



## Building and Development Dispute Resolution Committees—Decision

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*Sustainable Planning Act 2009*

<b>Appeal number:</b>	<b>90-10</b>
<b>Applicant:</b>	Tim Hamilton
<b>Assessment manager:</b>	Caloundra Building Approvals
<b>Concurrence agency:</b> (if applicable)	Sunshine Coast Regional Council (Council)
<b>Site Address:</b>	16 Ann Street, Dicky Beach and described as Lot 51 on RP 64307 — the subject site

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### Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the decision dated 8 December 2010 by Caloundra Building Approvals, as the assessment manager, to partially refuse an application for building work (relaxation of siting provisions).

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Date of hearing:	Thursday 27 January 2011
Place of hearing:	The subject site
Committee:	Ms Kari Stephens – Chairperson Ms Liz Woollard – General Referee
Present:	Mr Richard Prout – Council representative Mr Tim Hamilton – Applicant/owner

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### Decision

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of the assessment manager for the partial refusal of a development application for the siting of a dwelling; and replaces it with the following decision:-

#### APPROVAL

The siting variations for the following building components are approved:

- (i) A sala with a rear building setback of 200mm from the southern boundary. No openings are permitted within 1.5m of the southern boundary;
- (ii) A dwelling addition with a setback distance of 1.79m to the side western boundary;
- (iii) A garage with a zero setback to the western boundary and a 6m setback to Ann Street; and
- (iv) A 600mm eave projection into the front setback, located at a height of approximately 5.1m above ground level.

#### REFUSAL

The siting variations for the following building components are refused:

- (i) The spiral staircase proposed on the western boundary is refused due to non-compliance with performance criteria 2 of MP 1.2 of the Queensland Development Code (QDC). The staircase will have an unacceptable impact on the amenity and privacy of the residence on the adjoining allotment.

All standard conditions referred to on pages 2 and 3 of the decision notice shall apply.

## **Background**

The land subject to this appeal is located on the southern side of Ann Street, one lot removed from the intersection with Cooroy Street (to the west) and approximately 300m to the beach (to the east). The site comprises an area of 607m<sup>2</sup>, and has a frontage of approximately 15.08m, and a length of 40.23m. The land has its lowest point at the street frontage, with the level at the driveway approximately 12m Australian Height Datum (AHD), rising to approximately 13.5m AHD in the rear western corner of the property. The frontage of the property faces north.

The property is improved by an existing two-storey dwelling which is setback approximately 10m from the road. The house is a brick and tile construction and displays a dated appearance, typical of dwellings built in the late 1970s and early 1980s. The adjoining properties on either side are of a similar scale and type, although it is relevant to note that the building on the western boundary is set further forward at approximately 6m from the Ann Street frontage.

It is also relevant to note that the existing side setbacks are 1.79m on the western boundary and 1.83m on the eastern boundary. Given that the building is two storeys and has a height greater than 4.5m, the existing building does not comply with the acceptable solutions for setbacks in the QDC (where a minimum side setback of 2m would be required).

The second storey of the house enjoys medium distance ocean views primarily to the north, although ocean glimpses to the north-east are also available.

At the hearing, the applicant made reference to building plans for a renovation of a much larger scale that had previously been approved for this site. This previous approval has lapsed. He stated that this current application was of a lesser scale and impact. The previous plans were not submitted to the Committee, and their lapsed status means they bear little relevance to the current application.

The land is located within the Low Density Residential zone of the former Caloundra City Planning Scheme. The suburb of Dicky Beach makes up part of the "Caloundra Eastern Beaches" planning area.

The neighbour to the immediate west of the subject site has raised some concerns with the Council (as the concurrence agency) relating to the proposed building works on the site. Their concerns related to loss of sunlight, breezes and views as a result of the extension. At the conclusion of the hearing, the Committee members attended the dwelling on the western boundary, and observed those particular elements from the ground floor and second-floor rooms located in the north-east corner of the house (being the rooms most likely to be impacted by the proposed development). The room on the ground floor is a secondary kitchen, whilst the room on the second floor is a lounge room. Both rooms are considered to be "habitable" rooms.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 13 December 2010.
2. An inspection of the site and the locality, undertaken by the Chairperson and the General Referee.

invitation from the owner).

