



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	12 - 17
Applicant:	Building Surveying Professionals P/L
Assessment Manager:	Building Surveying Professionals P/L (Mr. Stewart Magill)
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	9 Island Court, Minyama, Qld 4575 described as Lot 658 on M93025 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse alterations and additions to a detached Class 1a dwelling.

Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to part refuse the building work as it did not meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Performance Outcome PO6 (a), (b) (ii) and (c).

Date and time of hearing:	12 June 2017 at 3:00 pm
Place of hearing:	The subject site
Committee:	Mr Graham Osborne - Chair Mr Andrew Parker - Member
Present:	Ms Geraldine Hartley – Property Owner Mr Mervyn Hartley Mr Stewart Magill – Applicant and Assessment Manager Mr Gus Shultz – Building Surveying Professionals P/L Mr Aaron Kefford – AK Building Design Mr Craig Cleary - Builder Mr Vince Whitburn - Council representative Mr Peter Chamberlain - Council representative

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 to refuse the alterations and additions to the Class 1a Dwelling at the direction of Council, and approves the siting of the building with the following conditions:

- The proposed alterations and additions to the Class 1a Dwelling must be sited and built in accordance with the following drawings:
 - AK Building Design – Drawing Number 16179A/01 dated 06/02/2017, Proposed Site Plan;
 - AK Building Design – Drawing Number 16179A/01B dated 06/02/2017, Proposed Site Plan – Proposed Relaxations;
 - AK Building Design – Drawing Number 16179A/03A dated 06/02/2017, Proposed Ground Floor Plan;
 - AK Building Design – Drawing Number 16179A/04A dated 06/02/2017, Proposed Ground Floor Plan Final;
 - AK Building Design – Drawing Number 16179A/05 dated 06/02/2017, Proposed First Floor Plan;
 - AK Building Design – Drawing Number 16179A/06 dated 06/02/2017, Proposed North Elevation;
 - AK Building Design – Drawing Number 16179A/07 dated 06/02/2017, Proposed West Elevation;
 - AK Building Design – Drawing Number 16179A/08 dated 06/02/2017, Proposed East Elevation; and
 - AK Building Design – Drawing Number 16179A/09 dated 06/02/2017, Proposed South Elevation;

- The roofed area marked “Outdoor Entertaining” is to be constructed in accordance with plan AK Building Design – Drawing Number 16179A/04A dated 06/02/2017, and must not be enclosed with walls, screens, lattice, shutters or the like, so as to remain open at all times; and

- The property owner shall, prior to any further building work commencing onsite, apply for and gain, a Development Approval for the Building Work.

Background

The subject site is a 946 m² allotment located at 9 Island Court, Minyama, and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The lot is an angular block with 10.63 metres street frontage, and approximately 40 metres of combined canal frontage to the rear.

The owners of the property wish to construct a swimming pool on the site, and alter and remodel the existing dwelling. They commissioned AK Building Design to prepare an appropriate modern two (2) storey design to suit their needs.

The prepared plans were lodged with Building Surveying Professionals P/L (Assessment Manager) in order to obtain a Development Permit for Building Works.

However, the swimming pool and some parts of the proposed building design did not comply with Acceptable Outcome AO6 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

Buildings and structures exceeding 1 metre in height above ground level (other than pool fencing which is at least 75% transparent) are setback a minimum of 4.5 metres from the property boundary adjacent to the canal or artificial waterway/waterbody.

As such the Assessment Manager lodged a request for referral agency response for building work with Council on 8 February 2017. The Council issued a Concurrence Agency Response on 15 March 2017 instructing the Assessment Manager to part approve and part refuse the application

as it did not comply with the requirements of the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcome PO6 (a), (b) (ii) and (c).

The Assessment Manager refused the Building Development Permit on 31 March 2017 as directed by Council.

An application for appeal Form 10 was lodged with the Building and Development Dispute Resolution Committees Registrar by the Applicant on 24 April 2017.

Material Considered

The material considered in arriving at this decision comprises:

