



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	12-14
Applicant:	Conrad Gargett Pty Ltd (architects)
Assessment Manager:	Coastal Building Certifications
Concurrence Agency:	Sunshine Coast Regional Council (Council)
Site Address:	133 Oceanic Drive, Warana described as Lot 257 on W95535 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application (Application) for building works for a new house. The decision followed a Concurrence Agency response directing the Assessment Manager to refuse the Application.

Date and time of hearing:	10:30am, 13 th May 2014
Place of hearing:	133 Oceanic Drive, Warana
Committee:	Chris Schomburgk – Chair
Present:	Tim Banks – owner Stuart Jolly – builder Michael Boccock - certifier David Gole – architect (Conrad Gargett Architects) Vince Whitburn - Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(2)(c) of the SPA **sets aside** the refusal appealed against and replaces it with the following decision:

The Application is **approved** subject to the following conditions:

- The design and siting of the house is to be generally in accordance with drawings prepared by Conrad Gargett Architects, being:
 - Site Plan Drawing A1000 Issue C dated 15/05/14
 - Ground Floor Plan Drawing A2010 Issue C dated 15/05/14
 - First Floor Plan Drawing A2101 Issue C dated 15/05/14
 - Second Floor Plan Drawing A2102 Issue C dated 15/05/14
 - West Elevation Drawing A3000 Issue C dated 15/05/14
 - North Elevation Drawing A3001 Issue C dated 15/05/14
 - East Elevation Drawing A3002 Issue C dated 15/05/14
 - South Elevation Drawing A3003 Issue C dated 15/05/14
 - 3D Isometric Drawing A5000 Issue C dated 15/05/14

- Windows are to be treated with opaque glass where shown on the approved plans.
- The overall building height is not to exceed 10.5m from existing ground level measured vertically at any point.

Background

The subject site comprises 555m² and is located in an older suburb of the original Kawana Waters area. The site has frontage to Oceanic Drive, a major north-south link in this locality. Oceanic Drive, in this section, runs parallel to the coast, and allotments on the eastern side (as is the case here) back onto the foreshore dunes area.

As such, these allotments are highly valued, and most of the older houses along this strip have seen re-development or substantial refurbishment in recent years.

In the immediate vicinity of the subject land, on this eastern side of the road, there are a number of new or redeveloped houses that are 3 storeys in height, which is best depicted on the architect's "Site Comparison" drawing that accompanied the application. Indeed, 6 out of 11 sites along this strip are 3-storey houses, with the subject land being in the middle of this particular strip. The subject land is bounded on its southern side by a recent 3-storey house.

The subject site contains an older-style, single-storey, brick house with a single garage under the main roof. The proposed development seeks to demolish the existing house and build a new 3-storey house with a 3-car garage under the main roof (2 of the cars would be in tandem).

Council's Concurrence Agency refusal dated 5th March 2014 relied upon the following grounds for refusal:

The application is refused as the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:

Caloundra City Plan 2004 - 8.5 Detached House Code - Specific Outcome O3 Building Height.

O3 – the height of the detached house and associated buildings does not cause significant loss of amenity to adjacent residential development having regard to:

- (a) Overshadowing*
- (b) Privacy and overlooking*
- ~~*(c) Views and vistas*~~
- (d) Building character and appearance*
- (e) Building massing and scale as seen from neighbouring premises*

And

QDC MP1.2

P2 Performance Criteria – 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.*~~

In response to Council's refusal of the Application, the Assessment Manager issued a Decision Notice refusing the Application on 12th March 2014. The Applicant then lodged an appeal with the Committee's Registrar against the Decision Notice on 07th April 2014

After the appeal hearing, the architect provided amended plans to the Registrar. The substance of the amendments, which are considered by the Committee to be minor, include:

- i) Redesigning the ground and first floor bathrooms such that they are now in line with the northern boundary setback of the balance of the proposed house (now 1.8m, previously 1.0m);
- ii) Reduction in the size of the second floor terrace to align with this 1.8m setback (previously 1.0m);
- iii) Extension of the full-height privacy screen on the second floor deck (south-east corner) for its full length (previously only partway); and

- iv) Provision of opaque glass to all windows on first and second floor on the northern and southern faces of the building.

At the hearing, the location of windows, habitable rooms, and outdoor areas of the adjoining houses were noted, relative to the proposal plans.

