



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	02 – 15
Applicant:	Jason & Amanda Coll
Assessment Manager:	Suncoast Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	27 Henning Crescent, Meridan Plains described as Lot 214 on SP 267702 – 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 Development Application for Building Work in relation to the construction of a Dwelling and Attached Garage the location of which conflicts with the siting provision of a Plan of Development at the direction of the Concurrence Agency.

Date and time of hearing:	10.00 am, 30 January 2015.
Place of hearing:	The subject site and afterwards at Sunshine Coast Regional Council chambers, located at Omrah St Caloundra
Committee:	Don Grehan – Chair
Present:	Amanda Coll – Applicant. Jack Greensill –Suncoast Building Approvals representative. Gary Sheffield– Council representative

Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564 of the SPA, **sets aside** the decision of the Assessment Manager and approves the proposed Dwelling and attached garage subject to the following conditions and directions as considered appropriate:

Conditions:

1. The setback from the outermost project of the dwelling and attached garage on the south east boundary alignment fronting Creekwood Avenue shall be no less than 1500 mm.
2. The setback to the southern boundary alignment fronting Henning Crescent shall be no less than 4500 mm.
3. The setback to the north eastern boundary alignment fronting Meridan Way shall be no less than 5623 mm
4. A set out certificate signed by a Registered Cadastral Surveyor verifying compliance with these setbacks from the prescribed property boundaries, is to be submitted to Assessment Manager prior to the issue of a Form 21 – Final Inspection Certificate.

5. A solid screen or fence, identical in height and location to the existing subdivisional fence, must be maintained along the boundaries fronting Meridan Way and Creekwood Avenue.
6. Prior to the commencement of work, the Applicant must engage a Registered Cadastral Surveyor to conduct an identification survey of the subject site documenting both the location and height (relative to AHD) of the existing subdivisional fence situated along the Meridan Way and Creekwood Avenue frontages and a copy this survey is to be submitted to Council for inclusion on the property record.
7. Unless noted otherwise, the Condition Time, requisite stages of inspection, requisite certificates of design, compliance or aspect together with any specific elemental conditions and details of any applicable self-assessable codes or further development approval required are to be nominated in writing by the Assessment Manager prior to the commencement of work. Such details are to be provided to the Applicant, Builder and Council.

Directions:

1. Council shall include the details of Condition 2 together with a copy of the Surveyors identification survey of the subject site reference in Condition 3 to any future purchaser of the property as part of the conveyancing process.
2. Applicant and Council are reminded that the Conditions of this Decision are the Conditions of a Development Approval for Building Works and attach to the land binding the owner, the owner's successors in title and any occupier of the land.

Background

The Assessment Manager refused a Development Application for Building Works (Application) to construct a Dwelling and attached Garage on a corner allotment with a minimum road boundary clearance of 1500mm following receipt of a Concurrence Agency Response from the Sunshine Coast Regional Council (Council).

The Council, directing the refusal, considered that the proposed development did not comply with, and could not be conditioned to comply with, the Plan of Development (POD) applicable to the subdivision given the requested reduced boundary clearance constituted more than a minor variation to the setbacks required and accordingly were not considered to be generally in accordance with the Plan of Development.

The Applicant, dissatisfied with the refusal, lodged an appeal with the Committees Registry on the 19th of January 2015 against the Decision of the Assessment Manager.

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 19 January 2015.
2. Assessment Managers Decision Notice, Reference No. SBA2014-1684 dated 12 January 2015.
3. Sunshine Coast Regional Council Concurrence Agency Response, Reference No. RAB14/0625 dated 12 January 2015.
4. Sunshine Coast Regional Council Concurrence Agency Response, Reference No. RAB14/0567 date 11 November 2014.
5. Verbal submissions from the Applicant's representative given at the hearing.

6. Verbal and written submissions from Council's representative given at the hearing inclusive of the endorsed, stage specific, detailed Plan of Development for Stage 12, "Creekwood North", Ref No 2010/620017.04 dated 10 September 2010 (POD).
7. The *Sustainable Planning Act 2009* (SPA).
8. The Sustainable Planning Regulation 2009 (SPR).
9. The *Building Act 1975* (BA).
10. The Queensland Development Code MP1.2 (QDC MP 1.2)
11. The Dwelling House Code of the Sunshine Coast Planning Scheme 2014

