



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	01 - 13
Applicant:	John Kelly
Assessment Manager:	Building Surveying Professionals Qld Pty Ltd
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	28 Pacific Boulevard Buddina and described as Lot 68 on RP 107475 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Building Application for an elevated deck, constructed within the road boundary setback area. The decision followed the concurrence agency's advice with respect to design and siting for the structure.

Date of hearing:	10.00am Friday 8 February 2013
Place of hearing:	The subject site
Committee:	Debbie Johnson - Chair Shane Adamson - Member
Present:	John and Bronwyn Kelly - Applicants Stewart Magill - Assessment Manager Ed Tarazona - Assessment Manager Steven Rosenius - Council Representative

Decision:

The Building and Development Dispute Resolutions Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision by the Assessment Manager that is appealed against and **replaces the decision** to allow the siting variation required for the existing open deck. The road boundary setback is varied to 2m providing:

- (a) the deck is not covered by a roof using either pervious or impervious materials; and
- (b) the area under the deck is to remain open, not screened or enclosed in any way.

Background

The subject site is basically rectangular in shape with an area of 511 square metres and a frontage width of 20.117m.

The property features a single detached, two storey brick dwelling with ocean views directly across the street. The first floor level of the home has been designed for the main living area, which addresses the views and the street. A double garage is incorporated on the ground floor level under the living area.

The current owners purchased the property approximately 10 months ago. Since this time they have renovated the home and extended the outdoor living areas. Two elevated decks have been attached to the dwelling, one to the north and the other to the east. The deck to the north is covered and accessed directly from an external stair which leads to the main entry of the home. The deck to the east is open and accessed from the living areas. The architectural drawings indicate that this deck is approximately 5m wide and 8.7m long (43.5 square metres). These new decks are comparatively large compared to the size of the original dwelling that measured 96 square metres at each level. At the upper level, the original house also had a covered verandah along the northern side. This verandah now effectively links the two new deck areas.

Although the new eastern deck has been built, the precise height of the structure is not known. The architectural drawings indicate that it would be approximately 3.7M high. Similarly, the road setback is not certain, but it is believed to be 2m. The setback distance between the deck and the southern side boundary is believed to be 2.7m. Beyond the deck, along the front boundary, there is a new rendered masonry fence that is 2m high. Several large trees were removed in this area to make way for the deck and new fence.

The adjoining property to the south is a similar size to the subject site. It features a very large, contemporary home with three levels. This property has a double garage and an entry structure built to the road boundary. The garage is set back 1.5m from the boundary shared with the subject site. Council have advised the Committee that these structures were approved and that a siting variation was therefore granted.

The adjoining property to the north is considerably larger than all the surrounding sites. It has been developed to accommodate a total of 10 residential units in a rambling brick building that is two storeys high. This development appears to be setback at 6m or more, for the full extent of the frontage. Similarly, most surrounding properties have maintained the 6m setback to the road.

As the owners of the subject site do not live permanently on site, they have carried out their renovations and extensions as time and opportunity have presented. The Committee was told that much of the building work has been undertaken before approvals were finalised. The owners appear to have managed this work themselves. That is, no licensed builder has been formally engaged or contracted to do this work.

The Council wrote to the applicants 30 July 2012 advising that a breach had been identified for their property. Council advised that the deck addition to the east was situated within the prescribed road boundary setback. Similarly, that there had been no building approval issued for these works.

The Applicant sought a development approval through the Assessment Manager for the building works undertaken. The Assessment Manager could not determine the approval for the deck along the front of the dwelling, without referral to the Council, as it was built within the road boundary setback.

On 20 August 2012, the Assessment Manager referred the building application to the Council as the concurrence agency, for design and siting consideration.

On 31 August 2012, the Council wrote to the Assessment Manager requesting further information to demonstrate compliance with the relevant performance criteria of the Queensland Development Code

(QDC). Similarly Council requested a written opinion in relation to the proposal from all property owners, either side of the subject site.

On 19 November 2012, the Assessment Manager responded to Council's request for further information. This response included detailed statements regarding the performance criteria of QDC Part MP1.2, Element 1, P1. The response included written opinion in support of the deck from one of the ten unit owners to the north of the site and another from the owner of the land to the south.

On 20 November 2012, Council issued the referral agency response to the Assessment Manager. Their notice directed the Assessment Manager to refuse the building application, stating that the proposal did not comply and could not be conditioned to comply with the QDC provisions.

On 3 December 2012, the Assessment Manager issued a decision notice to the Applicant refusing the application for building works citing the referral agency's response. The Applicant lodged an appeal against this decision to the Committee Registrar on 2 January 2013.

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 Registrar on 2 January 2013.
2. Verbal submissions by the Applicant, the Assessment Manager and the Council representatives at the hearing.
3. The Committees' on site inspection of the deck structure as built.
4. Property details as available through Council's website.
5. The Caloundra City Plan.
6. The Queensland Development Code (QDC) Part MP1.2
7. *The Sustainable Planning Act 2009* (SPA)
8. *The Building Act 1975* (BA)
9. *The Building Regulation 2006* (BR)
10. The National Construction Code 2012
11. Historic aerial photographs of the subject site as viewed through Google Maps.

