



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	20-15
Applicant:	Helen Danalis
Assessment Manager:	Building Surveying Professionals – Stuart Andrews A81046
Concurrence Agency: (if applicable)	Brisbane City Council (Council)
Site Address:	205 Hilder Road, The Gap, QLD. 4061 and described as Lot 3 on RP 857112 (the subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Building Surveying Professionals as the Assessment Manager to refuse a Development Application (Application) for a secondary dwelling within the prescribed setbacks of the Queensland Development Code. Brisbane City Council, as Concurrence Agency, directed the refusal.

Date and time of hearing:	24 July 2015, 10:00am - 11:00am
Place of hearing:	The subject site – 205 Hilder Road The Gap 4061
Committee:	James Dunstan – Chair Jenny Owen – General Referee
Present:	Helen Danalis – Applicant Roger Darville - Builder Kevin Mcleish – Council representative Rick Hendrick – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Assessment Manager on 5 June 2015 to refuse the Application for the secondary dwelling.

Background

The site is 802 m² and is located second from the end of a cul-de-sac. The site is very steep and falls towards the road. The block is wedge shaped with the narrow portion at the road frontage. The front boundary has two sections, 2.3m and 10m to create an approximate width of 12m to the road. The rear of the site is approximately 30m wide. There is steep bushland to the rear of the site. The area is characterised by steep sites and houses designed to suit site conditions. The majority of these dwellings are setback a reasonable distance from the road boundary.

The existing development is a three bedroom single detached dwelling located towards the rear of the site where the lot is the widest. The house consists of two levels with the upper level being at ground level to the rear and is habitable. A significant portion of the lower level is below natural ground level and is predominantly non-habitable (garage, storage, entry and home office).

A Development Application (Application) was submitted for a secondary dwelling consisting of a double garage at street level and a two bedroom dwelling above. The garage is to provide both trailer and vehicle storage.

The Assessment Manager refused the Application due to the concurrence agency advice being deemed inconsistent with the performance requirements of the Queensland Development Code MP1.2 (QDC MP1.2).

Council issued the concurrence refusal on the following grounds:

“The proposed extension/alteration has been deemed to not meet Queensland Development Code MP1.2, Performance Criteria 1 (a), (b), (c), (d).

- The proposed enclosed structure with a 5000mm height and length over 8000mm constructed on a zero mm setback of a 12.5m frontage creates a dominating and overbearing presence which is incompatible with the streetscape. For this reason the proposed structure does not comply with Performance Criteria P1 (a) The bulk of the building or structure;*
- The proposed enclosed structure with a 5000mm height is not in keeping with other structures within the road boundary setbacks which are open and non-habitable. For this reason the proposed structure is does not comply with the Performance Criteria P1 (b). The road boundary setbacks of neighbouring buildings or structures;*
- The excessive height and presence of the proposed structure will create line of sight issues for pedestrians, vehicular traffic as well as adjoining residents. For this reason the proposed structure does not comply with Performance Criteria P1 (c). the outlook and view of neighbours and residents;*
- The proposed structure will create a line of sight issue for vehicular traffic when exiting and entering using the existing driveway creating a hazard. For this reason the proposed structure does not comply with Performance Criteria P1 (d). Nuisance and safety to the public. “*

The Assessment Manager, upon receiving the Council advice issued a Decision Notice refusing the Application dated 5 June 2015.

The Applicant, upon receiving the Decision Notice, lodged an Application for Appeal (Form 10) with the Committee's Registrar on 30 June 2015. A hearing was conducted on the subject site at 10.00am on 24 July 2015

Both the Applicant and Council representatives made representations at hearing.

