



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	08 - 17
Applicant:	Coastal Solutions Group Pty Ltd (Troy Wainwright)
Assessment Manager:	Neil Barralet
Concurrence Agency: (if applicable)	Sunshine Coast Council
Site Address:	43 Koorungal Crescent, Buddina, Qld 4575, Lot 483 RP118150 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse a Class 10a patio roof. The Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building as it did not comply with the performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome P06.

Date and time of hearing:	25 July 2017 at 10.00 am
Place of hearing:	The subject site - 43 Koorungal Crescent, Buddina, Qld 4575, Lot 483 RP118150 – the subject site
Committee:	Mr Ain Kuru – Chair Mr. Richard Prout – Member
Present:	Mr Jim Shingles, Coastal Solutions Group Pty Ltd – Applicant Mr Jonathon Dakers, Coastal Solutions Group Pty Ltd – Applicant Mr Peter Chamberlain – Council representative, Sunshine Coast Council Mr Vince Whitburn – Council representative, Sunshine Coast Council

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 Class 10a patio roof at the direction of Council, and approves the building with the following conditions:

- The proposed patio roof must be sited and built in accordance with the attached drawings; and
- The Applicant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for Building Work.

Background

The Proposal

The proposal comprises a patio roof attached to the rear of the existing house. The patio roof extends 5.8 metres from the house, is 7 metres wide and 2.8 metres high at the fascia. The patio is constructed using aluminium posts and beams, and an insulated panel roof. The setback of the proposed patio roof is shown on the drawings submitted with the application as 1.8 metres to the revetment wall at the closest point.

It appears that the purpose of the patio roof is to provide a covered area for outdoor recreation adjacent to the living area of the house and the swimming pool. The patio roof is to replace an existing shade sail in the same location and with approximately the same dimensions.

The lot has an area of 751 m² and is wedge shaped with a narrow street frontage. The lot opens to a wide rear boundary with frontage to the Kawana Water Canal on the western side. The lot and has been developed for residential purposes with a house and the following ancillary improvements:

- A swimming pool and associated deck located at the rear of the house on the canal frontage;
- A shade sail adjacent to the pool and at the rear of the house, setback 1.8 m from the revetment wall of the canal. There is no record of a Development Approval for the shade sail; and
- Miscellaneous fencing, paving and landscaping.

The surrounding area comprises detached houses with frontages to the canal. Ancillary development adjacent to the canal typically consists of low level structures such as jetties, retaining walls, swimming pools, decks and associated landscaping.

The Committee noted that higher structures such as buildings appeared to be mostly setback 4.5 metres from the canal revetment wall.

Consideration of the Application

Coastal Solutions Group Pty Ltd lodged a Development Application for Building Work with private building certifier Mr Neil Barralet. Pursuant to section 11 of the *Building Act 1975*, Mr Neil Barralet is the Assessment Manager for the application, and is responsible for managing the assessment process under the *Sustainable Planning Act 2009*.

The proposed patio roof did not comply with Acceptable Outcome A06 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, which states:

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.

Note—A06 alternative provision to QDC.

As a result, the private building certifier was unable to decide the application without obtaining the Council's concurrence. The application was subsequently referred to the Council for assessment.

On 26 January 2017 the Council requested further information stating:

This application has been assessed and Council considers that the roof setback 1.8m from the rear/canal boundary does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO6 (b) (ii), (iii) and PO6 (c).

There is mention in the application that this roof is replacing an existing shade sail. However there doesn't appear to be any Concurrence Agency Approval or Building Approval for this shade sail. If there is an approval and they can be supplied to the Council, then these previous approvals may be taken into consideration.

You are invited to discuss the Performance Outcomes 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.

On 10 February 2017 the Applicant responded stating:

We believe this proposed roof structure adequately meets the Performance Outcomes of the Sunshine Coast Planning Scheme 2014. It is to replace an existing shade sail which is in the same location and has been there for many years. To the best of our knowledge there has never been any complaints about the sail therefore we would not expect complaints about a skillion roof structure that would replace it. This is because it is only visible from one neighbouring house.

Setbacks to Canal and Artificial Waterways

PO6 Buildings and structures are adequately setback from canals and other artificial waterways or waterbodies (e.g. lakes) to-

(b) There will not be any unreasonable loss of amenity to adjacent land and dwellings occur having regard to –

(ii) Views and vistas;

The neighbours will not be affected by this proposed structure because the roof structure will only be visible from one of the neighbours and even then it will not affect their view because it is only a fully open skillion roof structure.

(iii) building character and appearance;

The proposed roof is a flat skillion roof which is fully open.

(c) Building mass and scale as seen from neighbouring premises.

Will not impact the scale and massing of building because it is an open structure. And because of its siting at the street it is not in any of the neighbour's line of sight.

On 21 February 2017 the Council directed the private building certifier refuse the application as it did not meet the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO6 for Setbacks to Canals and Artificial Waterways, namely:

The application is directed for refusal as Council deems that the proposed patio does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO6 (b) (ii), (iii) and PO6 (c).

Buildings and structures are adequately setback from canals and other artificial waterways or waterbodies (e.g. lakes) to:-

~~(a) protect the structural integrity of the canal/waterway/waterbody profile and revetment wall;~~

(b) ensure no unreasonable loss of amenity to adjacent land and dwellings occur having regard to:-

- (i) *privacy and overlooking;*
- (ii) *views and vistas;*
- (iii) *building character and appearance; and*

(c) *Building massing and scale as seen from neighbouring premises.*

The private building certifier issued a Decision Notice on the 13 March 2017, refusing the Class 10a patio roof as directed by Council.

The Committee received the application for appeal, Form 10 from the applicant on the 14 March 2017.