Findings of Fact

The Committee makes the following findings of fact:

In their decision, the Assessment Manager stated the reasons for refusal as being the concurrence agency refusal. The Council considered the QDC Part MP1.2 as being the relevant legislation to determine the design and siting of the works that were proposed.

Under the Caloundra City Plan, the subject site is located in the Low Density Residential Precinct and a Detached Dwelling is self-assessable where complying with the acceptable solutions of the Detached House Code. The development does comply with the relevant acceptable solutions and there are no siting provisions relevant to the assessment under the Caloundra City Plan.

Consequently, the application for design and siting is to be assessed solely against Element 1 of the QDC part MP1.2, Design and Siting of Buildings and Structures the QDC A1. The acceptable solution states:

- (a) For a detached *dwelling, garage* or a *carport* the minimum *road setback* is:
- (i) 6m; or
 - (ii) where there are existing *detached dwellings* on both adjoining *lots* and at least one of the *detached dwellings* is *setback* from the *road* between 3m and 6m, and the difference between their *road setbacks* is –
 - (A) not more than 2m- a distance between the two *buildings*; or
 - (B) more than 2m- the average of the *road setbacks* of the adjacent *buildings*; and

As the new deck has been positioned 2m from the road boundary it cannot comply with acceptable solution (i) listed above and as there are not any existing detached dwellings on both adjoining lots, acceptable solution (ii) does not apply.

Where development does not comply with all of the acceptable solutions, an assessment must be made against the relevant performance criteria. Element 1 of the QDC Design and Siting of Buildings and Structures the QDC P1 criteria states:

- 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.

In this application, Council considered the above mentioned performance criteria and on 20 November 2012, directed the Assessment Manager to refuse the application stating the following reasons for refusal:

- The proposal does not comply and cannot be conditioned to comply with the QDC MP 1.2, P1. The location of a building or structure facilitates an acceptable streetscape, appropriate for:*
- (a) The location of a building or structure; and*
 - (d) nuisance and safety to the public.*

Because the matter is in appeal, the assessment by the Council is put aside and the matter is considered afresh.

The Committee finds having regard to Element 1 of the QDC Design and Siting of Buildings and Structures the QDC P1 (a)

- despite the deck's location, the structure barely impacts on the streetscape given the scale and nature of the development. The streetscape is more likely affected by the neighbouring garage and entry structure or by the 2m high masonry fence which is completely solid. All of which are lawfully built.

Having regard to (b)

- the three storey dwelling to the south has a large double garage and entry structure built to the road boundary. The two storey brick dwelling units to the north are set back 6m. Given the nature of the curve in the road at this point, their outlook is orientated away from the subject site. The size of the dwelling on the subject lot is very small by comparison to the developments either side. The proposed road boundary setback of 2m is considered appropriate in this instance given the deck is open.

Having regard to (c)

- the deck, despite its location will not impact upon the outlook and views of neighbouring properties. The roadway is curved to the south of the subject site as it forms a wide corner to the nearest intersecting street. Therefore, there is a very short line of sight available to or from the frontage of the site looking south. Compounding this is the built form on the neighbouring allotment as they

have built a double garage and a large entry structure along the road frontage. The line of sight to the north of the subject site is also limited although the road way straightens from this point. This is due in part to the line of trees along the northern boundary of the property, but to a greater extent, to the extensive landscaping on the large unit site next door.

The subject site is located directly opposite a public car parking area and a raised timber boardwalk that provides access down to the beach. Persons coming from the beach via the boardwalk, would look directly at the frontage of the subject site. The new deck and rendered masonry fence is in clear view from this aspect, as there is no landscaping between the deck and the fence line. Nor is there any landscaping on the nature strip to screen the fence line. The streetscape would greatly benefit by the introduction of landscaping on the nature strip or by planting between the deck and the masonry wall.

Having regard to (d)

- the structural integrity of the deck structure will be determined by the Assessment Manager and will not likely cause a safety issue for the public in this respect. It is always possible that activities carried out on a deck could cause a nuisance to the public. However, in this instance the deck is positioned well clear of the main public thoroughfare. The parkland and public car parking areas are on the opposite side of the road along the beachfront.

Reasons for the Decision

The Committee finds that the siting of the deck structure complies with all relevant performance criteria of the QDC MP1.2 for the following reasons:

- ▶ The deck as built, does not have a bulky appearance and does not cause an unacceptable streetscape.
- ▶ Similarly, the Committee finds that the structure does not adversely impact upon the views of neighbouring residents, nor is it found to cause a nuisance or a safety issue for the general public.

Debra Johnson
Building and Development Committee Chair
Date: 8 April 2013

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