



Building and Development Dispute Resolution Committees-Decision

Sustainable Planning Act 2009

Appeal Number: 67-10

Applicant: Laurice and Ken Close

Assessment Manager: Accord Building Certifiers

Concurrence Agency: Gold Coast City Council (Council)
(if applicable)

Site Address: 133 Currumbin Creek Road, Currumbin Waters and described as Lot 291 on RP 178604- the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Accord Building Certifiers as the assessment manager to refuse a development application for as constructed work consisting of a deck, roofed timber patio and boat shed within the waterfront setback.

Date of hearing: 9:30am on 11 November 2010

Place of hearing: The subject site

Committee: Greg Rust

Present: Laurice and Ken Close -Applicants/Owners
Andrew Powell - Council representative
Patrick Giess - Council representative
Gerrad Van Eyk -Assessment manager

Decision:

The Committee, in accordance with section 564 of the SPA **changes** the decision of the assessment manager.

- The Committee orders the assessment manager to approve the application with reasonable and relevant conditions.
- The assessment manager's approval shall be in accordance with the attached amended plan proposed by the applicants (ie. the roofed patio is to be cut back as indicated).

The as-built deck and boat shed were both acceptable to the concurrence agency at the time of the hearing and therefore needs no further review by this Committee.

Background

The appeal relates to as constructed building work which the owners are attempting to have approved to comply with the directions of an enforcement notice issued on 23 April 2010 by Council.

The building work is located within the prescribed setback of the Canals and Waterways Code of the Gold Coast Planning Scheme and therefore a relaxation of the setback is required for the work to remain as constructed. The assessment manager for the building application therefore referred the matter to Council as the concurrence agency.

The deck and patio is also built over sewerage infrastructure. At the same time the application for building work was submitted, a request to Allconnex water was made to obtain permission to retain the building work over the sewer.

The Council requested amended plans from the assessment manager that identified modifications to the building work as follows:

- (a) The roofed patio offset a minimum 4.5 metre to the outermost projection from the waterfront property boundary;
- (b) The boat-port contained wholly within the subject property boundaries; and
- (c) The building works defined as 'As- constructed'.

As the result of item (a) above, the patio would need to be modified and partly demolished to increase the setback from 2 metres to 4.5 metres from the boundary.

As the result of item (b) above, the boat port would need to be modified to be within the property boundary. This was determined at hearing to have already been done. Therefore, no further consideration by the Committee was necessary.

As item (c) above is mandatory for the certifier when approving existing work, the request is not relevant.

Amended plans were not forthcoming from the applicant. As a result, the assessment manager, on the request of the applicant, refused the application to provide the applicant a right of appeal.

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 2 September 2010.
2. Decision notice dated 25 August 2010 from the assessment manager.
3. Correspondence from the assessment manager to the concurrence agency dated 29 September 2010.
4. Concurrence agency response dated 15 October 2010.
5. Verbal submissions during the appeal hearing.
6. Enforcement notice from Council dated 23 April 2010.
7. Amended plan received by the Committee Registrar by email dated 8 December 2010.
8. The *Building Act 1975*.
9. The *Sustainable Planning Act 2009*.
10. The *Integrated Planning Act 1997*.

11. The Integrated Planning Regulation 1998.
12. The Queensland Development Code MP1.2 (QDC)
13. The Council's planning scheme (specifically the Canals and Waterway Constraint Code)

Findings of Fact

The Committee makes the following findings of fact:

- The application seeks approval for an as-constructed deck, open patio and boatshed.
- The existing deck and patio are setback approximately 2.0 metres from the canal alignment and located within the waterfront set back for the property (minimum 9 metres).
- The as constructed boat shed is located in the rear left hand corner of the lot located within the waterfront set back for the property (minimum 9 metres).
- The boatshed, deck and patio are constructed close to the sewerage infrastructure and are subject to applications to the relevant authority (Allconnex Water), which are not within the jurisdiction of this committee.
- The above structures as constructed are within the required waterfront setback and therefore concurrence agency approval is required before the assessment manager can issue a building approval. The assessment manager referred the application to the concurrence agency and response identified that modification of the as constructed work would be required.
- The applicant declined to amend the application as requested by Council, and instructed the certifier to decide the application to enable the matter to be decided by a Committee.
- The concurrence agency response included the requirement for a condition to be imposed for substantial redesign/rectification of the structures.
- At the hearing and in the further submission provided, Council advised the proposal did not achieve compliance with the performance criteria PC1 of the Canals and Waterways Constraint Code.
- The relevant clause PC1 states:
"All buildings and structures must provide for setbacks from the watetway which ensure the efficient use of the site, respond to the waterside location, and have minimal impact on adjoining properties."
- At the hearing the Council representative expressed concern regarding the amenity of the adjoining property from the increased potential for the occupants using the deck if it remained covered for its full extent.
- The Committee invited the applicant to provide an amended submission.

Reasons for the Decision

The amended submission increases the canal setback to approximately half of that requested by Council. The reasons below support this request.

- Council has, in the past, allowed relaxations of up to 4.5 metres from the waterfront setback.
- Council has advised that the deck and boatshed are acceptable.
- Altering the patio structure as requested by Council would have a minimal affect on the

visual impact of the structure.

- The patio structure as constructed has minimal impact on adjoining properties.
- The structure responds to the waterside location as would generally be expected for this type of environment.
- The applicant's proposal of a 3 metre setback from the waterfront would have a minimal additional impact on the amenity of the adjoining property than the 4.5 metre setback allowed under Council's planning scheme.
- The sewerage infrastructure has bearing in terms of the supporting posts of both the deck and patio and must be considered.

Having regard to the above points, I consider this appeal in favour of the applicant's request.

Greg Rust
Building and Development Committee Chair
Date: 10 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:

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