4. The assessment manager's decision notice dated 8 December 2010.
5. Verbal and written submissions from the parties at the hearing.
6. The QDC – MP 1.2 "Design and Siting Standards for Single Detached Housing – on lots 450m<sup>2</sup> and over".
7. The SPA.
8. The Sustainable Planning Regulation 2009.

## **Findings of Fact**

The Committee makes the following findings of fact:

The assessment manager's decision to partially refuse the application for building work (namely for relaxation of siting provisions) was based upon the concurrence agency response from Council dated 22 November 2010. The concurrence agency response partial refusal is based on alleged non-compliance with provisions of the QDC. The reasons for refusal are as follows:

*"The proposed garage, staircase and deck eaves are [sic, refused] for the following reasons;*

1. *The development does not comply with and cannot be conditioned to comply with the performance criteria 2 of part 1.2 (design and siting standards for single detached housing on lots 450m<sup>2</sup> and over) of the Queensland Development Code as:*
  - a) *The proposed building additions will have a negative affect [sic, on] the privacy of the adjoining property.*
  - b) *The proposed building additions will detract [sic, from] the outlook from the adjoining property.*
  - c) *The proposed building additions will affect the light and ventilation to the adjoining property;*
2. *The proposed development does not comply with performance criteria P1(c) of the Queensland Development Code in that the proposed development (eaves) will have a negative affect on the outlook and views of neighbouring residents.*

It is relevant to note that parts of the building application were approved, as follows:

1. *the siting variation approved applies only as follows:*
  - *a sala with a rear building setback distance of 200mm from the rear southern boundary;*
  - *a dwelling addition with a side boundary setback distance of 1.79m from the side western boundary.*
2. *Openings are not permitted on the southern elevation of the sala and openings are not permitted within 1.5m of the southern boundary on the eastern elevation and west elevations of the building.*

In essence, the sala was approved subject to removal of any openings within 1.5m of the rear boundary. In addition, the two-storey extension to the main dwelling was also approved with a setback distance consistent with the existing side setbacks of 1.79m.

The refused components relate primarily to the zero-lot lined garage, the external staircase to the observation deck, and a 600mm eave on the second level of the Ann Street elevation. Each component of the refusal is discussed below:

### ***The garage***

The garage is proposed to be located with a zero boundary setback to the western (side) boundary and a 6m setback to Ann Street. The zero-lot lined wall as proposed is a solid masonry wall, and contains no

openings. At 7.4m in depth, the proposed garage is slightly deeper than a traditional garage, and is intended to accommodate a laundry and storage area along the rear wall.

The garage has been refused due to alleged non-compliance with performance criteria 2 of the QDC, specifically in terms of privacy, outlook and light/ventilation to the adjoining property.

The QDC provides acceptable solutions for class 10a buildings within nominated boundary clearances (specific to performance criteria 2). A garage structure which complies with acceptable solution A2(d), parts (i), (ii) and (iii) is deemed to comply with the performance criteria and is therefore considered an appropriate form of development. The acceptable solutions govern building height, the length of the building on the boundary, and the proximity to windows of habitable rooms on adjoining dwellings. In all three clauses of the acceptable solution, the garage structure is deemed to comply vis-a-vis:

- (i) The height of the garage structure on the western boundary is 2.7m, which is less than the 4.5m allowed;
- (ii) The total length (at 7.4m) is less than the 9m allowed under the Queensland Development Code; and
- (iii) The adjoining dwelling is greater than 1.5m from the common boundary, and therefore any windows of any habitable rooms exceed the minimum setback.

Compliance with the acceptable solutions, necessarily leads to compliance with the performance criteria.

At the hearing, the Council relied on a building newsflash prepared by Building Codes Queensland as part of the former Department of Local Government and Planning on the topic of "length of class 10a buildings" (issued 28.03.2002). The stated purpose of the newsflash is to provide advice on the application of the setback concessions for class 10a buildings. Essentially, the newsflash states where there is an existing building, built with a setback less than the current codes allow, the usual "concession" to build within the setback area cannot be applied. The newsflash then goes on to state that "a request can be made to the local government to vary the setback provisions".