Applicant representations:

- The secondary dwelling is to be used by the Applicant's mother, who is elderly and requires ground level access;
- The lower storey of the secondary dwelling is sized to provide for 2 vehicle parking, additional storage of a trailer, and provision for a future lift when needed;
- 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 secondary dwelling will not have a negative impact on the streetscape as it will not be visible until you are at the end of the street in front of it;

- The secondary dwelling will provide a transition in setback heights between the neighbouring properties;
- Setback is 0m to the Outer Most Projection (OMP) (1m wall) along the short 2.575m boundary only, and then increases in setback to 6m along the 10m angled boundary;
- The materials proposed include corrugated iron, rendered blueboard and other materials to add texture and reduce the bulk;
- The secondary dwelling will not cause a risk to traffic or pedestrians as is at the end of a cul-de-sac;
- The neighbours outlooks are not affected and they have provided signed letters of support;
- There is no alternative siting available due to the need for a vehicle manoeuvring area in front of the existing dwelling;
- Will not move further back due to existing retaining wall;
- Will not consider moving or utilizing space in front of existing dwelling due to rainforest area and existing house services;
- Will not allow excavations within 5m of the existing dwelling as not wanting to compromise existing turning space

Council's representations:

- The bulk of the structure being 8m in length, 5m high on a 12.5m wide frontage does not meet P1. This was the main reason for refusal;
- Other structures that have been given concessions within the road boundary setbacks in the neighbourhood, were generally single storey, open, non-habitable structures;
- Council will not usually accept habitable structures within 3m of the road setback;
- Alternate access options are available on site;
- An internal peer review of the application with senior compliance officers upheld the assessing officer's opinion that the bulk of the building was too great and did not meet P1;
- There is no precedence of permitting this type of construction for a two storey dwelling within the front 6m anywhere in the council region;
- 2 previous cases of dwellings illegally constructed within 2-3m of the road boundary setback had resulted in council taking enforcement action and the buildings being demolished;
- Statements from all affected neighbours had not been received;
- An increased setback would be preferred, along with the recessing of the garage a minimum 7-800mm;
- The driveway crossover is too wide and would take up majority of the council verge;
- The area in front of the existing dwelling where there is approximately 5m of space should be utilized.

The size of the secondary dwelling was raised at the hearing, as it appears the Gross Floor Area (GFA) exceeds the maximum permissible under City Plan 2014 for a secondary dwelling. Council advised they had not reviewed the GFA in their assessment of the Application. A development approval may need to be obtained from Brisbane City Council to address this if deemed to be non-compliant with the self-assessable provisions of the Dwelling House Code of City Plan 2014.

It is the Assessment Manager's responsibility to ensure all required permits are obtained prior to issuing a building approval. The Applicant advised she will make any minor adjustments needed so that the secondary dwelling does not exceed the maximum 80m² GFA permissible in City Plan 2014.

Regardless of the possible compliance issue with the dwelling house code, the siting provisions of the QDC are still relevant as this is a detached class 1a building on a residential lot.

Following the representations made above, and viewing the subject area, the Committee provided the Applicant and Council with a two week period, which was then further extended by an additional week due to extenuating circumstances, to negotiate a mutually agreeable amended plan.

The Applicant submitted amended plans to Council which were reviewed, and comments provided. The amended plans added some articulation to the lower storey by recessing the garage 700mm underneath the upper floor, some soft landscaping was also added whilst maintaining the same road setbacks generally.

Council upon reviewing the revised plans, upheld their previous decision to refuse the siting variation on the following grounds:

“Council reasonably believes the revised plans do not comply with the performance criteria P1(a) and P1(b) of the Queensland Development Code MP 1.2 for the following reasons:-

- *The 2 storey secondary dwelling provides a substantial bulk to the front of the premises and does not facilitate an acceptable streetscape in the proposed location.*
- *The proposed location of the secondary dwelling is not consistent with the road boundary setbacks of neighbouring dwellings. “*

