



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	22-11
Applicant:	Cox Architects
Assessment Manager:	Sunshine Coast Regional Council
Concurrence Agency: (if applicable)	N/A
Site Address:	1 Riverview Avenue Buderim Qld 4556 and described as Lot 2 on RP97172 – the subject site

Appeal

Appeal under section 527 of the Sustainable Planning Act 2009 (SPA) against the decision of Sunshine Coast Regional Council as the assessment manager to approve a development application for the construction of an additional storey to an existing garage.

Date of hearing:	21 June 2011
Place of hearing:	The subject site
Committee:	Ms Georgina Rogers – Chair Mr John O'Dwyer - Member
Present:	Mr David Cox – Applicant Mr Alan Thompson – Sunshine Coast Regional Council

Decision:

The Committee, in accordance with section 564 of SPA **sets aside** the decision appealed against, to refuse the development application for building works, namely a building structure (additional storey over an existing garage).

The Committee **directs** the assessment manager to re-assess the development application for building works subject to the following conditions:

1. The western wall, adjacent to the western property alignment, of the existing garage and proposed additional storey is to be upgraded to be one hour fire rated. This may be achieved through a construction method which is acceptable in accordance with the Building Code of Australia (BCA).

2. The roofing of the proposed additional storey above the existing garage is to match the materials and profile of the existing dwelling.
3. The existing vegetation at the front of the site between the garage and Riverview Avenue road boundary alignment is to be retained and maintained.

Background

The existing site comprises of a steep sloping, irregular shaped block that has been terraced to provide building platforms for the existing dwelling and garage which is significantly lower than street level. The site fronts Riverview Avenue to the south.

The existing garage is located between the existing dwelling and the road frontage and is adjacent to the western boundary of the site. Vehicle access is via Riverview Avenue with the entrance to the garage at a lower level than the street and parallel to the Riverview Avenue. This maintains minimal visual street impact by the vehicle garaging. There appears to be an average setback distance of more than 6 metres from the existing garage to the front road boundary alignment.

The western boundary of the site abuts a lane, which is approximately 4 metres wide and serves for overland flow and drainage purposes. There were some significant signs of erosion over this lane due to the steepness of the site and obvious forces due to the volume of overland flow over time.

The applicant proposes to construct a second storey on top of the existing garage structure. This will incorporate an external staircase on the northern side of the garage, adjacent to the existing dwelling. This proposal required a siting variation approval from Council which is assessed against the siting requirements of the Maroochy Plan 2000. Council rejected the application on the basis compliance with the performance criteria of Maroochy Plan Code 4.1 has not been demonstrated for:

Element 1 Performance Criterion 2

- Buildings and structures are sited to contribute positively to the streetscape, maximise community safety and maintain the amenity of adjacent land and dwelling by having regard to views and vistas; and

Element 8 Performance Criterion 2

- Buildings and other structures are designed and sited to minimise adverse impacts on amenity of neighbouring sites having regard to views and outlook.

Element 8 has Acceptable Measures that require setbacks from side and rear boundaries of 1.5 m for a building up to 4.5 m in height.

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 Registrar on 15 March 2011.
2. Submission from Sunshine Coast Regional Council dated 10 June 2011 in response to the Appeal.
3. Submission from neighbour (4 Riverview Avenue, Buderim) stating support of the development.

4. A site inspection conducted by Committee members during the hearing, included the following inspections and observations:
- The rear portion of the subject site which sloped steeply downwards from the platforms on which the dwelling and garage were constructed.
 - The views of the existing garage from the footpath outside the subject site.
 - Views of the existing garage from the road footpaths, front garden and balcony at 2 Riverview Avenue which identified that the dwelling was visible above the footpath.
 - Views from the footpath outside the premises at 4 Riverside Avenue, Buderim which identified that the dwelling was visible above the footpath and that a hedge situated at the frontage of the premises obscured views down into the subject site.
 - Views from the footpath outside the premises on the western side of Coolum View Terrace to the south-west, identified that the dwellings on the premises were elevated above the footpath.

Issue with the Information provided

It appears that the drawings which were submitted to council and those which were submitted to the Committee differed in regards to the stated use.

