



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	46-2011
Applicant:	Gary Francis and Helen Francis
Assessment Manager:	The Certifiers Pty Ltd
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	32 Sunset Drive, Noosa Heads and described as Lot 85 on RP132405, — the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by The Certifier Pty Ltd as the Assessment Manager, dated 13 May 2011, to refuse a building Development Application (siting variation) for a dwelling house (class 1a). The refusal was based on advice from Sunshine Coast Regional Council as the Concurrence Agency.

Date of hearing:	10am, Thursday 22 September 2011	
Place of hearing:	The subject site	
Committee:	Mr Peter Folker	– Chairperson
	Ms Natalie Rayment	– General Referee
Present:	Mr Luke Owen-Jones	– Assessment Manager
	Mr Rob Wibrow	– Council representative
	Mr Gary Francis	– Applicant
	Ms Helen Francis	– Applicant

Decision

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager dated 13 May 2011, to refuse the building Development Application based on a Concurrence Agency refusal dated 11 October 2010, and replaces it with the following decision:-

The Assessment Manager is directed to decide the Development Application for building works shown on the drawings submitted with the appeal, with no Concurrence Agency requirements.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 10 June 2011.

2. Drawings submitted with the appeal, including Site Plan and Elevations.
3. An inspection of the site and the locality, undertaken by the Chairperson and General Referee.
4. The Assessment Manager's decision notice dated 13 May 2011.
5. The concurrence agency response dated 11 October 2010.
6. The Concurrence Agency's report on application for variation of siting requirements, dated 11 October 2010.
7. Verbal submissions from the parties at the hearing.
8. The Planning Scheme for the former Noosa Shire Council (the Noosa Plan) – in particular, Division 7 - Detached House Code (the relevant code).
9. The Queensland Development Code (QDC) – Part MP 1.2.
10. The Building Regulation 2006.
11. The *Sustainable Planning Act 2009* and its regulations.

Background

The Assessment Manager was directed to refuse the application by Council in its referral agency response dated 11 October 2010. Council refused the siting variation request because “[t]he proposed fire rated wall adversely impacts on the amenity and privacy of residents on adjoining lots”. This reason for refusal was the culmination of an assessment by council of the proposal against the relevant code provisions.

The trigger for assessment was that there was building work (the roof – and any structure that is part of that roof i.e. the boundary wall) within 1.5m of the side boundary and it was greater than 9m in length (hence, non compliance with the QDC for a Class 10a structure). The length of roof is approximately 12m. The wall/fence alone would not otherwise have triggered assessment under the planning scheme.

The application for building works was initially generated by a complaint to Council, approximately 12 months ago. The building works, the subject of the application, are in place and were constructed approximately four years ago to replace previously existing fencing and roof structures already in the same position on the site. The applicants advised that there has been some form of roof cover in this location for a considerable time (30 years or so) – it had previously been green, plastic, corrugated sheeting typical of that era which had ‘broken down’ over time due to exposure.

The subject site is located in Noosa Heads in a well established residential area characterised by detached residential dwellings. The area of the subject land is 759m². This allotment size is fairly typical for the area. Sunset Drive is a local street providing direct access to the residential properties.

The subject site is located on the western corner of Sunset Drive and Brolga Lane. Being a corner site, the site has only two direct neighbours, one to the north and one to the west.

The site is located within the "Detached Housing" zone in The Noosa Plan. The applicable code is the "Detached House Code" (the relevant code).

The site contains a well established dwelling which according to the applicants has been on the lot for at least 30 years. The dwelling has driveway access to a double garage off Sunset Drive and a second driveway access off Brolga Lane providing a service court area for car/caravan/boat storage. The outdoor living area is under the main roof and is adjacent to this service court area and also overlooks the pool area. The site is fully fenced on all boundaries, the fencing being at least 1.8 metres in height. There is generous landscaping screening the fencing along the Brolga Lane frontage and part of the Sunset Drive frontage. The outdoor living area is very private with little to no overlooking into and out of this area. This is due to the screening effects of the roof adjoining the high boundary wall, together with the outdoor area

being located well within the site.

The neighbouring site immediately to the north contains a two-storey dwelling which is also a corner site and which takes its access off Sleepy Hollow Drive. There is a generous buffer of landscaping on the neighbour's side of the common northern boundary and the dwelling is setback approximately 5 or 6 metres from the common boundary. This neighbouring dwelling is mainly orientated away from the subject site as its aspect is northerly and it has a pool area on the northern side of the house. The immediate neighbour to the west contains a single storey dwelling which has frontage to Sunset Drive and which is setback at least 6m from the common boundary.

