



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	17-14
Applicant:	C&R Darvill Pty Ltd
Assessment Manager:	Building Surveying Professionals P/L
Concurrence Agency: (if applicable)	Brisbane City Council (Council)
Site Address:	55 Hipwood Street, Hamilton and described as Lot 3 on RP 43491— the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) regarding a decision to refuse a Building Development Application for additions to the subject premises. Brisbane City Council as Concurrence Agency directed the Assessment Manager to refuse the requested reduced boundary setback because it did not comply with the Queensland Development Code MP 1.2 (QDC MP 1.2).

Date and time of hearing:	10am on Thursday 22 nd May 2014
Place of hearing:	The subject site
Committee:	Greg Rust— Chair
Present:	Roger Davill – Applicant Alan Pemble – CR Darvill Stuart Andrews – Building Certifier Duncan Kirk – Brisbane City Council representative John Grimsey _Brisbane City Council representative Chris and Samantha Hill – Adjoining Property Owners

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 and approves the proposed addition with a setback of 1500mm.

Background

A Building Development Application (Application) was refused by the Assessment Manager for alterations and additions to the existing home located at the subject address. The Application showed that the location of the ensuite/WC and robe wall did not meet the setback provisions contained in the Queensland Development Code MP 1.2 (QDC MP 1.2) Acceptable Solution A2. A2 requires that the side setback of the wall of the ensuite addition be 2 metres from the side boundary. The Application proposed the ensuite/WC and robe wall at 1.5 metres setback.

The non compliant setback was submitted to the Council as Concurrence Agency requesting approval for a dispensation for the setback distance. When considering the Application, the Council requested the proposal be commented on by the closest adjoining neighbours. This process also included a site meeting. Following this process, Council directed refusal of the Application stating non compliance with the QDC performance criteria in their letter dated 25 February 2014.

Council provided the following reasons for refusal:

“Proposed additions present a bulky impact on adjoining neighbour with an additional detrimental impact on privacy”

The QDC MP1.2 sets out performance criteria P2 for side boundary clearance as outlined below:

“P2 Buildings and structures

- (a) Provide adequate daylight and ventilation to habitable rooms, and
- (b) Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.
- (c) Do not adversely impact on the amenity and privacy of residents on adjoining lots”

The Assessment Manager refused the Application in his Decision Notice dated 20 March 2014 and a Form 10 – Notice of Appeal was lodged with the Committee Registrar on 7 April 2014.

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 7 April 2014.
2. The Assessment Manager Decision Notice dated 20 March 2014
3. Council advice letter dated 25 February 2014
4. The *Sustainable Planning Act 2009* (SPA)
5. The *Building Act 1975* (BA)
6. The Sustainable Planning Regulation 2009 (SPR)
7. Queensland Development Code MP1.2 (QDC MP1.2)
8. The Brisbane City Council City Plan 2000
9. Verbal submissions at the hearing including the Committee viewing the proposed additions from the adjoining property.

Findings of Fact

The Committee makes the following findings of fact:

- A Building Development Application was refused by the Assessment Manager for alterations and additions to the existing home located at the subject address.
- As Concurrence Agency, Council directed refusal of the Application citing the location of the ensuite/WC and robe wall did not meet the setback provisions contained in the QDC MP1.2.
- The QDC MP1.2 sets out the required setbacks for side clearance for the construction of buildings and applies to new buildings, alterations and additions to existing buildings.

- During the hearing, the adjoining property owners invited the Committee Chairperson to enter their property to view the proposed additions from their perspective. The Committee hearing therefore was held on the subject site but also on the neighbouring property.

Reasons for the Decision

The performance provisions under the QDC MP 1.2 P2 contain subclauses (a)(b) &(c).

Clause (a) requires adequate ventilation to habitable rooms. It seems clear that this clause has been satisfied.

Clause (b) deals with light and ventilation to habitable rooms of buildings on adjoining lots. In this matter, the building adjoining the lot is a significant distance (in excess of 2 metres) from the proposed addition. Generally speaking the spatial separation for two storey buildings is an overall distance of 4 metres. That is each building being at a 2 metre boundary setback.

It is also of note that the part of the building subject of this appeal is a non habitable section of the building (i.e. ensuite/WC and robe) and is restricted to less than 50 percent of the elevation of the existing building. For this reason the proposal is considered acceptable as it does not have a detrimental effect on light and ventilation.

Clause (c) deals with adverse impact on the amenity and privacy of buildings on adjoining lots. Council argues that the amenity of the adjoining lot is impacted by the elevation of the proposal being 500mm closer than that required by the code. In this respect the Committee finds that the reduced setback only applies to part of the buildings elevation and this part is for non habitable use. Thus, the wall of the building will be 500 mm closer to the side boundary of the adjoining lot. Given the non habitable nature of the part of the building in dispute, the Committee considers that the reduction in privacy is negligible.

Sun study diagrams provided by the Applicant also support the proposal as acceptable and well within normal expectations for shadows cast by the extension proposed. Therefore the Committee considers that there will be no loss of amenity by the adjoining buildings

Due to the above, the Committee sets aside the decision of the Assessment Manager and approves the addition with a setback of 1500mm.

Greg Rust
Building and Development Committee Chair
Date: 3 June 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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