



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	43-12
Applicant:	Jeff Hoyle
Assessment Manager:	Pacific BCQ
Concurrence Agency:	Sunshine Coast Regional Council (Council)
Site Address:	343 David Low Way, Peregian Beach, and described as Lot 111 on P93158 (the Subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Pacific BCQ as the Assessment Manager to refuse a Development Application for Building Works (Design and Siting) for an extension. The refusal was based on the Concurrence Agency response from Sunshine Coast Regional Council.

Date of hearing:	16 th October 2012
Place of hearing:	343 David Low Way, Peregian Beach - the subject site,
Committee:	Mr Chris Schomburgk - Chair
Present:	Mr Jeff Hoyle – Applicant Ms Danielle Williams – Applicant Mr Don Grehan – Assessment Manager Mr Paul Riley – Sunshine Coast Regional Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA, **sets aside** the decision by the Assessment Manager to refuse the Development Application for siting of an extension; and replaces it with the following decision:-

The Committee **directs** the Assessment Manager to **approve** the Development Application, subject to compliance with the following conditions:-

- The extension is to be constructed generally in accordance with the plans submitted with the Application.

Background

The subject property comprises 729m² and slopes from front to back, and across the site. This part of David Low Way is effectively a service road cul-de-sac and the property is the second last lot heading towards the northern end of the service road.

The property is improved by an existing split-level house, predominantly over one level, which the current owners seek to extend. The property enjoys views to the east and south-east to the Pacific Ocean.

The site has an existing two-storey house adjoining to the south, while the land to the north (which is the last lot in the service road) is currently vacant, but is higher than the subject lot. Land to the rear is national park.

The proposed extension seeks to build in under the existing building for a bedroom, garage, laundry and rumpus room; modify and extend the existing ground floor level; and add a third level for a master bedroom and small deck. The proposed third level covers only a part of the existing (and proposed) ground floor level.

The extensions propose a side boundary setback of 1.5 metres, and a front boundary setback that varies from 5.019 to 5.358 metres for the proposed upper deck; from 3.3389 to 3.783 metres for the ground level deck; and 5.54 metres for the upper level stairwell. The Council's usual requirement is for a minimum of 6.0 metres to the front boundary and 2.0 metres to the side boundary for a building as proposed.

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 4 September 2012.
2. A site inspection of the subject site and the locality undertaken by the Committee Chairperson.
3. The Concurrence Agency Response dated 22 August 2012.
4. The Assessment Manager's Decision Notice dated 27 August 2012.
5. Verbal submissions from the parties at the hearing.
6. Plans provided on behalf of the Applicant after the hearing.
7. The *Sustainable Planning Act 2009* (SPA) and Sustainable Planning Regulation 2009 (SPR).

Findings of Fact

The Committee makes the following findings of fact:

- Council's decision to direct refusal of the Application is based on alleged non-compliance with provisions of the Detached House Code 14.54, in particular Siting and Effects of Development Setbacks 01; which states that:
"buildings and other structures are appropriately designed and sited to preserve the visual and acoustic privacy of adjoining and nearby land uses, and to maintain the visual continuity and pattern of buildings and landscape elements within the street".
- The Application is for Building Works, being extensions to the existing house.
- The property is located within the Eastern Beaches Locality in the planning scheme for the former Noosa Shire Council. In the Table of Assessment for Development Other than a Material Change of Use (Division 12, Table 7.10), building works are Code Assessable where the works do not comply with Column 2 of the Building Works Code. In such a case, the relevant Code is the Building Works Code. The Detached House Code, as sought to be relied upon by the

Council, is not an “Applicable Code” in such a case. This point was accepted by the Council representative at the hearing.

- The Applicant has provided written approval for the proposal plans from the neighbour to the south, but no such approval from the absentee-owner of the vacant lot to the north.
- Subsequent to the hearing, the Applicant provided, through the Assessment Manager, a set of amended plans for consideration. The amended plans are referred to as “Approval Plans” and are dated August 2012, Revision F, as distinct from the plans considered by the Council which are dated July 2012. There are no obvious changes of consequence to this Appeal in the amended plans, and the setbacks have been retained as originally proposed.
- The provisions of the Detached House Code which are relied upon by the Council in directing its refusal, are very similar to provisions in the Building Works Code with respect to setbacks and siting generally.

Reasons for the Decision

Based on an assessment of the above facts, it is the Committee’s decision that the Decision Notice being appealed against be **set aside**, and that the Development Application for an extension be approved, subject to compliance with the following conditions:

1. The extension is to be constructed generally in accordance with the plans submitted with the application.

In arriving at its decision to direct that the Application be refused, the Council has relied upon a Code which, according to its own planning scheme, is not applicable. As such, the Appeal must be upheld and the decision set aside.

Notwithstanding this issue, the Committee has considered the merits of the Application and the relevant provisions of the Building Works Code, and has determined that the Appeal would have been upheld, and the decision set aside, in any event, for the reasons set out below:

- The proposed building works will not negatively impact on the visual or acoustic privacy of the adjoining and nearby land uses;
- The existing house to the south is not likely to be affected in any material way;
- The property to the north remains vacant, but it can be expected that a house to be designed on that site at some time in the future would seek to take maximum advantage of the easterly views to the ocean. In doing so, the proposed extensions to the subject lot will have little or no negative impact on those views, especially considering that any future house to the north would likely seek to have it located as far up the hill (away from the subject house) as practical to maximise views and breezes;
- The proposed extensions are designed to avoid overlooking into, and from, any future house to the north, and present an attractive appearance to any such future house;
- The proposed extensions remain below the maximum allowable height of a building in this locality;
- The proposed extensions are in keeping with the character of this part of the street.

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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