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 Committees Registrar on 14 March 2017;
2. Assessment Manager Decision Notice, Permit No: 16265, dated 13 March 2017, refusing the patio roof as directed by Council;
3. The following drawings:
 - Site Plan, untitled and undated; and
 - Roof Plan and Section view, untitled and undated.
4. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
5. Letter dated 22 March 2017 from property owner giving authority to Coastal Solutions Group Pty Ltd (Builder & Applicant) to act on his behalf for the Appeal;
6. Sunshine Coast Council Application Form – 2013/4 Regional Strategy and Planning Request for Referral Agency Response for Building Work dated 12 January 2017, lodged by the Assessment Manager;
7. Information Request from Council to the Assessment Manager dated 16 January 2107, reference number RAB17/0006;
8. Email and letter from Assessment Manager in response to Council Information Request Dated 10 February 2017;
9. Concurrence Agency Response from Council dated 21 February 2017, reference number RAB17/0006, instructing the Assessment Manager to refuse Development Application for Building Work;
10. The following amended drawings provided by Coastal Solutions Group Pty Ltd emailed to the Committee on 3 August 2017:
 - Site Plan, untitled and undated; and
 - Roof Plan and Section view, untitled and undated.
11. Verbal submissions at the hearing from all parties to the appeal;
12. The Sunshine Coast Planning Scheme 2014;
13. The Queensland Development Code MP 1.2;
14. The *Sustainable Planning Act 2009*;
15. The *Building Act 1975*.

Findings of Fact

The Committee makes the following findings of fact:

Reasons for Refusal

Pursuant to section 33 of the BA, the Sunshine Coast Planning Scheme contains alternative boundary clearance provisions to the Queensland Development Code for Class 1 and 10 buildings, which includes the proposed patio. Table 1 of Schedule 7 of the SPR identifies referral

agencies and their jurisdictions. Item 20 of Table 1 of Schedule 7 of the SPR “Design and siting” provides that the local government is a concurrence agency where:

“(b) under the provision, the proposed building or structure is not of the quantifiable standard for a relevant qualitative statement under the provision”

The referral jurisdiction of the local government is:

“Whether the proposed building or structure complies with the qualitative statement”

A patio is defined as a dwelling house under the Sunshine Coast Planning Scheme 2014. It defines a Dwelling house as:

“A residential use of premises for one household that contains a single dwelling.

The use includes out-buildings and works normally associated with a dwelling house and may include a secondary dwelling.”

Section 9.3.6 of the Sunshine Coast Planning Scheme contains the Dwelling House Code, which includes Performance Outcomes and Acceptable Outcomes for a dwelling house. AO6 of the Code states the Acceptable Outcome (ie the qualitative statement) is as follows:

“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.”

The drawings provided with the application did not specify the setback from the canal, however at the hearing it was established that the proposed patio was sited 2.8 metres from the short boundary and 3.6 metres from the longer boundary. As a result, the application was referred to Council for assessment pursuant to the corresponding Performance Outcomes (ie the qualitative statement), which states:

“Buildings and structures are adequately setback from canals and other artificial waterways or waterbodies (e.g. lakes) to:-

- (a) protect the structural integrity of the canal/waterway/waterbody profile and revetment wall;*
- (b) ensure no unreasonable loss of amenity to adjacent land and dwellings occur having regard to:-*
 - (i) privacy and overlooking;*
 - (ii) views and vistas;*
 - (iii) building character and appearance; and*
- (c) building massing and scale as seen from neighbouring premises.”*

The Council directed the private building certifier to refuse the application quoting sub sections (b) and (c) above but did not provide any further reasons.

Impact on Amenity

At the hearing the Council advised that the proposed patio roof would provide for outdoor living under its roof, and that such use would interfere with the views and vistas of the neighbouring property to the south. The Council also expressed concern about the height of the proposed roof, which it considered was too obtrusive in this location.

The Committee examined what impacts the proposed structure would have on the neighbouring property to the south and agreed that the proposed structure would unreasonably interfere with the neighbours views to the north. The Committee requested that the Applicant redesign the

patio having regard to the neighbour's views. The Committee suggested that the Applicant consider the location of the neighbour's house and the view they could expect across the subject site, having regard to that part of the side boundary within 4.5 metres of the canal frontage where fencing was not permitted. This in the Committee's view provides a benchmark for what views residents would reasonably expect to be retained, notwithstanding vegetation.

It should be noted that the proposed patio does replace an existing shade sail in approximately the same location, and while the structure was built without approval, Council was not aware of any complaints from neighbours. It was also noted that there were numerous structures such as decks built on surrounding properties within the frontage setback. Council advised that many of these were built without its approval, and that it only addressed these when complaints were made.

Reasons for the Decision

The Applicant submitted the amended design for Council and the Committee to consider on 3 August 2017. The revised design moved the patio roof back from the corner of the existing house, and showed setbacks of 3 metres from the short boundary and 3.4 metres from the longer boundary of the canal frontage respectively.

The Sunshine Coast Council advised the Committee on the 3 August 2017 that the amended design was compliant with the performance outcomes of the Sunshine Coast Planning Scheme 2014.

The Committee is of the view that this revised design does not unreasonably impact on the views of the neighbour, as it protects the vista of the neighbour to the north and replaces the existing shade sail structure.

In respect of the height, the Committee believes that the patio is an open structure and the initial height of 2.8 metres at the fascia is preferable to the amended height of 2.4 metres, as it would improve the amenity of the neighbour by allowing better views through the structure. The height of 2.8 metres at the fascia should therefore be retained.

Ain Kuru
Building and Development Committee Chair
Date: 11 August 2017

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