



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>04-12</b>
<b>Appellant:</b>	<b>Mr Mark Brown</b>
<b>Assessment Manager:</b>	<b>Sunshine Coast Regional Council</b>
<b>Concurrence Agency:</b> (if applicable)	<b>Not Applicable</b>
<b>Site Address:</b>	<b>1054 Yandina – Coolum Rd Maroochy River described as Lot 2 SP 201601 – the subject site.</b>

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### **Appeal**

Appeal under section 519 of the *Sustainable Planning Act 2009* (SPA) against the decision of Sunshine Coast Regional Council (Council) to refuse an Application for Material Change of Use – Building Works Made Assessable by the Planning Scheme in relation to the proposed construction of Class 1a Dwelling in a designated flood prone area.

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<b>Date of hearing:</b>	12 March 2012  Written submissions only (connected to previous Appeal 33-11)
<b>Place of hearing:</b>	1/19 Project Ave Noosaville Q 4566
<b>Committee:</b>	Mr Don Grehan – Chair Mr Patrick Atkinson - General Referee

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with Section 564(2) of the SPA, **sets aside** the refusal of the Council and **replaces it with the following decision:**

- (a) The Application for Material Change of Use – Building Works Made Assessable by the Planning Scheme in relation to the proposed construction of Class 1a Dwelling the floor levels of which are contrary to the Acceptable Measures of Element 9 – Flooding, of the Code for the Development of Detached Houses and Display Homes (the Code) of the Maroochy Plan 2000 is approved subject to the following conditions:
- (1) The proposed development shall be undertaken generally in accordance with Drawing Numbers 1 to 12, Project Number 2012-030C dated 31/10/2011 by MRA Design (Applicant's Architect).

- (2) The minimum finished floor levels of the development shall not be less than: 2.8m AHD (Ground Floor Entry/Foyer) and 4.52m AHD (First Floor). A certificate signed by a Licenced Surveyor confirming that the minimum finished floor levels have been achieved shall be submitted to Council in conjunction with the lodgement of the Form 21 Final Inspection Certificate.
  - (3) All materials used to construct the ground floor entry/foyer area inclusive of walls, floors, doors, windows, louvres, stair treads, stair stringers, architraves, skirtings, cornices or the like and all finishes, fixtures, fittings and fixings, located below a level of 4.52m AHD, shall be of concrete and/or reinforced masonry block work (treated to resist moisture movement), stainless steel or aluminium.
  - (4) The passenger lift serving the ground floor entry/foyer area shall be set to park on, and automatically return to, the first floor level located at or above 4.52m AHD.
  - (5) The passenger lift control cabinet, drive pump and electrical controllers (except for the foyer call button and safety sensors) shall be located on the first floor level located at or above 4.52m AHD.
  - (6) Windows W01, W07, W08 and W09 shall be redesigned to incorporate louvre openings to a height of not less than 1200mm minimum above FFL to minimize the potential for differential pressures during flood events.
  - (7) All glazing located below a level of 4.52m AHD shall be Grade A Toughened Safety Glass not less than 5mm minimum thickness or greater as may be required AS 1288 - 2006 Glass in buildings - Selection and Installation.
  - (8) Except for lift safety sensors and lift call buttons, no electrical fixtures or fittings (lights, general purpose outlets, light switches or similar) shall be located below a level of a level of 4.52m AHD.
  - (9) Artificial lighting to the foyer shall be controlled via electronic sensors located above a level of 4.52m AHD.
  - (10) Carpets and/or other floor covering susceptible to moisture damage shall not be installed to the ground floor entry/foyer area or appurtenant stairs.
  - (11) In accordance Section 245 of the SPA the conditions of this Development Approval attach to the land (Lot 2 SP 201601) and bind the owner, the owner's successors in title and any occupier of the land.
- (b) The Council shall include Conditions 1 to 11 as a notation against the property file to be provided in conjunction with any conveyancing search associated with the potential sale of subject site.

## **Background**

The Applicant proposes to construct a highset dwelling on the subject site, to accommodate the physical needs of the property owners. The proposed design incorporates a passenger lift from an enclosed ground floor entry/foyer area.

