



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	61 - 10
Applicant:	Debbie Johnson
Assessment Manager:	Sunshine Coast Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	1 Tolkien Place, Coolum and described as Lot 25 on SP155483 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Council, as the assessment manager, to refuse a siting variation for a Class 10 roofed structure already constructed to within 1.878 metres of the Boneham Avenue road boundary of the subject site.

Date of hearing:	Friday 17 September 2010
Place of hearing:	The subject site
Committee:	Geoff Cornish – Chair Peter Folker – General Referee
Present:	Debbie Johnson – Applicant Graham Dacombe – Owner Alan Thompson – Sunshine Coast Regional Council

Decision:

The Committee, in accordance with section 564 of the SPA, **sets aside** the decision appealed against and **approves with conditions** a siting variation to enable the granting of a development approval to validate the Class 10 structure already erected to within 1.878 metres of the Boneham Avenue road boundary of land situated at 1 Tolkien Place, Coolum and described as Lot 25 on SP155483 - the subject site on the condition that the existing landscape screening be imposed.

Background

The matter concerns the decision of the assessment manager not to grant a siting variation to enable the approval of a Class 10 roofed structure already erected within the prescribed road boundary setback on the Boneham Avenue frontage of the subject site. The structure was identified as being unapproved during a recent property settlement. The vendor had erected the structure without seeking

any approval and after settlement the new owner commenced proceedings to seek to have the structure approved for retention.

An application to the Council resulted in a refusal of the siting variation application required to enable the structure to receive final approval.

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 18 August 2010.
2. Verbal submissions from the applicant and the owner at the hearing.
3. Verbal and written submissions from the Council representative at the hearing.
4. The SPA.
5. The *Building Act 1975*.
6. The Queensland Development Code.
7. Maroochy Plan 2000 and its attached codes, in particular the Code for Detached Houses.

Findings of Fact

The Committee makes the following findings of fact:

- The original dwelling was approved in 2003 and, at the time, required the approval of a siting variation to enable it to be constructed to within 4.5 metres of the Boneham Avenue road boundary of this corner allotment.
- The structure to which this appeal applies was erected without any approvals for either siting or development.
- The structure is attached to the dwelling and sited between the approved dwelling and the Boneham Avenue road boundary of the subject site.
- Maroochy Plan 2000 sets out alternative siting provisions for structures on residential allotments and hence the siting provisions of the Queensland Development Code do not apply to this appeal.
- The structure does not comply with the Acceptable Measures set out in Code 4.1 of the Maroochy Plan 2000. Therefore the structure requires to be assessed against the Performance Criteria set out in that Code.
- Council's direction to refuse the application is based on alleged non-compliance with the following Maroochy Plan 2000 performance criteria of the Code 4.1 Code for the Development of Detached Houses and Display Homes, Element 1, P2:

P2 Buildings and Structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

- (a) views and vistas;*
- (b) building character and appearance;*
- (c) casual surveillance.*

It is noted that criterion (d) of P2 was not identified in Council's Decision Notice. Criterion (d) states:

(d) an adequate area suitable for landscaping being provided for at the front of a lot.

Reasons for the Decision

- The existing structure is located behind a 1.8 metre high solid screen fence, and immediately behind the fence (between the fence and the structure) is a row of existing screening vegetation to approximately 3m to 3.5m in height such that the existing structure is almost completely obscured to passers-by.
- The proposal will have minimal if any visual or amenity impacts on neighbours.
- The concurrence agency's Decision Notice stated that its decision was based on Performance Criteria P2 of Element 1 of Code 4.1 and clauses (a), (b) and (c) of that performance criteria. The performance criteria requires buildings and structures to contribute positively to the streetscape, maximise community safety, and maintain neighbourhood amenity having regard to views and vistas (Clause (a)), building character and appearance (clause (b)), and casual surveillance (clause (c)).
 - In regards to views and vistas, the Committee finds that the existing structure has little, if any, effect on existing views and vistas as the structure is effectively obscured by the existing fence and landscape screening (of which the existing landscaping is considered to contribute positively to the streetscape in this instance and its retention is important).
 - In regards to building character and appearance, the Committee was not convinced that these were problematic. The existing structure has very little visual impact on the streetscape for the same reasons given above and as such the existing dwelling dominates this property and is of an appearance and character consistent with the surrounding neighbourhood.
 - In regards to casual surveillance, the Committee again finds that the existing structure has little to no effect on the achievement of casual surveillance from this property as it adjoins a part of the dwelling which has no windows, other than from a bathroom (which is screened) facing the street and which would otherwise be completely obscured from a view of the street by the existing fence and landscaping. The Tolkien Place frontage offers the best opportunity for casual surveillance from this property and the existing structure is of no consequence in this regard.
- The Committee considers that the proposal satisfies the Performance Criteria of the relevant Planning Scheme Code.

Geoff Cornish
Building and Development Committee Chair
Date: 19 October 2010

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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