The existing building setback to the western boundary is less than the 2m that would be required under the current code. However, a request to vary the setback has been made to the local government, and that request ought to be considered on its merits.

As above, the garage complies with the various acceptable solutions under the QDC, and is therefore deemed to comply with performance criteria 2. Furthermore, in terms of the Council specific concerns (privacy, outlook, light/ventilation to the adjoining property) the Committee makes the following observations:

- a built to boundary wall can offer privacy opportunities which exceed that which would normally occur with a 1.5m or 2m setback containing openings.
- The garage area is of a low height, and will have limited impact on the outlook of the adjoining residence, particularly from the ground floor where views are already limited.
- The light and ventilation to the adjoining property is unlikely to be impacted by a 2.7m high garage wall, particularly in consideration of the approved second storey building above it, with a setback of 1.79m.

The Committee considers there will be limited impacts as a result of the garage being located on the western boundary as shown on the plans.

### ***The eave***

The eave is located on the street elevation, and projects into the 6m setback area by 600mm. The eave is located as part of the roof of the second storey with a height of approximately 5.1m above ground level and is considered to form part of the house (rather than the garage as Council indicated at the hearing). The eave has a pitch of 20° and is intended to be constructed from custom orb sheeting. The eave, like the garage, has been refused in consideration of alleged impacts on the adjoining property in terms of privacy,

outlook, and light/ventilation.

Although encroaching into the front setback by some 600mm, the proposed structure is lightweight, and will add visual interest as well as sunshade and weather protection to the proposed extension. It is not considered to unduly affect the privacy, outlook or the light/ventilation of the adjoining property. It should be noted that the adjoining property primarily has views to the north and the north-east, and these views will not be impacted upon by the eave projection of the building on the subject site.

The Committee finds there will be negligible impact as a result of the proposed eave on both the streetscape and the adjoining property.

### ***The staircase***

The staircase is proposed to link the second level of the building with an observation deck located directly above. The proposal is for an aluminium spiral staircase with a zero boundary setback to the western property boundary. The Council alleges that the proposal will impact on privacy, outlook, and light/ventilation as a result. The staircase will be located almost directly opposite the east facing window of the adjoining property, where privacy impacts into this room are highly likely. The staircase will be exposed and clearly visible, and is therefore considered to have some impact on the immediate outlook (although middle and long-distance views are unlikely to be affected). There is unlikely to be any impact on light or ventilation. In consideration of these issues, the Committee finds the staircase will have a negative impact on the adjoining property because the boundary setback is inadequate.

### **Reasons for the Decision**

The Committee accepts that the QDC is a performance-based document. Compliance with the acceptable measures is one way of meeting the specific performance criteria and in the case of the garage, these acceptable measures are considered to be met.

The Committee finds that the garage ought to be approved because it complies with the various acceptable solutions under the QDC and impacts on the adjoining property are likely to be limited, particularly in consideration of the approved second storey structure above it.

The Committee finds that the 600mm eave projection into the front setback is lightweight, and will add visual interest as well as weather protection to the extension. At a height of 5.1m AHD, it is not considered to unduly affect the privacy, outlook or the light/ventilation of the adjoining property (whose views primarily to the north and northeast, and remain unaffected).

The Committee finds that the aluminium spiral staircase will most likely have an impact on the privacy and outlook of the adjoining dwelling. It is proposed to be located adjacent to a habitable window of the adjoining property and insufficient setbacks and loss of privacy will result. The Committee believes the staircase could be relocated to a position which complies with boundary setbacks, and has a lesser impact on the adjoining neighbour. The aluminium spiral staircase should be refused.

The Committee agrees with the part approval by the Council for the two-storey building extension, and for the rear sala.

**Kari Stephens**  
**Building and Development Committee Chair**  
**Date: 3 February 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:

The Registrar of Building and Development Dispute Resolution Committees  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
Telephone (07) 3237 0403 Facsimile (07) 3237 1248