of the *Sustainable Planning Regulation 2009*.
6. The Council assessed the application against Performance Criteria P1 of the Code which state:
 

*The location of a building or structure facilitates an acceptable streetscape, appropriate for –*

  - (a) the bulk of the building or structure; and*
  - (b) the road boundary setbacks of neighbouring buildings or structures; and*
  - (c) the outlook and views of neighbouring residents; and*
  - (d) nuisance and safety to the public.*
7. The Council directed refusal of the application for the following reasons:
  - a. the proposed building's bulk does not facilitate an acceptable streetscape;
  - b. the proposed building and structure will detract from the outlook of the adjoining

properties;

- c. the proposed building and structure will affect the outlook and views of neighbouring residents; and
- d. there are no constraints on the allotment that prevent the proposed building and structure from being built in accordance with the prescribed boundary setbacks.

8. The assessment manager subsequently refused the building application.

### **Reasons for the Decision**

The Committee finds that the proposed house will have considerable bulk, and this will impact detrimentally on the streetscape, and the outlook and views of neighbouring residents. At 8.4 m high, it will be almost twice the height of the existing house, which has a height of 4.4 m. This means that the proposed building height will be four times its own setback of 2.1 m from the boundary. The Committee could not find any similar precedents in the area. While it appeared some houses in the immediate vicinity may have lesser than prescribed setbacks, these were generally single storey houses, and these setbacks were greater than two metres. Aerial photos of the area indicate that most houses in the area are in fact set back six metres.

The street itself is typical of an established suburban street, with a broad low set character and mature vegetation. Views to the ocean at the end of the street add special value to the streetscape. On inspection of the site, it was evident that a two storey house in the proposed location would significantly change the character of the area. The Committee finds that the proposal does not satisfy the performance criteria of the code as:

the proposed house is two storeys high and located four metres closer to the street than nearby houses, and would significantly disrupt the existing streetscape. This will be exacerbated due to the site's prominent location on the corner, and views from above this point to the ocean; and the streetscape would produce an unacceptable outcome for neighbouring residents as the proposed building height and bulk impedes into the street significantly more than other houses. It is the height and bulk of the proposed house, and not the footprint shown in the detailed view analysis, that would interrupt the outlook and views of neighbouring houses.

The Committee, after providing the parties with an opportunity to put their case forward, decided under section 564 to **confirm** the decision appealed against.

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**Ain Kuru**  
**Building and Development Committee Chair**  
**Date: 1 June 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  
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