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 30 June 2015
2. Written submission by the Applicant stating use and reason for siting and design of the building proposed, and response to P1 criteria;
3. Decision Notice – Refusal issued by Building Surveying Professionals dated 5 June 2015
4. Council response – Refused by Brisbane City Council dated 4 June 2015
5. Neighbours Letters – Provided by the Applicant to Council in support of the Application;
6. Additional neighbours letters – provided with revised plans for further support;
7. Written and photographic submissions provided by the Applicant;
8. Correspondence between the Applicant and Council prior to the Council advice being issued with regards to possible acceptable solutions and re-design
9. Revised plans provided by the Applicant to Council during the 3 week negotiation period agreed to by all parties;
10. Further neighbours statements provided in support of the application;
11. Council response to the revised plans and reasons for maintaining their decision;
12. The Queensland Development Code MP 1.2 (QDCMP 1.2);
13. The *Sustainable Planning Act 2009* (SPA)
14. The *Sustainable Planning Regulation 2009* (SPR)
15. Verbal representation by the Applicant at the hearing;
16. Verbal representations by Council at the hearing;
17. Research undertaken on other existing buildings and structures in the surrounding area;
18. Research undertaken regarding City Plan 2014 requirements for Secondary Dwellings.

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is a very steep site, with existing terraced, boulder retaining walls with very limited access;
- The road boundary has 2 chords, one being 2.575m in length, the second 10.00m in length, giving an overall 12.575 road frontage.
- The proposal is for a 2 storey secondary dwelling – with setbacks of 0m OMP along the 2.575m boundary chord and up to 6m along the 10.00m boundary chord. The front elevation of the dwelling at these setbacks is 8000m wide and 5000m high.
- The Application, made to Building Surveying Professionals as the Assessment Manager was correctly referred to Council as a Concurrence Agency under the Sustainable Planning Regulation 2009, Schedule 7, Table 1, Item 19;
- The Application was refused by Council because it was *deemed not to meet Queensland Development Code MP1.2, Performance Criteria 1 (a), (b), (c), (d)*.
- The performance criteria of the Queensland Development Code MP1.2 for P1 states:
P1 *The location of a 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; and*
 - (c) the outlook and views of neighbouring residents; and*
 - (d) Nuisance and safety to the public.*
- Viewing the existing residential streetscapes in the vicinity of this property, there are no examples of similar structures nearby;

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

- The proposed secondary dwelling in the original and revised form does not provide an acceptable streetscape appropriate to the bulk of the building or structure, and does not satisfy QDC MP1.2 P1(a).
- The proposed secondary dwelling in the original and revised form does not provide an acceptable streetscape appropriate to the road boundary setbacks of neighbouring buildings or structure, and does not satisfy P1(b).
- The proposed secondary dwelling satisfies P1(c).
- The proposed secondary dwelling satisfies P1(d)

Reasons for the Decision

The Committee viewed the existing residential streetscape in the vicinity of this property, and found no examples of similar structures nearby.

The dwelling, being 5m in height, 8m wide on a 12m frontage with a 0mm setback to part of the road, will have an overbearing and dominant impact on the surrounding properties, and will be visible from further down the street. The inclusion of articulation for the garage, whilst assisting in softening the bulk, does not adequately reduce the impact.

The only other structure at the end of Hilder road within the road boundary setback is a single storey open carport, and the surrounding area generally has single storey carports. All habitable

dwellings in the surrounding area are generally located in excess of 4.5m from the road boundary setback. The proposed setback of 0mm OMP is not in keeping with the setbacks of neighbouring buildings.

The neighbours, whose outlooks will be affected in the street, have been consulted by the Applicant, viewed the proposed plans, and consented to them in their current form. Therefore, the proposed dwelling can be deemed to satisfy QDC MP1.2 P1(c).

Being sited at the end of a cul-de-sac, with no pedestrian footpath located near, and no walking paths around, will not cause a nuisance to the public, nor impact the safety of the public as it will not obstruct line of sight for vehicle traffic, and as such the proposed dwelling satisfies QDC MP1.2 P1 (d).

Therefore, although the Application can be deemed to meet P1(c) and P1(d), the Committee considers the lack of setback and articulation to the road boundary and the length and overall height of the building, the proposal **does not** provide for an acceptable streetscape appropriate for the bulk of the secondary dwelling, and the road setbacks of neighbouring buildings and structures. Therefore the proposal does not comply with the requirements of QDC MP1.2 P(1) (a) and (b) and the Assessment Manager's refusal of the Application is confirmed.

James Dunstan
Building and Development Committee Chair
Date: 19 August 2015

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
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 1800 804 833 Facsimile (07) 3237 1248