The subject site is covered by the Flood Prone Land Overlay having been identified as being located within the Flood Prone and Drainage Constraint Areas of the Maroochy Plan 2000. In keeping with this designation, the Code prescribes minimum floor levels as an Acceptable Measure to satisfy the following Performance Criteria in relation to floor levels of relevant buildings on affected premises:

*Floor levels of Detached houses and Display homes are provided at a height above flood levels at which the safety of people on the site is maintained and potential damage to property on the site is minimised.*

The inclusion of the passenger lift necessitates the provision of an enclosed ground floor entry/foyer at a level less than prescribed minimum floor levels and accordingly, the Applicant proposed an Alternate Solution to satisfy the Performance Criteria documented in an Application for Material Change of Use – Building Works Made Assessable by the Planning Scheme and made to Council.

Having considered the proposal, Council refused the application in the belief that Performance Criteria P1 of Element 9 of the Code had not been satisfied.

The Applicant, dissatisfied with the refusal, seeks to appeal the decision.

## **Material Considered**

The material considered in arriving at this decision comprises:

- Form 10 – Appeal Notice and Appellant's correspondence accompanying the appeal lodged with the Registrar on 12 December 2011.
- Suncoast Regional Council Decision Notice, Preliminary Building Approval, Reference No. PBA11/0081 dated 14 November 2011 (Superseded).
- Suncoast Regional Council Decision Notice, Material Change of Use - Dwelling (Building Works Made Assessable by the Planning Scheme Preliminary Building), Reference No. MCU12/0007 dated 19 January 2012 (Amending PBA11/0081 dated 14 November 2011).
- The Committee Decision for Appeal No. 33-11 dated 18 October 2011.
- Verbal submissions from the Applicant and their representative given at the hearing of Friday 22 July 2011 in conjunction with the Committee Decision for Appeal No. 33-11.
- Verbal submissions from Council's representative at the hearing of Friday 22 July 2011 in conjunction with the Committee Decision for Appeal No. 33-11.
- Architectural Drawings 1 to 12, Project Number 2012-030C dated 31/10/2011 by MRA Design.
- Sunshine Coast Council Flood Search Certificate, Ref. CER10/3065 dated 02 December 2010.
- The *Sustainable Planning Act 2009* (SPA).
- The Sustainable Planning Regulation 2009 (SPR)
- The *Building Act 1975* (BA).
- The Maroochy Plan 2000.

## **Findings of Fact**

The Committee makes the following findings of fact:

- This matter was the subject of a previous appeal to the Committee and a hearing was held at the subject site at 10am, Friday 22 July 2011.

- The parties to the hearing of the Friday 22 July 2011 were:
  - Mr Don Grehan – Chair for the Committee
  - Mr Patrick Atkinson – General Referee for the Committee
  - Mr Mark Brown – Applicant
  - Mr Michael Rolton – Applicant’s representative
  - Mr Jack Greensill – Building Certifiers representative
  - Mr Alan Thompson – Council’s representative

- Appeal No. 33-11, was dismissed by the Committee on jurisdictional grounds and the matter has subsequently been resubmitted to Council and it is their decision, as Assessment Manager, that gives rise to this Appeal (Appeal No. 04-12).

- This Appeal (Appeal No. 04-12) takes into consideration representations made by the Applicant, the Applicant’s Representative, the Building Certifier and Councils representative at the hearing held on 22 July 2011.

- The subject site is located within the Council area as formed by the amalgamation of the former Noosa Shire, Maroochy Shire and Caloundra City Councils in 2008.

- The Council has not yet finalised a unified planning instrument, and in the interim development is regulated by the applicable Planning Schemes of the former Local Government entities. Accordingly, in relation to the subject site, the Maroochy Plan 2000 is the applicable planning instrument.

- In relation to the proposal, Volume 1, Part 4, Table 4.1 Table of Development Assessment for Rural Precincts of the Maroochy Plan 2000 clarifies that the development represents a self assessable Material Change of Use subject to compliance with the Acceptable Measures of the Code (Elements 1-9 and 11-19).

- The subject site is covered by the Flood Prone Land Overlay having been identified as being located within the Flood Prone and Drainage Constraint Areas, Special Management Area shown on Regulatory Map 1.5 of the Maroochy Plan 2000.

