



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	22- 14
Applicant:	Daniel John Barber (Builder)
Assessment Manager:	Steve Morley of Total Building Consult
Concurrence Agency: (if applicable)	Brisbane City Council (Council)
Site Address:	43 Coora Street (corner of Bellbird Crescent), Wishart and described as Lot 30 on RP 889015 (subject site)

Appeal

The appeal is made pursuant to section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by the Certifier as the Assessment Manager, which was based on direction from the Council acting as Concurrence Agency, to refuse a building development application for building works for the design and siting of a structure incorporating a class 1a extension with a gable roof and attached skillion roof.

Date and time of hearing:	Wednesday 6 August 2014 at 1pm
Place of hearing:	The subject site
Committee:	Chris Trewin – Chair Peter Rourke - Member
Present:	Daniel Barber – Applicant and Builder John Barber – observer Brendan Trebilco – Property Owner Ricky Hedrick – Brisbane city Council representative John Grimsey - Brisbane city Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision made by Assessment Manager to refuse the Application.

Background

The subject site is located on the western corner of the intersection of Coora Street and Bellbird Crescent, and consequently has two street frontages. There are no other dwellings located on the intersection, as the streets are undeveloped to the east. The lots on the other three corners appear to form part of the parkland surrounding the Bulimba Creek Bikeway.

The subject site is approximately 705m² with the frontage to Coora Street measuring approximately 23m in length and the Bellbird Crescent frontage measuring approximately 31m. The subject site is on the

edge of a significant residential development consisting primarily of similar brick veneer, tile roofed dwellings.

The Property Owners have extended their dwelling towards Bellbird Crescent to form an enclosed sunroom. It is set back 1.5m from the Bellbird Crescent road boundary and the enclosed sunroom has a gable at the front of that road, which finishes approximately 4.0m above the surrounding ground level, at the apex. The owners have also removed the existing small roofed pergola facing Coora Street and replaced it with a patio that runs nearly the full length of the dwelling which is also set back 1.5m from the Bellbird Crescent Boundary.

A building development application (Application) was lodged by The Patio Doctors (Builder) with the Assessment Manager who in turn lodged a Concurrence Agency Application with the Council for assessment against the Performance Criteria of the Queensland Development Code MP1.2 (QDC MP1.2). When Council carried out a site inspection as part of their assessment process, they discovered that the works were completed prior to finalising their Concurrence response.

The Council issued a response, dated the 11 June 2014, directing the Assessment Manager to refuse the Application. Among other things, the Council was of the opinion that the bulk and scale of the gable roofed extension and the attached skillion patio roof did not facilitate an acceptable streetscape.

The Applicant lodged a Notice of appeal with the Committee Registrar on 15 July 2014.

During the hearing the Applicant and Property Owner suggested that the neighbouring property on Bellbird Crescent (1 Rosella Court) had set a precedent for works to extend into the required front boundary set back because it has an enclosed garage that extends almost to the front boundary. Council has since confirmed that there has been a siting variation to allow the structure at 1 Rosella Court to be sited where it is, but only if it remained open.

It was generally agreed at the hearing that the open skillion roofed patio is not really an issue, but the Council maintained that the high gable of the enclosed sunroom was a problem, due to its bulk. It was also agreed that the only elements of Performance Criterion P1 relevant to the appeal are P1 (a) and (b).

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 15 July 2014.
2. Queensland Development Code Part MP1.2 – Design and siting standards for single detached housing – on lots greater than 450m² (QDC MP1.2)
3. *Sustainable Planning Act 2009* (SPA)
4. *Building Act 1975* (BA)
5. Volume 2 of the Building Code of Australia 2014 (BCA)
6. The Concurrence Agency response for design and siting issued dated 11 June 2014,
7. Decision Notice issued by the Certifier on the 19 June 2014.
8. Verbal representations by appeal parties at the hearing.
9. Emails between the Certifier, Builder and the Committee Registrar dated between 15 and 17 July 2014
10. Neighbour's statement from the owners of 1 Rosella Court, dated 13 August 2014.

11. Various emails from the Property Owners, Builder and the Council forwarded via the Registrar following the hearing on 6 August 2014.

Findings of Fact

The Committee makes the following findings of fact:

- There are no alternative siting standards that apply to the subject site.
- The subject site is in excess of 450m² in area; therefore QDC MP1.2 applies to the building work.
- The Assessment Manager received a properly made Application for a dwelling extension (enclosed sunroom) and patio. The proposed siting was not in accordance with the acceptable solutions of QDC MP1.2.
- The Assessment Manager lodged a Concurrence Agency Application with the Council on 16 April 2014 and Council directed refusal of the Application in their response dated 11 June 2014.
- The Applicant completed the unapproved works on the 1 June 2014.
- The Assessment Manager issued a Decision Notice refusing the Application on the 19 June 2014.
- The Assessment Manager's Decision Notice was appealed to the Committee on the 15 July 2014 and an appeal hearing was held on site on Wednesday 6 August 2014 at 1pm.
- After the appeal hearing, the Applicant provided a 'Concurrence Agency Application – Neighbour's Statement' dated 13 August 2014 from the owner of 1 Rosella Court supporting the development.

Reasons for the Decision

- The gable end of the enclosed sunroom extends 4.0m above the finished ground level and is a significant structure situated 1.5m from Bellbird Crescent road boundary.
- Given the size and bulk of the structure, the Committee finds that the enclosed sunroom does not contribute positively to the streetscape.
- The enclosed gable sunroom is not in keeping with the road boundary setbacks of approved neighbouring buildings or structures.
- In its current form the gable end of the enclosed sunroom does not comply with the Performance Criteria P1 (a) and (b) of QDC MP 1.2.

Chris Trewin
Building and Development Committee Chair
Date: 11 September 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
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