



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3—09—062</b>
<b>Appellant:</b>	<b>Duilio and Maria Polzi</b>
<b>Assessment Manager:</b>	<b>Sunshine Coast Regional Council</b>
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	5 Lawrence St, Mooloolaba and described as Lot 3 on SP219464 — the subject site

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### **Appeal**

Appeal under section 4.2.29 of the *Integrated Planning Act 1997* (IPA) against the decision of Sunshine Coast Regional Council dated 21 July 2009 to refuse a Development Application for Siting of a Dwelling.

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<b>Date of hearing:</b>	Wednesday 26 August 2009 at 8:30am
<b>Place of hearing:</b>	6/115A, Point Cartwright Drive, Buddina
<b>Tribunal:</b>	Mr Chris Schomburgk – Chairperson
<b>Present:</b>	Mr John Dunn – Sunshine Coast Regional Council Mr Duilio (Dan) Polzi – Appellant

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2) (c) **sets aside** the decision of Sunshine Coast Regional Council to refuse a Development Application for Siting of a Dwelling; and replaces it with the following decision:-

The Tribunal, in accordance with section 4.2.34 (1), **directs** the Assessment Manager to **approve** the Development Application subject to compliance with the following conditions:-

1. Amended plans are to be submitted to Council for checking of compliance with these conditions. The amended plans are to include compliance with the requirements of Conditions 2-6 below.
2. The boundary setback to the western boundary is to be a minimum of 500mm.
3. A retaining wall is to be constructed along the cut area of the western boundary and is to be maintained at all times with sub-surface drainage installed to council requirements.
4. A fence is to be erected along the entire western boundary, with a height of 1.8m above existing natural ground level (i.e. on top of the retaining wall described in Condition 3).

5. The western-most wall of the dwelling is to have a textured finish, with colours to match the balance of the dwelling and is not to contain any doors or windows.
6. If the dwelling is to be moved closer to the eastern boundary, any balustrade to the deck area on top of the garage is to be set back a minimum of 1.5m from the eastern boundary. Any roof over this deck area is to be set back from the eastern boundary by a minimum of 2.0m.

### **Material Considered:**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal', grounds for appeal, supporting plans and documentation received by the Registrar on 6 August 2009.
2. A site inspection of the site and the locality, undertaken by the Chairperson prior to the hearing.
3. The Decision Notice from Sunshine Coast Regional Council, dated 21 July 2009.
4. Verbal and written submissions from the parties at the hearing.
5. The 2000 Planning Scheme for the former Maroochy Shire Council.
6. The Queensland Development Code (QDC) – Part MP1.2.
7. The *Integrated Planning Act 1997*.
8. The *Integrated Planning Regulation 1998*.

### **Findings of Fact:**

The Tribunal makes the following findings of fact:

- The subject site is currently vacant, and is in an area of generally established single detached houses, some of which are currently undergoing, or have recently undergone, renovation.
- The subject site is generally flat, cleared of vegetation, and is regular-shaped. The site was the subject of a recent subdivision of a larger allotment into two allotments. The site has an area of approximately 600m<sup>2</sup> with a width of 19.89 metres.
- The proposal seeks to construct a large two-storey dwelling. The proposal includes a laundry and pantry at ground level built to within 100mm of the western side boundary. It is this boundary clearance that is the subject of this appeal. The house is to be just over 6m from the front (street) boundary and 1.5m from the rear boundary. The eastern boundary setback is to be 1.5m, meaning that the proposed house covers most of the site's width.
- Council's decision to refuse the application is based on alleged non-compliance with provisions of the QDC. in particular Performance Criterion P2 of Element (1) of MP1.2 of that Code, which states:

#### ***Buildings and Structures***

- a) *provide adequate daylight and ventilation to habitable rooms; and*
- b) *allow adequate light and ventilation to habitable rooms of buildings of adjoining lots; and*
- c) *do not adversely impact on the amenity and privacy of residents on adjoining lots.*

It is this latter clause with which the Council makes specific reference.

- The applicant explained that he wanted to build a large home for his family, and that considerable design thought had gone into the proposal as it was lodged. The offending boundary clearance was for "non-habitable" rooms only – a laundry and pantry – and natural light would be achieved in the adjacent kitchen area by way of high level windows on the higher part of the kitchen wall. These windows were not shown on the plans that accompanied the application.

- At the hearing, the Council representative helpfully offered some compromise options. These included shifting the whole building a minimum of 400mm to the east, so that the minimum boundary clearance on the western boundary was 500mm, as opposed to the 100mm currently proposed. This extra distance would allow for maintenance of the western wall, allow for a narrow walkway along this boundary, and allow for installation of a retaining wall and drainage on the western boundary. In doing so, the eastern side boundary clearance would be reduced to 1.1m, but this was acceptable as the eastern side of the building was proposed to be a garage. A roof deck on top of the garage would have to be set back from the eastern boundary if this option was adopted.
- An alternative was to increase the western setback to 500mm and leave the eastern boundary setback as proposed (1.5m), but this would require a significant re-design of the ground floor.

Based on an assessment of these facts, it is the Tribunal's decision that the decision notice being appealed against be **set aside** and that **the application for Siting of a Dwelling be approved, subject to compliance with the following conditions:**

1. Amended plans are to be submitted to Council for checking of compliance with these conditions. The amended plans are to include compliance with the requirements of Conditions 2-6 below.
2. The boundary setback to the western boundary is to be a minimum of 500m.
3. A retaining wall is to be constructed along the cut area of the western boundary and is to be maintained at all times with sub-surface drainage installed to council requirements.
4. A fence is to be erected along the entire western boundary, with a height of 1.8m above existing natural ground level (i.e. on top of the retaining wall described in Condition 3).
5. The western-most wall of the dwelling is to be a textured finish, with colours to match the balance of the dwelling and is not to contain any doors or windows.
6. If the dwelling is to be moved closer to the eastern boundary, any balustrade to the deck area on top of the garage is to be set back a minimum of 1.5m from the eastern boundary. Any roof over this deck area is to be set back from the eastern boundary by a minimum of 2.0m.

### **Reasons for the Decision**

The conditions as set out above will ensure that the western wall of the proposed dwelling can be accessed for maintenance without relying on easements, trespass or goodwill of the adjoining owners. The separation will also allow for drainage and construction/maintenance of a retaining wall where a cut into the natural surface is proposed.

An amended proposal, subject to the conditions as above, will have minimal impact on the amenity of the future occupants of the land to the west (which is currently vacant);

The proposal, as amended by these conditions, will comply with the Performance Criteria of the QDC.

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**Chris Schomburgk**  
**Building and Development Tribunal Chair**  
**Date: 3 September 2009**

## **Appeal Rights**

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

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