



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	41 – 15
Applicant:	Building Surveying Professionals Queensland P/L – Stewart Magill
Assessment Manager:	Building Surveying Professionals Queensland P/L – (Stewart Magill)
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	64 Buderim Avenue, Alexandra Headland, Qld 4572, Lot 63 RP 27715 – 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 detached dwelling and swimming pool. Sunshine Coast Council as the Concurrence Agency directed the Assessment Manager to refuse the building and structure as they did not meet and could not be conditioned to meet the Specific Outcomes of the Maroochy Plan 2000 (16 September 2013) and the Queensland Development Code MP1.2, (Design and Siting Standard for Single Detached Housing – on Lot 450 m² and over).

Date and time of hearing:	Friday 22 January 2016 at 10.00 am
Place of hearing:	The subject site and O.G.E Architects offices at 4 First Avenue, Maroochydore, Qld 4558
Committee:	Richard Prout – Chair John Gillespie – Member
Present:	Stewart Magill -Assessment Manager and Applicant Fiona and Timothy Freeman – Property Owners Cameron Adams – Adams & Sparkes Town Planning & Development John Robertson – O.G.E Group Architects Greg King – O.G.E Group Architects Gus Schulz - Building Surveying Professionals Queensland P/L Steve Rosenius – Council representative Gary Sheffield – 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 detached dwelling and swimming pool at the direction of Council. The Committee approves the detached dwelling and swimming pool with the following conditions:

- The proposed development must be sited in accordance with the following drawings:

O.G.E Group Architects, Project 13057, Issue P9, Dated 28 January 2016, Drawing Numbers - SK1.01, SK2.01, SK2.02, SK2.03, SK2.04, SK2.05, SK3.01, SK3.02, K3.03, SK3.04, SK3.05, SK4.01, SK4.02, SK4.03, SK4.04, SK4.05, SK5.01, SK5.02, SK5.03, SK5.04;

- The Applicant shall, prior to any building work commencing onsite, gain a Development Approval for Building Work.

Background

The subject site is a 506 m² allotment located at 64 Buderim Avenue, Alexandra Headland and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment was first surveyed in 1915 but has never been developed.

The allotment has a slope of between 15% and 19% as defined by the Maroochy Plan 2000 (16 September 2013) and has a double street frontage namely Buderim Avenue to the south and George Street to the north.

The property owners engaged O.G.E Group Architects to design a dwelling and swimming pool for the allotment and lodged a Development Application for Building Work (Application) with Building Surveying Professionals Queensland P/L (Assessment Manager and Applicant).

As part of the development process the owners applied to the Council requesting the proposed development be assessed under the superseded planning scheme i.e. Maroochy Plan 2000 (16 September 2013) (MP2K). Council conditionally approved this request in June 2015.

However the proposed development did not comply with the Acceptable Measures of MP2K Code 4.1 (Development for the Development of Detached Houses and Display Homes), and the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing – on Lot 450 m² and over) (QDC MP1.2). As such the Assessment Manager lodged a request for referral agency response for building work with the Council on 14 August 2015.

The Council issued a Concurrence Agency Response on 9 November 2015 instructing the Assessment Manager to refuse the Application as it did not meet, and could not be conditioned to meet, the requirements of:

- MP2K, Code 4.1, Element 1, P1 (Height and Sitting of Buildings and Structures), Element 4, P1 (Small Lot Housing (on lots less than 600 m²), Element 8, P2 (Special Requirements in relation to Steep or Unstable Land); and
- QDC MP 1.2 Element 1, P2.

The Assessment Manager issued a Decision Notice on 18 November 2015 refusing the detached dwelling and swimming pool as directed by the Concurrence Agency.

The Building and Development Dispute Resolution Committees (the Committee) received application for appeal Form 10 from the applicant on 7 December 2015.

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 7 December 2015;