1. AK Building Design drawings:-

Drawing Number 16179A /01 dated 06/02/2017, Proposed Site Plan;
Drawing Number 16179A /01A dated 06/02/2017, Existing Site Plan;
Drawing Number 16179A /01B dated 06/02/2017, Proposed Site Plan–Proposed Relaxations;
Drawing Number 16179A /02 dated 06/02/2017, Existing Floor /Site Plan;
Drawing Number 16179A /03 dated 06/02/2017, Proposed Ground Floor Plan;
Drawing Number 16179A /03A dated 06/02/2017, Proposed Ground Floor Plan;
Drawing Number 16179A /04 dated 06/02/2017, Proposed Ground Floor Plan Final;
Drawing Number 16179A /04A dated 06/02/2017, Proposed Ground Floor Plan Final;
Drawing Number 16179A /05 dated 06/02/2017, Proposed First Floor Plan;
Drawing Number 16179A /06 dated 06/02/2017, Proposed North Elevation;
Drawing Number 16179A /07 dated 06/02/2017, Proposed West Elevation;
Drawing Number 16179A /08 dated 06/02/2017, Proposed East Elevation;
Drawing Number 16179A /09 dated 06/02/2017, Proposed South Elevation;
Drawing Number 16179A /P.1 dated 06/02/2017, Proposed perspective views 1&2;
Drawing Number 16179A /P.2 dated 06/02/2017, Proposed perspective view 3&4

2. IDAS Form I -Application, Applicant, Geraldine Hartley (date of engagement 06/02/2017)

3. BSP Sunshine Coast, Referral Agency request for building work Lot 658 on M93025-9 Island court, Minyama, (dated 8 February 2017).

4. Request for referral agency response for Building Works – Stewart Magill, (dated 08/02/2017)

5. BSP Sunshine Coast, Referral Agency request for building work Lot 658 on M93025-9 Island court, Minyama, (dated 8 February 2017).

6. Sunshine Coast Regional Council Information Request –Sustainable Planning Act 2009 (dated 22/02/2017)

7. Sunshine Coast Regional Council part approval-part refusal -concurrency agency response.... (dated 15/03/2017)

8. Sunshine Coast Regional Council part approved drawings accompanying the Concurrence agency response, (dated 15/03/2017):-

Drawing Number 16179A /01B dated 06/02/2017, Proposed Site Plan–Proposed Relaxations;
Drawing Number 16179A /04A dated 06/02/2017, Proposed Ground Floor Plan Final;
Drawing Number 16179A /06 dated 06/02/2017, Proposed North Elevation;
Drawing Number 16179A /07 dated 06/02/2017, Proposed West Elevation;

9. BSP Building Certifiers, Form 6-Development Application Decision Notice (dated 31/03/2017)
10. Assessment manager letter to the Registrar, Building and Development Appeal request (dated 21/04/2017)
11. AK Building Design drawings:-
 - Drawing Number 16179A /P1-P6, dated 22/03/2017, Existing perspective view11-Height Blankets
12. Current title search and authorisation, signed Geraldine Hartley, (dated 06/04/2017)
13. Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committee's Registrar dated 24 April 2017.
14. Email from applicant to registrar reiteration of evidence (dated 14/06/2017)
15. IDAS Form 2 Applicant Glen Fail, Builder (no date)
16. Sunshine Coast Council development information Site report (no date)
17. Verbal submissions at the hearing from all parties to the appeal;
18. The Sunshine Coast Planning Scheme 2014;
19. The Queensland Development Code MP 1.2 (QDC MP 1.2);
20. The *Sustainable Planning Act 2009 (SPA)*;
21. The *Building Act 1975 (BA)*.

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is a 946 m² allotment located at 9 Island Court, Minyama, and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The lot is an angular block with 10.63 metres street frontage, and approximately 40 metres of combined canal frontage to the rear;
2. The positioning of the lot in relation to its rear boundary has some similarities to that of a corner allotment, as it is situated almost on the T-intersection of two parts of the canal waterway. The shape of the lot at the rear curves to follow the intersection of the waterways;
3. The owners of the property wish to construct a swimming pool and alter and remodel the existing dwelling on the site, having commissioned AK Building Design to prepare an appropriate modern two (2) storey design to suit their needs;
4. Building Surveying Professionals P/L (Assessment Manager) was engaged on 06 February 2017 to assess the prepared plans in order to obtain a Development Permit for Building Work;
5. The proposed development does not comply with Acceptable Outcome AO6 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

Buildings and structures exceeding 1 metre in height above ground level (other than pool fencing which is at least 75% transparent) are setback a minimum of 4.5 metres from the property boundary adjacent to the canal or artificial waterway/waterbody.

6. Parts of the existing dwelling already encroach within the 4.5 metre canal setback prescribed by Acceptable Outcome AO6 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1. AK Building Design Drawing Number 16179A /P.1 dated 22/03/2017 details the extent of the existing encroachments;
7. AK Building Design Drawing Number 16179A /P.5 dated 22/03/2017 details the extent of proposed encroachments to be located within the 4.5 metre canal setback for the remodelled dwelling;
8. Section 33 of the *Building Act 1975* (BA) (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover. Table 9.3.6.3.1 of the Dwelling House Code states that Acceptable Outcome AO6 is an alternative provision to the QDC;
9. The Assessment Manager lodged a request for referral agency response for building work with Council on 8 February 2017 along with a full set of plans that detailed the proposed construction, and outlining the extent of the proposed encroachments located within the 4.5 metre canal setback for the proposed remodelled dwelling and swimming pool;
10. The Council issued an Information Request on 22 February 2017 to the Assessment Manager stating:

This application has been assessed and Council considers that the multipurpose room and rear patio encroachments into the 4.5m setback from the rear boundary do not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO6 (b)(ii) and (c).