The house to the north (no. 131 – a 2-storey house) has high-level windows on the first floor (ie: above the ground floor) along its southern face, and garaging on its southern ground floor, so that overlooking and privacy are not likely to be a concern. A deck/terrace in the south east corner of that house has full-height privacy screening, so again, privacy is not likely to be affected by or to the proposed house.

The house to the south (no. 135 – a 3-storey house) has non-habitable rooms along much of its northern face, and the proposed house on the subject land has only high-level windows, now proposed to have opaque glass, for its corresponding southern windows.

This house (no 135) has an open deck in the north east corner of its top level, but that is opposite the proposed full-height screening now proposed for the deck of the proposed house. Again, privacy and overlooking are not likely to present problems for either house (no. 135 or the proposed house).

The architect has prepared shadow diagrams (utilising recognised software programs) to show the extent of overshadowing from the proposed house at various times of the day and year. While the Council representative at the hearing was not necessarily convinced of their accuracy, the Committee is of the view, based on experience with such diagrams, that these are factual representations of the shadow effects of the proposed house.

Those diagram show, unsurprisingly, that the worst effect of shadows is in the June (winter) afternoon when shadows are cast onto part of the property to the south. Part of that shadow will be over the outdoor deck of the top floor of no 135, but the majority of the worst shadow is over the backyard of that property, where a large tree currently occupies the northeast corner of that land. The views from the top deck of no 135 are 180° from the north, northeast, east and southeast. Only a small part of that view would be impacted by the shadows, and only in late afternoon in winter.

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 Committee Registrar on 7th April 2014.
2. The Concurrence Agency response dated 5th March 2014 from Council
3. The Development Application Decision Notice from the Assessment Manager dated 12th March 2014.
4. Verbal submissions made by the Applicant, Architect and Builder at the hearing.
5. Verbal submissions made by Council at the hearing.
6. *Sustainable Planning Act 2009* ("SPA").
7. Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.
8. Queensland Development Code MP 1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m² and over (QDC MP1.2)
9. Amended plans provided to the Committee's Registrar after the hearing.

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is within an older established suburb where many houses have been the subject of redevelopment and/or refurbishment. Included in that redevelopment is a number of 3-storey houses in close proximity to the subject site, and other 3-storey houses along the eastern side of Oceanic Drive further afield.
- The property to the immediate south is a recent, modern 3-storey house. Its northern face includes some non-habitable rooms, high level windows, and open deck areas at part of the top 2 levels.
- The property to the north is 2-storey and has predominantly non-habitable rooms and/or high level windows along its southern face.
- The Application seeks approval for a modern, 3-storey house designed to acknowledge and respect its neighbours, while still taking advantage of its location, views and breezes.
- The application has been modified slightly since the hearing, predominantly to increase some side setback areas (marginally) and to clarify the nature and extent of screening to windows and open deck areas.
- The Council's Concurrence Agency response directed the Assessment Manager to refuse the Application. The reasons for refusal were stated as:

The application is refused as the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:

Caloundra City Plan 2004 - 8.5 Detached House Code - Specific Outcome O3 Building Height.

O3 – the height of the detached house and associated buildings does not cause significant loss of amenity to adjacent residential development having regard to:

- (a) Overshadowing*
- (b) Privacy and overlooking*
- ~~*(c) Views and vistas*~~
- (d) Building character and appearance*
- (e) Building massing and scale as seen from neighbouring premises*

And

QDC MP1.2

P2 Performance Criteria – 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.*~~

Reasons for the Decision

Having regard to the above, the Committee considers that, subject to conditions, the proposed house satisfies Specific Outcome O3 – Building Height of the Detached House Code of the Caloundra City Planning Scheme.

The proposed design has gone to considerable lengths to avoid or minimise impacts on adjoining properties.

The design and window and deck treatments of the proposed house will ensure that it will not cause significant loss of amenity to adjacent residential development.

Overshadowing of the property to the south is minimal, impacts primarily on that property's back yard, and is limited to specific times of the afternoon in winter months.

The treatments proposed to windows and outdoor decks will ensure no negative impacts on the privacy or overlooking of, or by, adjacent residential development.

The proposed building character, massing and appearance is consistent with the existing and emerging streetscape for this part of Oceanic Drive, and is not out of character with neighbouring premises.

The proposed building will not adversely impact on the amenity or privacy of residents on adjoining lots.

Chris Schomburgk
Building and Development Committee Chair
Date: 23rd May 2014

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 Planning and Environment Court 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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