



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	40 - 14
Applicant:	Professional Planning Group
Assessment Manager:	Sunshine Coast Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	18 Haslewood Crescent, Meridan Plains described as Lot 75 SP231636 – the subject site

Appeal

Appeal under section 519 of the *Sustainable Planning Act 2009* (SPA) against a decision by Sunshine Coast Regional Council to refuse an Application for Material Change of Use for the purposes of a duplex dwelling. The Application sought approval for a built to boundary wall on one boundary and a reduced side setback on another boundary contrary to the Acceptable Solutions of the relevant code of the approved Master Plan for the area.

Date and time of hearing:	10am on Thursday 20 th November 2014
Place of hearing:	The subject site
Committee:	John Panaretos – Chair Richard Prout - Member
Present:	Ain Kuru – Representative of the Applicant Tracy Ryan – Representative of the Applicant Mark Routledge – Builder Steven Ingham – Property Owner John Borthwick – Council representative Richard Mc Gillivray – Council representative Steven Tucker – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA, **sets aside** the decision of the Assessment Manager and approves the duplex dwelling in accordance with the plans submitted to the Committees Registrar as part of the appeal documentation and noted below:

Plans WD_01.1 Issue C through to WD_04.1 Issue C, WD_7.0 to WD_8.1, WD10.0, WD_17.1 and WD_18.1 all Issue C and dated 22/01/2014 drawn by Grow DDC.

Background

The subject site is a corner site and a designated duplex site in the Low Density Residential Precinct on approved plans associated with the *Creekwood Estate Master Plan*, adopted pursuant to a Preliminary Approval Overriding the Planning Scheme. The Master Plan replaces the planning scheme codes with the *Creekwood Duplex Dwelling Design Code* specifically for duplex dwellings which may not satisfy the Self Assessment criteria of the approved *Plan of Development*.

The subject site is also subject to conditions and an approved *Plan of Development*, supplemented by *Development Controls*, attached to a Development Permit to Reconfigure a Lot (ROL) into 86 lots and open space. Condition 3 of the ROL requires “*development on lots shall occur in accordance with the approved Plan of Development*”.

Under the Maser Plan, duplex development is elevated from Self Assessment to Code Assessment where not complying with all *Development Controls* which form part of the ROL *Plan of Development*. In this case, the duplex plans contravene a 1.5m side boundary setback requirement, instead proposing a built to boundary wall to its northern boundary and a 900mm setback to its eastern boundary.

Contrary to the provisions of the Master Plan, the relevant certifier issued a Development Permit for Building Work for the duplex under the erroneous belief that that the proposed duplex was subject to Self Assessment.

The duplex, construction of which is now complete, became the subject of, first correspondence from Council requiring rectification of the situation with the lodgement of a suitable Code Assessment Application, then refusal of the Application for the following reasons:

1. *The proposed Duplex does not comply with Condition 3 of the higher order Preliminary Approval...nor can it reasonably be conditioned to comply.*
2. *The proposed Duplex does not comply with Condition 3 of the higher order Reconfiguration Approval... nor can it be reasonably conditioned to comply.*
3. *Does not comply with the Overall Outcomes of the Creekwood Duplex Dwelling Design Code...*
4. *The proposed Duplex does not comply with Specific Outcomes 03 of the Creekwood Duplex Dwelling Design Code...*
5. *The application has not demonstrated sufficient grounds exist to justify approval despite the identified conflicts with the Master Plan.*

The Applicant lodged an Application for Appeal/Declaration (Form 10) against Council's refusal with the Committees Registrar on 5 November 2014.

Council's case largely rests on the conflict of the setback reductions with the constraints set by higher order approvals, i.e. the Preliminary Approval Overriding the Scheme and the ROL would both have to be amended to allow the reduced setbacks, augmented by s.347 of SPA, which prohibits conditions of an approval conflicting with conditions of an earlier, current approval. Council is concerned about a precedent approval of a departure from the *Plan of Development* would establish.