2. Letter from Timothy Freeman – Civil Engineer dated 19 November 2015, advising Committee that Building Surveying Professionals Queensland are his representative for the Appeal;
3. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
4. Form 56 (Notice to the local government that a private certifier has been engaged) – issued by Building Surveying Professionals (Qld) P/L dated 14 August 2015;
5. Request to apply a superseded planning scheme – Sustainable Planning Act Form 2;
6. Letter (Request for Application to be accepted under Superseded Planning Scheme) to Sunshine Coast Council from Adams & Sparkes Town Planning & Development dated 29 April 2015;
7. Letter (Response to Submissions to Superseded Planning Scheme Request) to Sunshine Coast Council from Adams & Sparkes Town Planning & Development dated 26 May 2015;
8. Notice of Decision Superseded Planning Scheme Request from Council dated 23 June 2015;
9. Sunshine Coast Council Application Form – 2013/14 Regional Strategy and Planning Request for Referral Agency Response dated 14 August 2015;
10. Slope stability assessment report from Tectonic Geotechnical & Environmental Engineers dated 31 January 2014 to Mr. Tim Freeman;
11. Slope Analysis Assessment from RPS dated 17 November 2010 including site plan (Plan Reference 106734-01);
12. Attachment 4 of the above report from Adams & Spark Town Planning & Development addressing the performance criteria of MP2K, Code 4.1;
13. Information Request from Council dated 28 September 2015;
14. Concurrence Agency Response – Refusal from Council dated 9 November 2015;
15. Decision Notice issued by Building Surveying Professionals (Qld) P/L dated 18 November 2015 refusing the detached dwelling and swimming pool;
16. Development Information Site Report from Council dated 14 August 2015;
17. Letter to the Committee date 7 December 2015 from Building Surveying Professionals Queensland;
18. The following drawings from O.G.E Group Architects, Project 13057, Issue P5, Dated 9 April 2015, Drawing Numbers - SK1.01,SK1.02, SK1.03, SK1.04, SK1.05, SK2.01, SK2.02, SK2.03, SK2.04, SK2.05, SK3.01, SK3.02, SK3.03, SK3.04,SK3.05,SK4.01;
19. The following drawings from O.G.E Group Architects, Project 13057, Issue P6, Dated 13 July 2015, Drawing Numbers - SK1.01,SK2.01, SK2.02, SK2.03, SK2.04, SK2.05, SK3.01, SK3.02, SK3.03, SK3.04,SK3.05,SK4.01,SK4.02, SK4.03,SK5.01;

20. The following drawings from O.G.E Group Architects, Project 13057, Issue P8, Dated 6 November 2015, Drawing Numbers - SK1.01,SK2.01, SK2.02, SK2.03, SK2.04, SK2.05, SK3.01, SK3.02, SK3.03,SK3.04,SK3.05,SK4.01,SK4.02, SK4.03,SK5.01;
21. The following drawings from O.G.E Group Architects, Project 13057, Issue P9, Dated 28 January 2016, Drawing Numbers - SK1.01,SK2.01, SK2.02, SK2.03, SK2.04, SK2.05, SK3.01, SK3.02, K3.03, SK3.04, SK3.05, SK4.01, SK4.02, SK4.03, SK4.04, SK4.05, SK5.01, SK5.02, SK5.03, SK5.04;
22. Letter of support dated 29 September 2014 from the property owner at 62 Buderim Avenue, Alexandra Headland;
23. Verbal submissions at the hearing from all parties to the appeal;
24. Emails from Council dated 11 February 2015 and 12 February 2015 in response to the amended drawings provided by O.G.E Group Architects, Project 13057, Issue P9, Dated 28 January 2016,
25. The Maroochy Plan 2000 (16 September 2013);
26. The Queensland Development Code MP 1.2 (QDC MP1.2);
27. The *Sustainable Planning Act 2009* (SPA);
28. The *Building Act 1975* (BA).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is an 506 m² allotment located at 64 Buderim Avenue, Alexandra Headland and is zoned Low Density Residential under the Sunshine Coast Plan 2014 and Alexandra Heights (Neighborhood Residential) under the Superseded Planning Scheme (Maroochy Plan 2000 (16 September 2013));
2. The allotment has a double road frontage i.e. Buderim Avenue to the south and George Street to the north. The allotment is long and narrow i.e. length 50.6m width 10m;
3. The allotment is vacant and was first surveyed in 1915 and has never been developed;
4. The allotment has a slope between 15% and 19% as defined by the Maroochy Plan 2000 (16 September 2013) and has an approximate fall of 9 m over its full length i.e. north to south;
5. The subject site is bounded by four allotments, namely: 62 Buderim Avenue, 53 George Street to the east and 66 Buderim Avenue, and 57 George Street to the west;
6. The buildings and structures on the adjoining allotments are in general complying with the Acceptable Solutions of the QDCMP 1.2 and Maroochy Plan 2000 (16 September 2013) with the exception of the following:
 - 62 Buderim Avenue has the following building and structures built to boundary:

- A garage wall which has been built to the boundary and exceeds 4.5m in height above natural ground level for an approximately length of 7 m;
- A combined retaining wall and boundary wall with a height in excess of 3.5 m above natural ground level in places for an approximate length of 12m;

It should be noted that the combination of the garage wall and boundary/retaining wall takes up all of 62 Buderim Avenues side boundary with the subject site;

- 53 George Street – the dwelling appears to have a 1.5 m side boundary setback from the subject site however the height of the building exceeds 6 m above natural ground level;
7. 57 George Street has not been fully developed and there is only a Class 10a shed on the site at present. As part of the construction of the shed and driveway access the ground level adjacent to the subject site has been reduced by approximately 1 m in height;
 8. 66 Buderim Avenue has a split level dwelling single storey when viewed from Buderim Avenue and two storeys to the rear. The side boundary setback to the subject site appears to be approximately 1.5 m;
 9. The streetscape in the surrounding area of the subject site predominately consists of open fronted allotments with soft landscaping and where walls have been erected within the front road boundary setback they are complying with the requirements of the planning scheme i.e. boundary walls are below 2 m in height, and retaining walls are below 1 m in height.

