



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	40-15
Applicant:	Sam Warren
Assessment Manager:	Suncoast Building Approvals – Michael Grummet A1021910
Concurrence Agency: (if applicable)	Sunshine Coast Council
Site Address:	53 Mons School Road Mons QLD 4556 and described on Lot 14 RP 95109 (the subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Suncoast Building Approvals as the Assessment Manager to refuse a Development Application for a dwelling. Sunshine Coast Council (Council) directed the Assessment Manager to refuse the Application as it did not meet and could not be conditioned to meet the Dwelling House Code, Performance Outcomes of the Sunshine Coast Planning Scheme 2014.

Date and time of hearing:	7 December 2015, 11:00am – 12.30pm
Place of hearing:	The subject site – 53 Mons School Road Mons QLD 4556 and 42 Wilguy Crescent Buderim
Committee:	Victor Feros – Chair William Anderson – General Referee James Dunstan – General Referee
Present:	Sam Warren– Applicant Christine Marville – Applicant Nick Hayes- Builder Vince Whitburn– 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 to refuse the Application and approves the siting subject to the following conditions:

- 1 The dwelling house is to be sited and constructed generally in accordance with the plans prepared by Studio 4 Project Number WD 01 A dated 07/12/2015, Sheets 1A-18A, subject to the following conditions:
 - a) Provide soft landscaping to the streetscape (minimum 2m tall) to reduce the impact of the building along the boundary when viewed from the road;
 - b) Provide articulation in the wall with a minimum 500mm step for a minimum length of 3m in the built form (e.g. step the theatre room in) to create additional articulation; and

- c) Ensure no single plane wall to exceed 9m in length

Background

The site is 728 m² and is located on Mons School Road. The site falls very steeply from the road to the rear of the site, plateaus and then falls away again at the rear. The block is basically rectangular in shape. There is steep bushland to the rear of the site which falls away from the road into the valley. The area is characterised by steep sites on this side of the road where houses have been designed to suit site conditions. The majority of these dwellings are set back a reasonable distance from the road boundary.

A Development Application (Application) was submitted for a proposed development consisting of four bedrooms. The single detached dwelling is located 10 m set back from the road and 1.5 m from the southeast boundary. The house consists of two levels with the garage located at lower ground level and the majority of the amenities located at the upper level.

The Assessment Manager refused the Application due to the Concurrence Agency advice being deemed inconsistent with the performance outcomes of the Dwelling House Code, Sunshine Coast Planning Scheme 2014.

Council issued the concurrence refusal dated 6 November 2015 on the following grounds:

"The dwelling setback 1.5m from the south-east side boundary does not comply with the Sunshine Coast Planning Scheme 2014 - 9.3.6 – Dwelling House Code Performance Outcomes PO5 (b)."

(PO5 (b) states "preserve the amenity and character of the rural or rural residential area, having regard to building massing and scale as seen from the road and neighbouring premises;")

The Assessment Manager, upon receiving the Council advice issued a Decision Notice refusing the Application dated 10 November 2015.

The Applicant, upon receiving the Decision Notice, lodged an Application for Appeal (Form 10) with the Committee's Registrar on 16 November 2015. A hearing was conducted on the subject site at 11.00am on 7 December 2015.

Both the Applicant and Council representatives made representations at hearing.

Applicant representations:

- That the steepness of the site precluded access to the lower garage area and the subsequent requirement for turning to gain access;
- The lower storey of the secondary dwelling is sized to provide for 2 vehicle parking,
- The subject site is heavily constrained due to the steepness of the site;
- The site has no alternative vehicle access due to the steepness;
- The materials proposed include profile roof sheeting, rendered blockwork and other materials to add texture and reduce the bulk;
- They will not consider moving the dwelling house further forward as it fails to meet other legislation with regards to the gradient of the ramp.

Council's representations:

- The bulk of the structure being 20m in length, 7m high on a 11.5m wide frontage does not meet the Dwelling House Code Performance Outcomes PO5 (b) with regards to massing and scale. This was the main reason for refusal;
- Other structures that have been given concessions within the road boundary setbacks in the neighbourhood, were generally closer to the road;

- Final refusal based on revisions to 2m side boundary and 10m set back from the road frontage with subsequent consent from neighbour;
- The council would accept the building being brought forward to 6m to bring the dwellinghouse in line with other dwellinghouses and a 2m side boundary;
- The access issues to the site with regards to ramps could be satisfactorily addressed by appropriate amendments to the proposed design;
(it is noted that concurrence agency stated that this is not the reason for refusal and did not think the discussions around access were relevant to the meeting).