Findings of Fact

- The subject site is a vacant, level, 612m² parcel situated within an emerging master planned residential neighborhood. While near rectangular in shape, the site is a three road frontage allotment (a corner allotment) bounded by Meridan Way, Creekwood Avenue and Henning Crescent and possesses irregularly corded corner truncations to the east and south and is encumbered by an easement along its south west frontage.
- A solid timber and masonry block sub-divisional fence of between 2.2m and 3.3m in height above the level of the adjacent footpath is located along the boundaries fronting Meridan Way and Creekwood Avenue.
- Other dwellings fronting Creekwood Avenue appear to have road boundary clearances of between 3m and 4.5m however it should be noted that visually, the shape of the subject site is such that the length of the proposed dwelling is not set in line with other residences.
- The Applicant proposes to construct a Class 1A Dwelling and Attached Class 10B Garage, the siting of which, would result in a minimum road boundary setback of 1500mm from the outermost projection to the south east boundary alignment fronting Creekwood Avenue, 4500mm from the outermost projection to the southern boundary alignment fronting Henning Crescent and 5623mm to the outermost projection to north eastern boundary alignment fronting Meridan Way which are contrary (in part) to the provisions of the POD.
- The Assessment Manager had previously gained authorisations from Council on the premise of a Concurrence Agency Response (RAB14/0567) for road boundary setbacks of 2336mm from the outermost projection to the south east boundary alignment fronting Creekwood Avenue, 4500mm from the outermost projection to the southern boundary alignment fronting Henning Crescent and 5623mm to the outermost projection to north eastern boundary alignment fronting Meridan Way.
- Miscommunications between the builder's representative and Applicant in relation to the siting of the proposed dwelling and attached garage gave rise to seeking a modification to the setbacks agreed under Concurrence Agency Response RAB14/0567.
- The Assessment Manager sort modification from a 2336mm setback to a 1500mm setback from the south east boundary alignment fronting Creekwood Avenue by means of a second Concurrence Agency Response (RAB14/0625) whereby Council subsequently directed the refusal.
- The "Requirements for Small Lots" (Lots less than 650m² in area) contained within the POD seeks to regulate the siting requirements for building and structures nominating solely that:
 - (1) Front boundary setbacks to the outermost projection (OMP) shall be at least:
 - 5m to a single garage/carport;

- 4m to a double garage/carport;
 - 3m to any other part of the building.
- The “Requirements for Small Lots” (Lots less than 650m² in area) contained within the POD does not include any Performance Criteria or Probable Solutions.
 - The Dwelling House Code of the Sunshine Coast Planning Scheme 2014 contains no specific Acceptable Outcomes or Performance Outcomes in relation to road boundary setbacks for corner allotments.
 - Acceptable Solution A1(b) and Performance Criteria P1 of the QDC MP1.2 specifically address road boundary setbacks for corner allotments.
 - Section 30 of the BA defines the relevant laws and other documents for assessment of building work inclusive of any relevant local law, local planning instrument or resolution made under section 33.
 - Section 33 of the BA clarifies that:
 - (2) A planning scheme or Priority Development Area (PDA) instrument may include provisions (*alternative provisions*) that, for relevant work, are alternative or different to the QDC boundary clearance and site cover provisions.
 - (3) However, a planning scheme or PDA instrument may include alternative provisions only if the provisions are a qualitative statement or quantifiable standard.
 - (4) If there are alternative provisions for relevant work, the QDC boundary clearance and site cover provisions only apply to the extent the alternative provisions do not apply to the work.
 - (5) Alternative provisions cannot be made other than under a planning scheme or PDA instrument.

qualitative statement means a statement about a performance or outcome sought to be achieved when applicable buildings or structures are completed.

quantifiable standard means a standard that achieves a performance or outcome sought under a qualitative statement.

- Section 78A of the SPA clarifies that:
 1. A local planning instrument must not include provisions about building work, to the extent the building work is regulated under the building assessment provisions, unless permitted under the Building Act.
 2. To the extent a local planning instrument does not comply with subsection (1), the local planning instrument has no effect.
- Sections 30 and 33 of the BA clarifies that, subject to section 33, the provisions relating to boundary clearance and site cover for a single detached class 1 building or a class 10 building or structure are otherwise regulated via the QDC MP 1.1 and 1.2 as applicable.

Reasons for the Decision

- The Committee is satisfied that the POD, as a Local Planning Instrument, has no effect to the extent that it seeks to regulate building assessment work given that :
 1. The POD does not identify those elements intended, under Sections 33(1) and 33(2) of the BA, as alternative provisions to the QDC as the requisite building assessment provisions for siting and;
 2. The siting provisions contained within the POD are not representative of a qualitative statement or quantifiable standard.

3. The building assessment work provisions contained within the POD make no provision for siting in relation to corner allotments which are otherwise specifically regulated under the QDC MP1.1 and 1.2.
- The Committee is satisfied that the Dwelling House Code of the Sunshine Coast Regional Plan has no effect, given that the building assessment work rightly nominated within the within the Dwelling House Code as alternative siting provision to the QDC make no allowance for siting in relation to corner allotments which are otherwise specifically regulated under the QDC MP1.1 and 1.2..
 - The Committee is satisfied that Mandatory Part 1.2 of the QDC is the applicable building assessment provision regulating boundary clearances.
 - Noting Council's previous acceptance of a road boundary setback of 2336mm.; giving due consideration to the bulk of the building and the road boundary setbacks of neighbouring buildings; the outlook and views of neighbouring residents; and nuisance and safety to the public, the Committee is satisfied that a further reduction of 836mm, together with the nominated conditions, will not result in an unacceptable streetscape.

Don Grehan
Building and Development Committee Chair
Date: 4 March 2015

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 Housing and Public Works
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