



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	78-11
Applicant:	Nigel Halpin
Assessment Manager:	Palm Beach Plan Approvals Pty Ltd
Concurrence Agency: (if applicable)	Gold Coast City Council (Council)
Site Address:	2 Barden Ridge Road, Reedy Creek and described as Lot 249 on SP174623 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Building Development Application to raise the height of a retaining wall. The refusal was based on a decision by the Concurrence Agency as the siting of the proposed building works would not comply with Queensland Development Code (QDC) MP 1.2.

Date of hearing:	10:00am on Wednesday 2 November 2011; and 11:00am on Wednesday 16 th November 2011
Place of hearing:	Building Codes Queensland, Meeting Room 5B,, Level 5, 63 George St, Brisbane
Committee:	John Brannock – Chair Massimo Ficca – General Referee
Present:	Nigel Halpin – Applicant (by telephone) Roger Sharpe – Gold Coast City Council (by telephone)

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA, **sets aside** the decision of the Assessment Manager dated 5 September 2011, to refuse a Development Application for the siting of a retaining wall and directs the Assessment Manager to approve the Development Application in accordance with the revised landscaping plan (Planting Plan for Existing Retaining Walls dated 17.5.2010) subject to the provision of a minimum of 600mm depth of

garden beds for deep rooted planting and landscaping.

Background

Council granted approval for a siting variation for a retaining wall within the road front setback clearance area on 4 November 2009.

A Show Cause Notice dated 4 May 2010 was issued by Council to the Applicant for contravening a Development Approval with regards to the height of the retaining wall.

Council issued correspondence dated 23 June 2010 requesting the Applicant provide further information on a satisfactory explanation to substantiate the retaining walls ability to facilitate an acceptable streetscape, appropriate for the bulk of the structure.

In Council's initial response, they advised that the development of the retaining wall does not facilitate an acceptable streetscape to allow compliance with Performance Criteria P1 of QDC MP1.2.

The Applicant admits that the structure was not compliant with Performance Criteria P1 of QDC MP1.2. and the retaining wall had been constructed prior to realising the retaining wall did not comply and has acted to remedy this issue in conjunction with Council and private certifiers.

A second application was lodged with Council on 8 June 2011 for an "as-constructed" retaining wall requiring Referral Agency assessment of building work assessable against the *Building Act 1975* (BA).

Council as Concurrence Agency refused the application for a siting variation on 9 August 2011 as it was deemed the proposal would not comply with the Performance Criteria P1 of QDC MP1.2.

The Development does not facilitate an acceptable streetscape:

- (a) The residential streetscape character comprises of a variety of fences (some instances no fencing) ranging in height from 1.2m to 2m. The height of the wall together with its length and bulk significantly impacts on streetscape amenity.*
- (b) The applicant has not demonstrated that landscaping (or any other method) will mitigate any adverse amenity related impacts.*
- (c) Approving the wall in its current form will set a precedence eroding the residential streetscape character of this new Estate.*

The Assessment Manager issued a Decision Notice to the Applicant on 5 September 2011 refusing the application based on advices of the Concurrence Agency.

The Committee received an appeal application lodged by the Applicant on 29 September 2011.

The appeal was made in response to Council's refusal of an application for an 'as-constructed' retaining wall within the Observatory Drive road frontage setback clearance area at the subject site as it was deemed to be contrary to the QDC MP1.2 for Design and Siting Standard for Single Detached Housing on lots 450m² and over with respect to streetscape.

Material Considered

The material considered in arriving at this decision comprises:

1. Council's Referral (Concurrence) Agency Response for Siting Variation Application No: 2910312 dated 4 November 2009;

2. Council's Show Cause Notice for contravening a Development approval with respect to the construction of the solid block retaining wall at a height greater than 2.935 metres, dated 4 May 2010;
3. Council's Referral (Concurrence) Agency Information Request for Siting Variation Application No: 201008036 dated 23 June 2010;
4. Council's Referral (Concurrence) Agency Refusal for Siting Variation Application No: 201105301 dated 9 August 2011;
5. Decision Notice (Refusal) issued by Palm Beach Plan Approvals Pty Ltd for Application No 09/159 dated 5 September 2011;
6. Form 10 - Application for Appeal lodged with the Building and Development Dispute Resolution Committees on 29 September 2011;
7. Email submission from Applicant dated 15 November 2011;
8. Queensland Development Code (QDC) MP 1.2 – Design and Siting Standards for Single Detached Housing – on lots 450 m2 and over (publication date 11 March 2010) ;
9. *Sustainable Planning Act 2009*;
10. Verbal submissions provided at the hearing by Applicant and Council representatives; and
11. Revised landscaping plan and details (Planting Plan for Existing Retaining Walls dated 17 May.2010).