Findings of Fact

The Committee makes the following findings of fact:

The Sunshine Coast Regional Council, as a concurrence agency, determined that the proposal adversely impacts on the amenity and privacy of residents on adjoining lots and accordingly directed the Assessment Manager to refuse the application.

The council, in its report, relied on the following relevant code provisions to make this determination:

Specific Outcomes 01 of Table 14-28 of the Noosa Plan

Setbacks

01 Buildings and other *structures* are appropriately designed and sited to—

- a) provide amenity for users of the premises as well as preserve the visual and acoustic privacy of adjoining and nearby land uses;
- b) preserve any existing *vegetation* that will buffer the proposed building from adjoining uses;
- c) allow for landscaping to be provided between buildings;
- d) maintain the visual continuity and pattern of buildings and landscape elements within the street;
- e) for class 10a structures, do not visually dominate the street;
- f) avoid any significant adverse impacts on the natural values of waterways and their foreshores, including those of the Noosa River and its lakes; and
- g) do not interrupt the natural cycles of erosion and accretion of waterways and foreshore areas.

Council's report set out the matters to which it had regard in its assessment of the proposal against these provisions and concluded that the "...wall built on the allotment in the way proposed, would not comply with the relevant [code provisions]". Council's report does not provide detailed reasons for this determination.

At the hearing, Council made the following point in support of its decision:

Council's concern is related to visual impact (i.e. the dominance of the building work) and privacy of the immediate neighbour to the north, exacerbated by the fact that the work is already done - so it may also have resulted in loss of existing vegetation and missed opportunity for landscaping between buildings.

At the hearing, the appellant made a number of points to support the proposal, including:

1. The new building work was seen as a visual improvement compared to what had been there previously.
2. The adjoining house is well setback from the fence with landscaping (vegetation buffer) and yard between the fence and the house.
3. The boundary wall is a solid wall up to 1.9 metres in height with a roof adjoining the wall and applicant's house so the building work should not cause visual privacy impacts on neighbours (as the direct line of sight is substantially obscured).

4. Being a solid wall with a roof is likely to improve acoustic privacy by reducing noise transference between neighbouring properties.

At the hearing, the Assessment Manager made the following point in support of the proposal:

The Certifier expressed the view that the impact of the building work is very minor on the immediate neighbour, due to the minor nature of the work, and that there would be no reflection off the roof resulting in a negative visual impact.

There was general agreement between Council and the Assessment Manager at the hearing that a Class 10a structure could be built in this location and be an average of 3.5m in height with a length of 9m without requiring Council approval.

It was also agreed at the hearing that despite the assessment manager's (the certifier) references to QDC provisions in its decision notice, the correct criteria for assessment in this case are the relevant specific outcomes of the Detached House Code in the planning scheme.

The building work has been in place for around four years and it replaced a similar extent of work that had previously existed in approximately the same location for around 30 years.

The outdoor living area enclosed by the subject building works is a private and pleasant space for the owners. Whilst the location of the outdoor living area is adjacent to the northern boundary, the existing wall and roof substantially limits any opportunity for overlooking into and out of the area. The subject works also provide acoustic screening to the northern neighbour due to the solid nature of the wall and roof.

There is little to no effect on the immediate neighbour to the west.

In regard to Specific Outcome 01 a) above, in as far as it relates to the neighbouring property, it only requires the preservation of visual and acoustic privacy of the neighbour. The reference to amenity is in respect of the users of the subject premises.

In regard to Specific Outcomes 01 b) & c) above, the opportunity for landscaping on the appellants' side of the boundary did not exist prior to the subject works occurring.

Reasons for the Decision

The extent of the assessment required under Specific Outcome 01 a) of the relevant code is whether the building works impacted on the visual and acoustic privacy of the neighbour (and whether the works provide amenity to the owners of the premises). The Committee considers that the subject building works enhance the visual and acoustic privacy of the neighbour by providing a substantial screening effect compared to a situation where the boundary wall and roof did not exist. The building works in turn provide amenity to the owners.

In regard to Specific Outcomes 01 b) & c) of the relevant code, there was no existing vegetation to preserve or an opportunity to allow new landscaping because the subject building works replaced similar building works that had existed for a considerable period of time.

In regard to Specific Outcomes 01 d) & e) of the relevant code, the subject building works have very little, if any, effect on the visual continuity and pattern of buildings and landscape elements within the street, nor do the works dominate the street.

Specific Outcomes 01 f) & g) of the relevant code are not relevant in this instance.

The subject building works satisfy the relevant specific outcomes of the relevant code.

Peter Folker
Chairperson
Building and Development Committee Chair
Date: 4 October 2011

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:

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