During the appeal hearing, Council argued firstly, that the existence of the building in situ, should not be a factor in Committee considerations, secondly, that there is no evidence that the building is contained within the boundaries of the subject site and thirdly, the built to boundary wall would increase building impositions and therefore costs for the neighbour, who is entitled to, and has proposed, a built to boundary wall.

The owners of the adjoining allotment (neighbours) to the north provided a letter to the Committee detailing a range of unfortunate circumstances associated with the land and adjoining construction, and opposing the alternative solution.

Council and the neighbour may be entitled to pursue some of the matters they have raised in legal forums since they are not within the jurisdiction of, or matters for consideration by, the Committee.

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 Committees Registrar on 5 November 2014.
2. Council Decision Notice dated 3 November 2014.
3. Plans WD_01.1 Issue C through to WD_04.1 Issue C, WD_7.0 to WD_8.1, WD10.0, WD_17.1 and WD_18.1 all Issue C and dated 22/01/2014 drawn by Grow DDC.
4. Building works documents received by the Registrar on 6 November 2014.
5. The Applicant's submission dated 20 November 2014 and lodged with the Committee at the hearing;
6. Council's "Sunshine Coast Council Response to Applicant's Written Submission" dated 20 November 2014 received by the Registrar on 27 November 2014;
7. Applicant's email response to Item 6. above, on 1 December 2014;
8. Council's email response to Item 7. above, on 3 December 2014;
9. The Creekwood Estate Master Plan (CEMP);
10. Creekwood Duplex Dwelling Design Code (CDDD Code)
11. The *Sustainable Planning Act 2009* (SPA).

Findings of Fact

The Committee makes the following findings of fact:

1. The Master Plan does not require strict adherence to the Plan of Development, but provides flexibility by allowing alternative solutions subject to Code Assessment against the Creekwood Duplex Dwelling Design Code (CDDD Code).
2. Section 347 of SPA is not applicable in the current circumstance as it refers to conflicting conditions, not subsequent approval for Material Change of Use. Further, the Development Controls document provides for *Minor Variations* to siting requirements pursuant to the *Building Act 1975*. Thus, the *Plan of Development* is not intended to be inflexible.
3. The Application is assessable against the Creekwood Estate Master Plan Code (CEMP Code) and more specifically, the Creekwood Duplex Dwelling Design Code (CDDD Code).
4. Clause 6.1.5 of the CDDD Code states, "*If compliance with an Acceptable Solution is not possible, code assessment is applicable against the Creekwood Duplex Dwelling Design Code*". Hence, compliance with Specific Outcome O3 is sufficient to justify approval of any alternative solution.

Reasons for the Decision

Specific Outcome O3 of the CDDD Code requires that duplex dwellings be sited and designed to “...not unduly prejudice the daylight or privacy available to any adjoining land that is used or is intended to be used for residential purposes”.

In this case, the built to boundary wall is single storey and abuts a northern boundary. It is therefore to the south of the adjoining allotment and not in a position to ‘unduly’ restrict daylight to the adjoining residence. It is a side wall to a non-habitable space (garage) and necessarily fire rated, without openings. Thus, it has negligible impact on privacy of the adjoining allotment.

The reduced setback to the eastern boundary is also a single storey, side wall to a non-habitable space (garage), without openings and to the western side of the adjoining allotment. Thus, its impact on daylight and privacy cannot be considered significant.

In addition, the alternative setback solutions do not conflict with the Overall Outcomes of the CDDD Code, which are also the Purpose of the Code, specifically:

- a) The alternative setbacks do not prejudice the quality of design of the duplex;
- b) The amenity of adjoining residential development with respect to daylight and privacy is not prejudiced;
- c) The comfort and convenience of duplex occupants is not compromised by the alternative solutions;
- d) The location of the duplex is within the expectations of the community.

John Panaretos
Building and Development Committee Chair
Date: 11 December 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 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 Housing and Public Works
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Brisbane QLD 4001
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