Findings of Fact

The Committee makes the following findings of fact:

The Performance Criteria P1 of QDC MP1.2 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.*

The retaining wall is defined as *building works* under the BA and is assessable under Performance Criteria P1 of QDC MP1.2.

A preliminary hearing was scheduled for 2 November 2011 but due to technical issues it was agreed the hearing be adjourned and rescheduled. While the hearing was adjourned the Committee requested written submissions from the Applicant and Council about the history associated with this application.

The Applicant provided the following verbatim written response received on 15 November 2011. This response summarises the history associated with this application.

- i. Please note that this is my first time at building a house so i organised the plans and approvals. building in an estate i thought they had final say that is why i went to covenant when i was aware of this problem and i did what they told me to do only to find out i was wrong.

- ii. Mid April 2010 – got steve borger from covenants on site for meeting to find a solution.
- iii. 21 April 2010 – received letter from covenants stating i had to put a planter box at the top of the wall with shrubs that will attain a mature height 600mm (planter box done).
- iv. 4 May 2010 – received show cause letter from council so i took this to my certifier, he put me on the right path and we put an application to council.
- v. 23 June 2010 – council responded, they suggested that the rock retaining wall that is in front of the over sized block wall be taken down and replaced with a block wall to match the over sized wall. that rock wall cost me \$9000 and could not be moved due to the engineering of the walls so i got form workers out to put a concrete face on the rocks, that cost me \$6000.
- vi. 11 August 2010 – i emailed council saying that i will change the retaining wall to what they want and asked for a time extension as i had financial difficulty paying for the wall.
- vii. 1 September 2010 – received letter from council saying that they have given me until 10 Jan 2011 when another inspection will take place.
- viii. 22 March 2011 – got an enforcement notice from council which really confused me considering i had done what they had asked so i rang them to find out what was going on, apparently after a year of dealing with council the two blokes i was dealing with were from two different departments of council both about the height of the retaining wall so we set up a meeting to try to come to an agreement and they told me bad luck i had to knock it down, that can't be done as the wall has been tied together with some peers one metre in as it has been engineered like that and i have a \$35000 pool shell sitting 1.5m in from the wall.
- ix. Mid April 2011 – set up a meeting with roger sharp he realised there had been a mix up by both parties so he told me to put another application in at no cost, it was no cost but i had to put building time extension in because the time frame had run out, that cost me \$1021. roger told me that course of action we were going to take and in the end that council will not contest this dispute.

No submission was received from Council.

The rescheduled appeal hearing took place on 16 November 2011 but was adjourned for the parties to hold 'without prejudice' discussions and allow the Applicant one month from the hearing date, the opportunity to satisfy Performance Criteria 1 of QDC MP1.2.

At the hearing there was considerable discussion about whether the retaining wall in a revised format would be able to contribute positively to the streetscape.

After engaging a landscape architect, the Applicant submitted a revised landscaping plan and planting schedule to Council to enable the already constructed retaining wall to comply with Performance Criteria P1 of QDC MP1.2.

Council provided written confirmation on 13 December 2011 that officers had met with the Applicant onsite to discuss landscaping options and has reviewed their previous position on the retaining wall. Council were satisfied with the revised landscaping and planting schedule proposal as being sufficient to buffer/screen the height of the wall and ultimately, comply with P1 or MP1.2 of the QDC.

Reasons for the Decision

The Committee agrees with the position of Council and finds the retaining wall has the potential to demonstrate compliance with Performance Criteria P1 of QDC MP1.2 if landscaped garden beds are increased to a minimum depth of 600mm. The proposed minimum depth (600mm) of soil for landscaping allows for deep rooted plants which will provide sufficient screening of the otherwise invasive retaining wall.

John Brannock
Building and Development Committee Chair
Date: 29 February 2012

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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