



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	35- 13
Applicant:	Allan and Deborah Meheux
Assessment Manager:	Don Grehan of Pacific BCQ (Assessment Manager)
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	17 Toulambi Street Noosaville and described as Lot 29 on SP 129286 – 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 Council's advice as Concurrence Agency with respect to design and siting for the structure.

Date and time of hearing:	10.00am Wednesday 4 December 2013
Place of hearing:	The subject site
Committee:	Debbie Johnson - Chair Shane Aamson - Member
Present:	Allan and Deborah Meheux - Applicants Don Grehan of Pacific BCQ - Assessment Manager Rob Wibrow – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision by the Assessment Manager to allow the siting variation required for the proposed upper level deck extension. The road boundary setback is varied to 4.5m providing:

- (a) that portion of the deck within the 6m setback area is not covered by a roof using either pervious or impervious materials; and
- (b) the area under that portion of the deck within the 6m setback area is to remain open, not screened or enclosed in any way, other than by open balustrading.

Background

On 10 September 2013, the Applicant applied to the Assessment Manager for a building approval. The proposed works included in part an extension to the width of an existing upper level deck, new pool gazebo and a carport. The Assessment Manager referred the application to Council (as

Concurrence Agency) as these structures were to be sited within the rear and street boundary setback areas.

On 10 October 2013, the Assessment Manager received Council's response recommending part approval and part refusal of the works proposed. Council agreed to allow a reduced setback of 0.4m for the gazebo from the rear boundary and a 0.5m reduced setback for the carport from the street boundary. However, Council refused the reduced setback of 4.5m being sought for the upper level deck extension.

The advice stated:

"The deck addition does not meet or cannot be conditioned to meet the following specific outcomes of the Noosa Plan Building Works Code:

(a) provide amenity for users of the premises as well as preserve the visual and acoustic privacy of adjoining and nearby land uses;

(b) maintain the visual continuity and pattern of buildings and landscape elements within the street.

To provide amenity for adjoining neighbours and maintain the visual continuity and pattern of buildings within the street an acceptable 6.0m setback must be maintained for upper level building works".

The Assessment Manager subsequently refused the building application on the 25 October 2013 and the Applicant proceeded to lodge an appeal with the Building and Development Dispute Resolution Committees on 31 October 2013.

Material 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 Committees Registrar on 31 October 2013.
2. Oral submissions by the Applicants, the Assessment Manager and the Council representative at the hearing.
3. The Committees' on site inspection of the subject site and immediate locality.
4. Property details as available through Council's website.
5. The Noosa Plan (in particular the Building Works Code).
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.

The subject site is rhombus shaped with an area of 615m² and a frontage width of 20.426m. The existing two storey home has been sited parallel to the side boundaries so that the front boundary is

splayed in relation to the front wall of the home. The house was built in the 1990's and the gardens around the home are established and well kept.

There is mature planting across the frontage, mostly palm trees and exotic shrubs. Similarly, both adjoining properties are well screened from the street by the effective use of landscaping despite the natural falls across the frontage of these three properties.

The subject site boasts a large existing upper level deck along the north western side of the house. Recently work commenced on the adjoining home that shares this boundary.

The Applicant sought to increase the small 'Romeo and Juliet' balcony along the north eastern or front side of the house as it does not overlook neighbouring properties. The existing balcony is currently 1m wide at the frontage. It is proposed that the balcony be increased to 2.4m in width.

The larger deck area in this location will provide an alternative outdoor seating area that will maintain privacy from neighbouring dwellings. Due to the splayed frontage, only half of the proposed deck would be situated within the front boundary setback, which is an important consideration. This affected portion of the deck is triangular in shape, as the 6m building line runs diagonally through the proposed deck. Therefore, the visual impact of this part is minimal at the 4.5m building line which will only coincide with the front corner of the deck. It is also significant that the Council has recommended approval of a double carport situated directly under this deck. This carport will be sited just 0.5m from the front building line.

Reasons for the Decision

As a result of observations made by the Committee during the on site hearing, the Committee finds that the subject site and those properties immediately adjoining the site are well landscaped and orientated to maintain effective visual and acoustic privacy of adjoining properties. The siting impact associated with the proposed increase in the width of the upper level deck is minimal due to the frontage being splayed, the double carport being allowed by Council, and the gardens being established. Consequently, the proposed development will not adversely impact upon the visual continuity and pattern of buildings in the street.

Debbie Johnson
Building and Development Committee Chair
Date: 29 January 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 Planning and Environment Court 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
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