



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

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| Appeal Number: | 44-10 |
| Applicant: | Mr Robert Fogerty |
| Assessment Manager: | Caloundra Building Approvals |
| Concurrence Agency: | Sunshine Coast Regional Council (Council) |
| Site Address: | 22 Caulfield Close, Little Mountain and described as Lot 248 on SP 111168 — the subject site |

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Caloundra Building Approvals as the assessment manager to refuse a development application for building works for the siting of an outdoor entertainment area. The refusal was based on concurrence agency advice from Council.

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| Date of hearing: | 15 July 2010 |
| Place of hearing: | 22 Caulfield Close, Little Mountain |
| Committee: | Mr Chris Schomburgk – Chairperson |
| Present: | Mr Richard Prout – Council Mr Robert Fogerty – Applicant Mr Andrew Stewart – Assessment manager |

Decision:

The Committee, in accordance with section 564 of the SPA, **sets aside** the decision by the assessment manager to refuse the development application for siting of an outdoor entertainment area; and replaces it with the following decision:-

The Committee, in accordance with section 564 **directs** the assessment manager to **approve** the development application, subject to compliance with the following conditions:-

1. The northern wall of the proposed building is to be extended in an easterly direction to the full length of the roofed area.
2. The western face of the proposed wall is to be rendered, painted and maintained in good order at all times.
3. No windows, doors or other openings are permitted in the western or northern walls of the proposed building.
4. The proposed building is not be used for purposes other than an entertaining area as proposed.

Background

A single storey detached house and outdoor swimming pool are already established on the subject site. The land itself is located in a relatively new estate which consists of a mix of new and 'under construction' dwellings of predominantly single storey height. It is bounded by detached houses on the side and rear boundaries.

The site is located in a short cul-de-sac and has an area of approximately 800m². It is an irregular shape with a frontage of approximately 13m to Caulfield Close, widening out to its rear boundary which is approximately 32.5m. The house is located approximately 6.5m from the road frontage.

The swimming pool is located along and abutting the northern side boundary. A rendered block wall approximately 1.8m high runs along that boundary for the length of the swimming pool. The western (rear) end of the swimming pool is approximately 6.5m from the rear boundary. The proposed entertainment area is to be located between the pool and the rear boundary.

Abutting the northern boundary at its western end on the adjoining property is an existing garage/shed that extends approximately 10m from the rear boundary. The rear (western) boundary is shared with two allotments, both containing dwellings. The northern-most of these has planted a row of trees along the boundary, which provides a degree of visual screening to the subject property.

A sewer line runs along the rear boundary approximately 1.5m inside the properties to the rear (ie: not inside the subject property).

The proposed entertainment area is to comprise a solid rendered block wall approximately 3m high and approximately 15m long, and located 0.5m inside the western (rear) boundary of the subject property. It will have a return along the northern boundary approximately 4.4m long, and the same length return on the southern end. The eastern face of the entertainment area, which faces the existing house on the subject property, will be open.

The proposed entertainment area is to include a toilet and shower at the southern end, and a "wet" bar area and indoor barbeque. The roof is proposed to extend beyond the walled area by about 1.5m to the east to provide protection from rain and to provide shade over the existing tiled area at this end of the swimming pool.

Materials Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 17 June 2010.
2. A site inspection of the site and the locality, undertaken by the Chairperson.
3. The concurrence agency response dated 25 May 2010.
4. The assessment manager's decision notice date 1 June 2010.
5. Verbal and written submissions from the parties at the hearing.
6. The Queensland Development Code (QDC) – Part MP1.2.
7. The SPA.
8. The *Sustainable Planning Regulation 2009*.

Findings of Fact

The Committee makes the following findings of fact:

- Council's decision to refuse the application is based on alleged non-compliance with provisions of the QDC, in particular performance criterion P2 of Part MP1.2, which states:
 - P2 Buildings and structures:*
 - a) provide adequate daylight and ventilation to habitable rooms; and*
 - b) allow adequate light and ventilation of habitable rooms of buildings on adjoining lots;*
 - c) do not adversely impact on the amenity and privacy of residents on adjoining lots.*
- The applicant has provided copies of the proposal plans endorsed with the consent of the three potentially-affected neighbours, all of whom state that they have no objections to the proposal.
- At the on-site hearing, Council provided a written statement, and the applicant provided a verbal statement. The applicant agreed that, if it were considered necessary by the Committee, the return wall on the northern boundary could be extended for the full length of the proposed roof. This would ensure that any noise generated within the entertainment area would be "funnelled" towards the existing house on the subject site, and would lessen the potential for noise impacts to the neighbour to the north.
- The applicant has also offered to render and paint the proposed wall on the western and northern sides, to improve the visual appeal of the wall to those neighbours.
- Despite approval from all of the affected neighbours, the Council representative remained concerned about the matters raised in their concurrence response about privacy, light and ventilation. It was agreed by all parties that if the side and rear walls of the proposal were set back from the respective boundaries by 1.5m, there would be no concerns from the Council.

Reasons for the Decision

- Based on an assessment of the above facts, it is the Committee's decision that the decision notice being appealed against be **set aside** and that the development application for siting of an entertainment area be approved, subject to compliance with the following conditions:
 1. The northern wall of the proposed building is to be extended in an easterly direction to the full length of the roofed area.
 2. The western face of the proposed wall is to be rendered, painted and maintained in good order at all times.
 3. No windows, doors or other openings are permitted in the western or northern walls of the proposed building.
 4. The proposed building is not be used for purposes other than an entertaining area as proposed.

The proposed building is classified as a class 1a habitable building, despite it being proposed for use as an entertainment area only, and despite it remaining open on the eastern side. It is not a class 10 building,.

To set the building back from the western and northern boundaries by 1.5m would create a strip of land within the subject site that would be of no practical use, and would not improve issues such as privacy, light or ventilation to the adjoining properties.

The proposal will not be seen from the street, so that the only potentially affected properties are those to the north and west. Given the relative locations of houses and other buildings on all of the affected lots, including the subject lot, no negative impacts are likely to arise as a result of the proposal.

The conditions as set out above will ensure that the building is not intrusive to the adjoining properties.

No detrimental impacts are likely to be caused to privacy, light or ventilation by the proposal.

The proposal, as amended by these conditions, complies with the relevant Performance Criteria of the QDC.

Chris Schomburgk
Building and Development Committee Chair
Date: 20 July 2010

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 Infrastructure and Planning
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