You are invited to discuss the Performance Outcome to ascertain if further information can be submitted to Council which may help in further assessment or changing the design to achieve a compliant Performance Outcome.

11. The Assessment Manager further discussed the proposal with Council on 2 March 2017 in response to the Information Request;
12. The Council issued a Concurrence Agency Response on 15 March 2017 instructing the Assessment Manager to part approve and part refuse the application. The proposed swimming pool was approved, however, the dwelling alterations and additions were refused as they did not comply with the requirements of the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcome PO6 (a) (*sic*), (b)(ii) and (c), namely:
 - (b) *ensure no unreasonable loss of amenity to adjacent land and dwellings occur having regard to:*
 - (ii) *views and vistas;*
 - (c) *Building massing and scale as seen from neighbouring premises.*
13. The Assessment Manager issued a Decision Notice on 31 March 2017, refusing the alterations and additions to the detached Class 1a dwelling as directed by Council;
14. An application for appeal Form 10 was lodged with the Building and Development Dispute Resolution Committees Registrar by the Applicant on 24 April 2017;

15. At the hearing, Council conceded that a typographical error had occurred on the issued Concurrence Agency Response dated 15 March 2017, and Performance Outcome PO6 (a) is considered to be satisfied by the proposed design;

Reasons for the Decision

The Committee conditionally sets aside the decision of the Assessment Manager to refuse the canal setback encroachments of the proposed detached dwelling alterations and additions, at the direction of Council, for the following reasons:

The Committee is of the opinion that the development is complying with Performance Outcome PO6 (b) (ii) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 as:

- PO6 Buildings and structures are adequately setback from canals and other artificial waterways or waterbodies to:
 - (b) ensure no unreasonable loss of amenity to adjacent land and dwellings occur having regard to:
 - (ii) views and vistas;

In refusing the application, the Council cited that the proposed design would cause an unreasonable loss of amenity to the adjacent land and dwellings. However, it is the opinion of the Committee that this does not accurately reflect the actual situation as witnessed at the subject site.

The rear boundary of the lot is uniquely angled by the curve of the canal, and both adjacent houses share angled views and vistas towards the waterways that are actually directed away from the subject site. Further, the layout of the proposed dwelling alterations is such that the main 2 storey volume is designed to be deliberately toward the centre of the site to respect the amenity, outlook and views of the adjacent housing.

In particular, the adjoining lot at No 10, located on the south eastern side, is presently built to two storeys. However, there is also an existing high screen wall constructed within their boundary, at ground level, so further preventing any loss of their amenity. Similarly, the single storey house at No 8, to the south western side, which is currently not permanently occupied, is separated from the proposed dwelling alterations by a generous boat ramp of approximately 5.4 metres setback from the boundary, so preventing any loss of amenity to this site.

The Committee is of the opinion that the development is also complying with Performance Outcome PO6 (c) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 as:

- PO6 Buildings and structures are adequately setback from canals and other artificial waterways or waterbodies to:
 - (c) building massing and scale as seen from neighbouring premises.

As stated above, the neighbouring properties are both angled away, and in the case of the south eastern property, there is a screen wall at ground floor level, and the south western neighbour benefits from the wide side boundary setback.

Council presented evidence that it did not have issue with the intrusion from the 2nd storey main bedroom extension into the 4.5 metre rear setback on its own. However, when paired with the intrusion of the proposed Rumpus Room and the roofed Outdoor Entertaining area, Council considered that the combined mass and scale was too excessive to comply with PO6 (c).

However, the Committee is of the opinion that the combined proposed intrusions into the canal setback are considered a marginal increase over the existing intrusions, and pose no threat to the building massing and scale as seen from neighbouring premises, including those properties on the opposite banks of the canal waterways.

To maintain this outcome, it is reasonable for the Committee to instruct the assessment manager to include a condition that prevents the Outdoor Entertaining area from being enclosed with walls, screens, lattice, shutters or the like, so as to remain open at all times.

Graham Osborne
Building and Development Committee Chair
Date:

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 Housing and Public Works
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 1800 804 833 Facsimile (07) 3237 1248