Application Process

1. Adams & Sparkes Town Planning & Development lodged a request to apply a superseded planning scheme – SPA Form 2 with the Council on the property owners behalf in April 2015 for a detached dwelling;
2. The Council issued a Notice of Decision Superseded Planning Scheme on the 23 June 2015 conditionally approving the request allowing the dwelling to be assessed under the provisions of the Maroochy Plan 2000 that was in effect from 16 September 2013;
3. The owner lodged a Development Application for Building Work with Building Surveying Professionals Queensland P/L (the Assessment Manager) in August 2015 for a Class 1a detached dwelling and Class 10b swimming pool;
4. The Assessment Manager lodged a request for referral agency response for building work with the Council on the 14 August 2015 as:
 - The Class 1a dwelling did not comply with all the Acceptable Measures of MP2K Code 4.1 (Development for the Development of Detached Houses and Display Homes); and
 - The proposed swimming pool did not comply with the Acceptable Solutions of the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing – on Lot 450 m² and over);
5. The Council issued an Information Request on 28 September 2015 namely:

Council's current position in relation to the proposal is to recommend refusal.

Council has not refused the application in the first instance (as discussed), in case the applicant wishes to submit an alternative design that may also require consideration by Council.

The development does not comply and cannot be conditioned to comply with MP2K, Code 4.1, and Queensland Development Code, as the;

The proposed development will cause an unreasonable loss of amenity to adjacent land and dwellings having regards to the following:

- *Building character and appearance*
- *Building massing and scale as seen from neighboring premises*
- *Views and vistas*
- *The proposal will be inconsistent with existing buildings*
- *The proposal will cause an over development of the site and overcrowding*
- *There are no constraints on the allotment that prevent the proposal from being built generally accordance with the prescribed boundary setbacks*

Submit an amended site plan/details showing the changed footprint and setbacks of the proposal which does not unduly impact upon the adjoining properties, including and not limited to the following:

1. Reduced height of building platforms and boundary walls/fences with associated finished platform Reduced Levels (RL) and floor levels and including and not limited to the following:

- *Increase the setbacks (or remove) to the western and eastern side boundaries for the walk ways and stairs and awnings*
- *Side boundary overall height of the proposed combination retaining wall/fence not to exceed 2 metres*

Alternatively

Demonstrate how the proposed development can generally comply MP2K, Code 4.1 Element 1, P2, as given below,

- (1) Element: Height and Siting of Buildings and Structures*
- (2) Element: Excavation and Filling (whether building works or operational works)*
- (4) Element: Small Lot Housing (on lots less than 600 m²)*
- (8) Element: Special Requirements in relation to Steep or Unstable Land*

And

Demonstrate how the proposed development can generally comply with Queensland Development Code (QDC) MP 1.2 – DESIGN AND SITING STANDARD FOR SINGLE DETACHED HOUSING – ON LOTS 450M2 AND OVER, ELEMENT 1 – DESIGN AND SITING OF BUILDING AND STRUCTURES P2/A2

6. The Owners provided Council with amended Architects drawings in November 2015: (O.G.E Group Architects, Project 13057, Issue P8, Dated 6 November 2015, Drawing Numbers - SK1.01,SK2.01, SK2.02, SK2.03, SK2.04, SK2.05, SK3.01, SK3.02, SK3.03,SK3.04,SK3.05,SK4.01,SK4.02, SK4.03,SK5.01);
7. The Council issued a Concurrence Agency Response on the 9 November 2015 instructing the Assessment Manager to refuse the dwelling and swimming pool:

In accordance with section 289(1) the reasons for refusal are as follows:

The proposed development does not comply with and cannot be conditioned to comply with MP2k, Code 4.1, Element 1, P1 as given below:

- (1) Element: Height and Siting of Buildings and Structures*

P1 Building and structures maintain the amenity of adjacent land and dwellings have regard to:

- (a) overshadowing;*
- (b) privacy and overlooking;*
- (c) views and vistas;*
- (d) building character and appearance; and*
- (e) building massing and scale as seen from neighboring premises.*

