



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	13 – 10
Applicant:	The CADD Company
Assessment Manager:	Andrew Bentley on behalf of GMA Certification Group
Concurrence Agency: (if applicable)	Gold Coast City Council
Site Address:	7 Alma Street Broadbeach Waters and described as Lot 87 on RP139722 – the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the assessment manager to approve a development permit for building works with conditions, for a dividing fence to be constructed within the waterfront setback. The conditions were based on concurrence agency advice from Council.

Date of hearing:	10.00am, Friday 18 June 2010
Place of hearing:	The subject site
Committee:	Debbie Johnson - Chair
Present:	David Whittaker - Applicant (The CADD Company) Kate and Brett McFall - Property owners Andrew Bentley - Building certifier Brock Smith - Council Andrew Powell - Council

Decision:

The Committee, in accordance with section 564 of the SPA **confirms** the decision appealed against and dismisses the appeal.

Background

In recent years, the previous owners of the property undertook extensive renovations of the residential building on the site. On 4 October 2007 Council issued a concurrence agency response to the previous owners as their building application required a siting variation for a deck, which formed part of the proposed works. It was to be constructed within the setback clearance of the waterway which runs parallel to the rear boundary of the site. The conditions of this advice included, 'fencing within the waterway boundary setback

clearance is not to exceed 1.2m in height'. The plans that were subsequently endorsed were clearly marked in red to demonstrate the portion of the fence which could not exceed 1.2m in height. These plans were also clearly referenced in written advice from Council.

The side boundary fence was subsequently built in concrete block work up to 2.6m high, measured at the rear boundary line. More recently, to protect their privacy, the current owners have extended the height of the fencing by adding a length of aluminium louvre panels atop the concrete block work. The height of these panels varied from 0.6m to a maximum of 1.0m as the concrete block wall stepped in height.

The length of panel therefore extended the overall height of the fence. Consequently the entire side boundary fence that was located within the setback clearance was significantly higher than the 1.2m stipulated in the Council's advice of 4 October 2007.

On 12 March 2009, Council issued a show cause notice to the current owner of the subject lot, with respect to the side boundary fence that had been erected within the 9m setback of a waterway. Council stated that the fence was not in accordance with the standard drawing 05-04-004 of the Gold Coast planning scheme land development guidelines. The show cause notice did not refer to the conditions stipulated in Council's previous advice.

This dividing fence is in part up to 3.6m high and is within the building line setback from the waterway. The owners subsequently engaged their certifier to apply for a development approval as it related to the fencing. The subsequent building application was referred to council as a siting variation was required to address the height of the fencing within the setback clearance from the waterway.

On 1 February 2010, the assessment manager issued a decision notice for the fence stating that the work had been constructed prior to the issue of the approval. The conditions of approval included those stated in a concurrence agency response from Council, dated 6 November 2009, which stated in part:

'Prior to the issue of a development permit for carrying out building work by the assessment manager, the applicant shall submit amended plans which show the removal of the aluminium frame and slats atop the structure (dividing fence) for the first 7.5m from the revetment wall'.

Whilst Council's advice required the removal of the length of aluminium louvre panel atop the fence, it did allow the existing concrete block wall to remain, as built. As the site falls away at the rear towards the water line, the highest part of this concrete block wall is approximately 2.6m high. The concurrence advice related to the same section of fence referred to in Council's earlier advice of October 2007. However, in providing their advice of November 2009, Council considered the performance criteria of the Canals and Waterways Code as contained in the Gold Coast Planning Scheme 2003. Similarly, Council cited the performance criteria of MP1.2 of the Queensland Development Code.

On 25 February 2010, the applicant lodged an appeal with the Registrar for the Building and Development Dispute Resolution Committees, requesting that the conditions of the approval be changed to allow the existing aluminium louvre panels atop the existing fence.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Application for appeal/declaration lodged with the Building and Development Dispute Resolution Committees on 25 February 2010.
2. Copy of previous written advice dated 4 October 2007 submitted after the hearing. This documentation included photographs and Council endorsed architectural drawings relating to the subject site.
3. Copy of show cause notice dated 12 March 2009 issued to the applicant.

4. Concurrence agency's written advice dated 6 November 2009.
5. The assessment manager's decision notice, dated 1 February 2010.
6. Property details, including mapping and the Gold Coast City Plan as available through Council's website.
7. The application and appeal material including photographs and drawings detailed by the applicant.
8. The applicant's grounds for appeal against the conditions contained in the decision notice.
9. Verbal submissions made by the applicant at the hearing.
10. Verbal submissions made by the owner of the site at the hearing.
11. Verbal submissions made by the building certifier at the hearing.
12. Verbal submissions made by Council representatives at the hearing.
13. Copy of Council's standard drawing titled Waterway Development Cross Section submitted at the hearing.
14. The Gold Coast City Plan 2003.
15. The SPA.
16. The *Building Act 1975*.
17. The *Building Regulation 2006*
18. The Queensland Development Code.
19. The Building Code of Australia.

Findings of Fact

The site is located on a waterway in an attractive, well established residential area. Many of the original homes in this vicinity have undergone significant renovations or improvements, as has the residence on the subject lot.

The site is rectangular in shape and level, except where it falls away at the rear to the waterway. The site is positioned near the end of this waterway and looks north over it. The adjoining lots to the east of the site are more tapered in their shape, as their rear boundaries abut the curve formed at the end of the canal. This array of the allotments around the end of the canal causes some of the lots to look over the adjoining lots. This is to take advantage to a greater or lesser degree, of the view looking down the waterway. Specifically, there are four allotments to the east of the subject lot that have their aspect compromised by the existing height of the side boundary fence in this instance. Three of the homes affected are single storey.

The Gold Coast City Council's code for canals and waterways stipulate three performance criteria that are relevant and must be considered in the assessment of the side boundary fence which is constructed within the setback clearance from the waterway.

Building Setback

PC1

All buildings and structures must provide for setbacks from the waterway which ensure the efficient use of the site, respond to the waterside location, and have minimal impact on adjoining properties.

PC2

Structures such as boat ramps, jetties, pontoons, boatlifts, boardwalks, gazebos, decking and structural revetment walls in, on or over water or tidal land must be designed and sited to complement and respond to the waterside location, whilst ensuring the waterway is retained in its natural state.

PC3

All buildings and structures must provide for setbacks from the waterway which ensure the efficient use of the site, respond to the waterside location, and have minimal impact on adjoining properties, whilst having regard to:

- a) foreshore protection;
- b) geotechnical stability;
- c) potential structural safety hazards;
- d) hydraulic performance (flood storage, flood flow paths);
- e) environmental values of the waterbody (local native vegetation);
- f) maintenance of public access areas;
- g) amenity (views, shadows and airflow); and
- h) the existing or intended function of the waterbody.

Similarly, the Queensland Development Code MP1.2 stipulates the following performance criteria in relation to buildings and structures in relation to side boundaries.

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*.

Reasons for the Decision

The combined height of the concrete block work fence with the aluminium louvre panels atop is considered to affect the outlook and therefore the amenity of residents on adjoining sites. In this instance it is their view of the waterway that is compromised. The waterway is likely to have been one of the primary reasons that neighbouring residents elected to purchase their homes. The existing fence cannot comply with all of the relevant performance criteria of either the Gold Coast City Plan or the Queensland Development Code, due to the height causing a loss of amenity for neighbouring lots.

Debbie Johnson
Building and Development Committee Chair
Date: 21 July 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