- In relation to residential development, the Council has in accordance with Section 32(b) of the BA, made a provision under the Maroochy Plan 2000 in relation to land liable to flooding namely Element 9 of the Code.

- In relation to land identified as being “Flood Prone Land”, Element 9 of the Code requires that Performance Criteria P1 be satisfied specifically:

*Floor levels of Detached houses and Display homes are provided at a height above flood levels at which the safety of people on the site is maintained and potential damage to property on the site is minimised.*

- As a means of satisfying Performance Criteria P1, Element 9 of the Code provides Acceptable Measure A1.1 that states:

*In any Flood Prone or Drainage Constraint Area as shown on Regulatory Map No 1.5, the floor levels of all buildings are:*

*(a) the greater of:*

- (i) 2.5m AHD (to provide protection from storm surge events); or*
- (ii) 400mm above the 100 year ARI flood level; or*
- (iii) 600mm above the highest recorded flood level;*

- As confirmed by the Council Flood Search Certificate, Ref. CER10/3065 dated 2 December 2010, the minimum floor level require to achieve compliance with Acceptable Measure A1.1 of Element 9 of the Code is 4.52m AHD which is equivalent to 600mm above the highest recorded flood level.
- As documented in Architectural Drawings 1 to 12, Project Number 2012-030C dated 31 October 2011 by MRA Design, the Applicant proposes to construct a high set dwelling on the subject site. To accommodate the physical needs of the property owners, the proposed design incorporates a passenger lift from an enclosed ground floor entry/foyer area.
- The Architectural Drawing No's. 4 of 12 and 5 of 12, Project No. 2010-030C dated 31 October 2011 by MRA Design indicate the finished floor heights of the proposed dwelling are as follows:
 

*Ground Floor level, 2.800m AHD; and  
First Floor level is 5.750m AHD.*
- In relation to the Ground Floor, the nominated floor level is contrary to Acceptable Measure A1.1 of Element 9 of the Code.
- The Applicant contends that the proposed dwelling satisfies Performance Criteria P1 of Element 9 of the Code given that the construction methods and materials intended for the ground floor entry/foyer area, as documented in the "Finishes Schedule Lower Floor - All Areas Below RL 4520" on Architectural Drawing No. 4 of 12, Project No. 2010-030C dated 31 October 2011 by MRA Design are either water proof, water resistant or otherwise located above the requisite minimum floor level. Similarly, the structural adequacy of this level to resist flood like actions have been confirmed by a Registered Professional Engineer of Queensland.
- Council advised at the hearing of Friday 22 July 2011 that, in arriving at it's decision to refuse the application, they "simply could not approve any application for construction below the specified minimum floor levels" and raised concerns in regards to liability to prevent any potential damage to the building should it occur in the event of flooding.

### **Reasons for the Decision**

- The Committee is satisfied that, the provision of the First Floor Level at or above the minimum required Finished Floor Level provides a place of safety for occupants in the event of flooding up to but not exceeding 600mm above the highest recorded flood level (4.52m AHD).
- The Committee is satisfied that establishing the Ground Floor Level for the purpose of an enclosed entry/ foyer at 2.8m AHD does not unduly effect the safety of people on the site in the event of flooding up to but not exceeding 600mm above the highest recorded flood level (4.52m AHD).
- The Committee is satisfied that the "Finished Schedule Lower Floor - All Areas Below RL 4.520" as documented on Architectural Drawing No. 4 of 12, Project No. 2010-030C dated 31/10/2011 by MRA Design in conjunction with the Conditions of this decision effectively minimise the potential damage to property in the event of flooding up to but not exceeding 600mm above the highest recorded flood level (4.52m AHD).

- The Committee, while acknowledging Council's concerns regarding liability, note that a stated element of Performance Criteria P1 of Element 9 of the Code is that "potential damage to property on the site is minimised" and this is contradictory to Council's operational assessment which support a view that they are obliged to prevent any potential damage to property.

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**Mr Don Grehan**  
**Building and Development Committee Chair**  
**Date: 21 March 2012**

### **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 Local Government and Planning  
PO Box 15009  
CITY EAST QLD 4002

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