During the hearing, the Council representative indicated that they were concerned about the possible conversion of the upper floor addition from store room to some other purpose. When this was raised, the above discrepancy between the plans held by the parties was revealed. Following discussions, the parties agreed the class of building may change between Class 1A and 10A. However, the Council representative indicated that the issues from the Building Act 1975 compliance viewpoint would be the same regardless of the classification, and did not object to the appeal proceeding taking into consideration the Appellant's documentation.

The Chair then indicated the appeal would proceed on the basis of the drawings lodged by the Appellant as part of the appeal documentation.

Findings of Fact

The Committee makes the following findings of fact:

- While the garage will come within 4.5 m of the Riverview frontage of the site, the average distance of the garage from that frontage is in excess of 6.0 m.
- The subject site is irregular in shape and the allotment is on a steep sloping site with limited opportunities to practically and economically locate additional storage facilities on the site.
- The existing garage does not comply with the setback from a side boundary required by Element 8 P2 Acceptable Measures of the Code for Residential Development and Use.
- The existing garage predates that Code adopted in 2000 by the former Maroochy Council.

Reasons for the Decision

The issue regarding the description of the use did not affect the siting matters that were considered in the Appeal.

Siting Matters

1. Part MP1.2 of the QDC sets out Performance Criteria (P1 - P8) in relation to design and siting of buildings and structures which a local government must consider, and be satisfied that the application meets the intent of each criterion. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria:

P1. The location of a building or structure facilitates an acceptable streetscape, appropriate for –

(a) the bulk of the building or structure

The proposed additional storey to the existing garage will not significantly impact upon the existing bulk of the structures existing on site. Viewed from various streetscapes it was determined that the profile of the additional storey will be within the context and bulk of that already provided by the existing dwelling and not significantly increase the visual impact in any manner.

(b) the road boundary setbacks of neighbouring buildings or structure

The road boundary setback of neighbouring buildings and structures will not be impacted by the proposed additional storey above the existing garage. It is reasonable to take the average distance of the garage from the primary frontage in determining compliance with a code on an irregularly shaped allotment. Therefore, the proposed addition to the garage meets the performance criteria of the 6.0 m frontage set back requirement.

Non-compliance with the strict frontage setback is acceptable where the average setback is greater than the required setback, and in this case the average setback has been calculated as 6.2 m.

Non-compliance with the side setback requirement is unreasonable, as the existing structure predates the existing planning scheme. The existence of the lane beside the proposed premises means that there is a “virtual” setback of the proposed additions from the nearest residence.

(c) the outlook and views of neighbouring residents

The outlook and views of the neighbouring residents will not be impacted by the proposed additional storey to the existing garage. There is established landscaping to the front of the site between the existing garage and road frontage.

The proposed addition will not have an adverse impact on the privacy of the neighbours.

It is acknowledged the proposed addition will not meet the acceptable measures for a setback from a side boundary under the steep land code provisions. However, this application is for additions to an existing structure located on the site before the current code came into force. Therefore the intent of the relevant Performance Criteria of the codes has to be considered rather than the specific acceptable measures.

The Council submission demonstrated that they had sought additional information in relation to the application particularly in relation to Element 8 Performance Criteria 2. This was responded to in part and included a letter of support from the owner and occupier of the dwelling nearest to the garage.

Council's own inspection conducted at the hearing concluded that the impact on the outlook and views of neighbouring properties was uncertain.

Passers-by walking or driving along Riverview Terrace or Coolum View Terrace will notice the new building, as it will extend above the top of the vegetation. However, it will only have a fleeting impact on views because the vegetation and existing dwelling on the subject site, and vegetation on neighbouring properties already obscure much of the views from street level.

It is considered these impacts on views and outlooks will be minor and the impacts are not sufficient to warrant refusal of the application.

(d) nuisance and safety to the public.

1. The addition of a second storey to the garage will not impact on the nuisance and safety to the public within the neighbourhood.
2. The decision held in this application is separate to any other applications which may be made over the property at this time or in the future.
3. The QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the Code in relation to the proposed building structure (additional storey to an existing garage) the Committee found that there were grounds for the application to be approved.

Georgina Rogers
Building and Development Committee Chair
Date: 5 September 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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