



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	02 - 11
Applicant:	Ross Parker for Kurrajong Steel Homes Pty Ltd
Assessment Manager:	The Certifier Pty Ltd
Concurrence Agency: (if applicable)	Redland City Council (Council)
Site Address:	1 Bream Place, Redland Bay and described as Lot 1 on SP 226359 – the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the decision dated 9 February 2011 by The Certifier Pty Ltd, as the assessment manager, to refuse a development application for building work for the siting of a dwelling. The refusal was based on advice from Council as the concurrence agency.

Date of hearing:	Thursday 10 March 2011 at 1pm
Place of hearing:	Level 5, 63 George St Brisbane Qld
Committee:	John Panaretos – Chair
Present:	Patrick Knight – Owner Nardia Knight – Owner Ross Parker – Applicant/Builder Cynthia Lawes – Council representative

Decision:

The Committee, in accordance with section 564 of the SPA, **sets aside** the decision of the assessment manager to refuse a development application for the siting of a dwelling; and **directs** the assessment manager to **approve** the development application, subject to the following conditions:

1. A minimum 4.5 metre setback is maintained between the outermost extremity of the dwelling and the Bream Place alignment;
2. The dwelling is sited in accordance with the revised ground floor plan (drawing no.265KU1PA [sheet 2]) dated and submitted to the Registrar on 25 March 2011;
3. A 450mm eaves overhang to surround the house as shown on the aforementioned ground floor plan;
4. Setbacks to Parklink Drive and the adjoining private property boundary are to remain as shown on the original Site Plan 265KU1PA [sheet 1] drawn on 1 October 2010, or greater;
5. All other building code requirements as determined by the assessment manager.

Background

The site is at the entry to a recently subdivided housing development, has an area of 801m² and public road frontages on three sides: Parklink Drive to the north-west and Bream Place to the north-east and south-east. The subdivision incorporates both standard and small lots. The owners bought the subject site to accommodate a large footprint house on a single level to overcome Mr Knight's health limitations. Through their builder, the owners proposed a house design requiring alternative solutions for all setbacks prescribed by the QDC MP1.2.

The following table compares setbacks required by the QDC with those proposed by the applicant:

BOUNDARY	QDC SETBACK - ACCEPTABLE SOLUTION	SETBACK PROPOSED BY APPLICANT (to eaves)
Parklink Drive	6m	1.585m
Bream Place	6m	At various points around the NE, E & SE alignment: 3.107m 4.242m 5.488m
Side Boundary	1.5m	0.996m

Council, as referral agency, agreed with the alternative setbacks proposed for the side boundary and Parklink Drive, but refused the proposed setbacks to Bream Place for the following reasons:

- (a) The proposed setbacks would dominate the streetscape.
- (b) This is a new estate and allowing these setbacks would set precedence for reduced setbacks.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' including grounds for appeal, plans, referral agency response and assessment manager's decision notice lodged with the Registrar on 27 January and 9 February 2010.
2. Decision notice from the assessment manager dated 9 February 2011.
3. Concurrence agency response from Council dated 16 December 2010.
4. Verbal submissions made by the parties at the hearing.
5. Written submissions made by the applicant at the hearing.
6. Written submission made by Council dated 17 March 2011.
7. Written submissions provided by the applicant by email to the Registrar on 24 and 25 March 2011, including the revised ground floor plan.
8. The SPA.
9. The Queensland Development Code (QDC) – Part MP1.2.

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is larger than 450m² and is thus subject to the siting provisions of Part MP1.2 of the QDC.

2. The proposed setbacks to Parklink Drive and the side boundary had been assessed by Council and accepted. Since no dispute arose over these setbacks, and they were consistent with other decisions made by Council in the immediate vicinity, they were not assessed by the Committee.
3. The Council representative considered that the original reduced setbacks proposed to Bream Place were not consistent with the following aspects of Performance Criteria P1 of the QDC:

The location of the 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.
4. The Council representative considered that as the proposed house is single storey, a 4.5m setback to Bream Place would achieve the abovementioned Performance Criteria.
5. The applicant initially offered to increase the setback by removing the roof overhang and eaves. Upon further consideration of Council's assessment after the hearing, the applicant revised the proposed ground floor layout and submitted a plan preserving a minimum 4.5m setback to Bream Place.

Reasons for the Decision

1. The originally proposed setbacks to Bream Place were insufficient to achieve an acceptable streetscape, consistent in character with the streetscape established by other approved dwellings in the street;
2. Council has consistently applied QDC prescribed setbacks to Bream Place and reduced setbacks to Parklink Drive to create consistent streetscapes.
3. The revised setback of 4.5m was acceptable to both applicant and Council and is consistent with the character of the street based on setbacks of constructed or approved houses on both standard and small lots in Bream Place;
4. It is important to the streetscape character and aesthetics of the house that the roof overhang be maintained as proposed.

John Panaretos
Building and Development Committee Chair
Date: 11 April 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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