



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>10-14</b>
<b>Applicant:</b>	MRA Design (Powderdat Pty Ltd).
<b>Assessment Manager:</b>	Mr Andrew Stewart, Caloundra Building Approvals.
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council (Council)
<b>Site Address:</b>	12 Latona Avenue Caloundra Q 4551 described as Lot 2 on RP 56352 – the subject site

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application for Building Work in relation to an extension to an existing dwelling incorporating a three storey roofed balcony resulting in a road boundary clearance of 2.548 metres at the direction of the Concurrence Agency.

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<b>Date and time of hearing:</b>	10.00 am. 06 May 2014.
<b>Place of hearing:</b>	The subject site.
<b>Committee:</b>	Mr Don Grehan – Chair
<b>Present:</b>	Mr Michael Rolston – MRA Design – Property owner's representative; Mr Les Prestwidge – Applicant for the Development Application; Mr Vince Whitburn – Council representative.

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### Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564(2)(c) of the SPA, **sets aside** the decision of the Assessment Manager made at the direction of the Concurrence Agency and, in accordance with section 564(1) of the SPA, makes the following directions:

- (a) The Assessment Manager is directed to re-assess the Development Application for building works in relation to proposed extensions to the dwelling.
- (b) The re-assessment shall be on the basis that Concurrence Agency has no objections to the siting of the building with a road setback of 2.548 metres from its southern outer most projection and 5.711 metres from its northern outermost projection to the property boundary adjoining Latona Avenue as defined on Sheet 05 of 10, Project No. 13044 by MRA Design dated 27/03/2014.
- (c) The Assessment Manager shall impose the following conditions on any subsequent Development Approval for building works in relation to the proposed extension to the dwelling:

- (1) Any balcony located within 6.0 metres of the property boundary adjoining Latona Avenue must not be enclosed or covered by walls, windows, louvres, screens, blinds, shades, shutters, battens, trellises, lattice or the like; and
- (2) The balustrades to the balcony located within 6.0 metres of the property boundary adjoining Latona Avenue must be constructed of transparent glass or similar material (no tinting, colourings, etching, motifs or the like), save for the interlinking top rail required by AS1288.

## **Background**

The Assessment Manager refused a Development Application (Application) for Building Works in relation to a proposed extension to an existing dwelling that incorporated a three storey roofed balcony with road boundary clearance of 2.548 metres following receipt of a Concurrence Agency Response from the Council dated 11 March 2014.

The Council, directing the refusal, considered that the proposed siting did not comply and could not be conditioned to comply with the Queensland Development Code Mandatory Part 1.2, P1 (QDC MP 1.2) in that it does not facilitate an acceptable street scape appropriate for the bulk of the building, the road boundary setbacks of neighbouring buildings, and the outlook and views of neighbouring residents.

An appeal against the Decision Notice dated 20 March 2014 was lodged with the Committees Registrar on 31 March 2014. Mr. Michael Rolton from MRA Design was provided with written authority from both the Applicant for the Development Application, Les Prestwidge (Wentworth Pty Ltd) and the property owner Louise Cameron, to represent their interests in the appeal.

## **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 31 March 2014.
2. Caloundra Building Approvals Decision Notice, Reference No. 00005941 dated 20 March 2014.
3. Sunshine Coast Region Councils Concurrence Agency Response, Reference No. RAB14/0058 dated 11 March 2014.
4. Architectural Plans Sheets 01 to 10, Project No. 13044 by MRA Design dated 27/03/2014.
5. Verbal submissions from the Applicant's representative at the hearing.
6. Verbal submissions from Council's representative at the hearing.
7. The *Sustainable Planning Act 2009* (SPA).
8. The *Building Act 1975* (BA).
9. Queensland Development Code Mandatory Part 1.2 Design and Siting Standard for Single Detached Housing – On Lots 450m<sup>2</sup> and Over (QDC MP1.2).

## **Findings of Fact**

The Committee makes the following findings of fact:

- The subject site is a 559m<sup>2</sup> allotment located at the southern end of Latona Avenue, Bulcock Beach, Caloundra.

- A two storey timber clad dwelling, circa 1950, sits upon the subject site and is setback approximately 21.0 metres from the road boundary.
- At the time of the Application, the zoning of the subject site under the Caloundra City Plan was Multi Unit Residential (currently the Sunshine Coast Planning Scheme, High Density Residential) and, save for one other original single detached dwelling located at 6 Latona Ave, the site is surrounded by multi-storey residential unit developments ranging from 3 to 6 storeys in height
- The building on the neighboring allotment (10 Latona Ave) to the immediate north of the subject site is a 3 storey unit complex setback approximately 6.0 metres from the road boundary.
- The building on the neighboring allotment (19 The Esplanade) to the immediate south of the subject site is a 4 storey unit development setback approximately 2.8 metres from the road boundary.
- The Applicant proposes to undertake major renovations to the existing dwelling in the form of a 3 storey extension to be located between the existing dwelling and the road boundary of the allotment.
- While the external walls of the extension are to terminate at a road boundary clearance of 6.0 metres, it proposed to construct a three storey roofed balcony the siting of which would result in a minimum road boundary clearance of 2.548 metres to its outermost projection. Accordingly, this siting would require Council's assessment of the proposal against the Performance Criteria of QDC MP1.2.
- On 20 February 2014, the Assessment Manager forwarded a request for Concurrence Agency advice to Council and on 11 March 2014, having considered the request, Council issued a response directing refusal.
- Council's refusal stated that the proposed road boundary setbacks do not comply and cannot be conditioned to comply with the QDC MP1.2, P1 namely:

*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*

- Council has particular concerns regarding the maintenance of views from the three storey units at 10 Latona Ave which, while enjoying only limited vistas, benefit from the change in direction of the road approximately adjacent to the subject site.
- The Applicant acknowledges Council's concerns regarding views from the units at 10 Latona Ave and truncated the design of the proposed roofed balcony to generally coincide with the line of sight afforded by both the change in direction of Latina Avenue and the location of the existing 4 storey units at 19 The Esplanade.

### **Reasons for the Decision**

- The Committee is satisfied that the proposed building setback facilitates an acceptable street scape appropriate for the bulk of the building given that the structure is of an equal or lesser size, scale and mass than that presented by most other buildings within the street.

- The Committee is satisfied that the proposed setbacks facilitate an acceptable street scene appropriate to the road boundary setbacks of neighbouring buildings given that the siting is not dissimilar to the setbacks enjoyed by other buildings within the street.
- The Committee is satisfied that the Conditions directed to be included in the Decision Notice for any subsequent Development Approval for Building Works and which attach to the land and bind the owner, the owner's successors in title and any occupier of the land, are sufficient to safeguard the outlook and views of neighbouring residents;

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**Don Grehan**  
**Building and Development Committee Chair**  
**Date: 7 July 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  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**