Builder's representations:

- Considered moving the dwelling house further forward but doing this the access fails to meet other legislation with regards to the gradient of the ramp;
- Considered a 2m set back from the side boundary and reduced patio to rear of property.

Following the representations made above, and viewing the subject area, the Committee allowed the Applicant the opportunity to submit revised plans to the Registrar.

The Applicant submitted revised plans to the Registrar which were submitted to Council for consideration. Following consideration of these plans, Council stated that the alterations still failed to meet the Dwelling House Code Performance Outcomes PO5 (b).

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 16 November 2015;
2. Decision Notice – Refusal issued by Suncoast Building Approvals dated 10 November 2015;
3. Council response – Refused by Sunshine Coast Council dated 6 November 2015;
4. Neighbours Letters – Provided by the Applicant to Council in support of the Application;
5. Correspondence between the Applicant and Council prior to the Council advice being issued with regards to possible acceptable solutions and re-design;
6. Revised plans provided by the Applicant;
7. Council response to the revised plans and reasons for maintaining their decision;
8. Sunshine Coast Planning Scheme 2014 -9.3.6 Dwelling House Code Performance Outcomes PO5 (b)
9. The *Sustainable Planning Act 2009* (SPA);
10. The *Sustainable Planning Regulation 2009* (SPR);
11. Verbal representation by the Applicant at the hearing;
12. Verbal representations by Council at the hearing;
13. Research undertaken on other existing buildings and structures in the surrounding area.

Findings of Fact

The Committee makes the following findings of fact:

- The subject site has a steep access followed by a plateau and a further steep slope to the rear, with existing dwellinghouses to both sides;

- The proposal is for a 2 storey dwelling – with a setback of 1.5m along the south east boundary and 4.74 on the north west boundary. The front elevation of the dwelling house is setback 10m.
- It is noted that the dwelling house could be located 3m from a rear boundary and side boundary and comply with the acceptable outcomes. This would affect the neighbours visual amenity in a more severe manner without recourse.
- It is noted that the building could be located closer to the road and meet the Acceptable Outcomes. This would not affect the neighbours visual amenity.
- The wedge shape adjacent plot and the placing of the dwellinghouse on the site means that the neighbour overlooks the adjacent lot from the upper windows when looking in a straight line due to the siting of the building within the lot boundary.
- The dwellinghouses surrounding the proposed dwellinghouse have similar side boundary setbacks of 2m.
- It is also noted that original plans and revised plans submitted do fail to meet the Acceptable Outcomes and the refusal of the concurrence agency is valid.
- Viewing the existing residential streetscapes in the vicinity of this property, there are examples of similar structures of size with appropriate articulation nearby. (circa 6m setback from the road and 2m from the side boundaries)

Reasons for the Decision

The Committee has reviewed all the information provided and finds the following:

Based on a site specific assessment and application of the Performance Criteria, and given the circumstances applicable to this subject site, the Application is considered to meet Dwelling House Code Performance Outcomes P05 (b) , and the Committee supports the siting of the dwelling house subject to the below conditions:

1The dwelling house is to be sited and constructed generally in accordance with the plans prepared by Studio 4 Project Number WD 01 A dated 07/12/2015, Sheets 1A-18A, subject to the following conditions:

- a) Provide soft landscaping to the streetscape (min 2m tall) to reduce the impact of the building along the boundary when viewed from the road; and
- b) Ensure articulation in the wall with a minimum 500mm step for a minimum length of 3m in the built form (e.g. step the theatre room in) to create additional articulation.

The neighbour, whose outlook will be affected in the street, has been consulted by the Applicant, viewed the proposed plans, and consented to them.

It is also noted that the neighbour when erecting his dwelling house on the lot would not have had an expectation of unrestricted views given that siting of the dwellinghouse overlooks the rear of the adjacent plots from his rear elevation.

The siting of the proposed house as conditioned above provides a reasonable outcome for both parties and other subsequent parties.

Therefore, the proposed dwelling can be deemed to satisfy Sunshine Coast Planning Scheme 2014 -9.3.6, Dwelling House Code, Performance Outcomes PO5 (b).

Victor Feros
Building and Development Committee Chair
Date: 18 January 2016

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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