(4) Element: Small Lot Housing (on lots less than 600 m²)

P1 Detached houses or display homes on lots less than 600 m²

- (a) are provided with clearly defined private open space of useable proportions to suite the recreation and outdoor needs of the residents, as well as providing space for services functions, such a drying clothes etc;*
- (b) preserve or enhance the amenity of adjoining residential land;*
- (c) minimise direct overlooking between buildings by building layout, location and design of windows and balconies or screening devices; and*
- (d) minimise the impact of acoustic disturbance to adjoining neighbours*
- (e) Boundary walls are limited in height and length to minimise the impacts on neighbours.*

(8) Element: Special Requirements in relation to Steep or Unstable Land

P2 Buildings and other structures are designed and sited to minimise adverse impacts on amenity of neighbouring sites having regard to:

- (a) natural light and ventilation,*
- (b) views and outlook, and*
- (c) privacy.*

The proposed development does not comply and cannot be conditioned to comply with Queensland Development Code (QDC) as given below

8. The Committee received the application for appeal, Form 10 from the Applicant on the 7 December 2015.

The Appeal Hearing

At the hearing, the following were agreed facts between the appeal parties:

- The allotment has a sloping of between 15% and 19% as defined by the Maroochy Plan 2000 (16 September 2013);
- The height of the building does not exceed a maximum height of 10 m above natural ground level as defined by the Maroochy Plan 2000 (16 September 2013); and
- The building is a two storey dwelling as defined by the Maroochy Plan 2000 (16 September 2013);

As such the building is complying with MP2K, Code 4.1, Element 1, P1 (Height and Sitting of Buildings and Structures) and Councils Concurrence Agency Response – Refusal should not have referenced this part of the Code as a reason for refusal.

- That the proposed front road boundary setback from Buderim Avenue to the dwelling/garage is complying with the Performance Criteria of the Maroochy Plan 2000 (16 September 2013);
- That the applicable Code for the proposed swimming pool was the QDC MP1.2 and as per the Acceptable Solution of QDC MP1.2 the required side boundary setback for the pool is 750mm;

At the hearing the Owners agreed to relocate the swimming pool clear of the boundary (Minimum 750 mm) in accordance with the Acceptable Solutions of the QDC MP1.2;

- That the setback provisions within Councils Small Lot Housing (on lots less than 600m²) Code (Element 4) conflicts with Councils Special Requirements in relation to Steep or Unstable Land Code (Element 8).

It should be noted that the Acceptable Measures in the Small Lot Housing Code states the following:

A1.9 Walls built to boundary have:

- (a) *An average height of 3.0m or less:*
- (b) *A maximum height of 3.5m unless they:*
 - *abuts a higher existing or simultaneously constructed wall;*
 - *are in accordance with an approved building envelop plan;*
 - *abuts a side or rear lane (in which case the maximum height is 5.5m)*
- (c) *Where there are no existing boundary walls, the maximum total length of built to boundary walls is 15 metres with no single section being longer than 9 metres.*

In contrast the Acceptable Measures in the Special Requirements in relation to Steep or Unstable Land Code requires a minimum setback of 1.5 m with no allowances for building to boundary.

- That the built to boundary walls on at 62 Buderim Avenue do not comply with the requirements of MP2K, Code 4.1 namely:
 - (a) A garage wall which has been built to the boundary and exceeds 4.5m in height above natural ground level for an approximately length of 7 m;
 - (b) A combined retaining wall and boundary wall with a height in excesses of 3.5 m above natural ground level in places for an approximate length of 12m;
- That the proposed new boundary walls are a maximum 2 m above natural ground level and as such are complying with the requirements of the applicable Codes.

The Applicant agreed to further reduce the height of the stair wall on the eastern elevation to bring it more into compliance with the requirements of Acceptable Measure A1.9 (a), A1.9 (b) and A1.9 (c) of Council's Small Lot Housing Code and change the location of the swimming pool.

The Applicant also agreed to provide the Committee with a letter of support from the owners of 62 Buderim Avenue, Alexandra Headland.

The hearing was suspended to allow the Applicant the opportunity to develop revised drawings for Council to consider;

Post Hearing

Following the hearing:

- The Applicant submitted the amended drawings and the letter of support to the Committee on the 2 February 2016. The drawing provided to the Committee from O.G.E Group Architects, Project 13057, Issue P9, Dated 28 January 2016, Drawing Numbers - SK1.01, SK2.01, SK2.02, SK2.03, SK2.04, SK2.05, SK3.01, SK3.02, K3.03, SK3.04, SK3.05, SK4.01, SK4.02, SK4.03, SK4.04, SK4.05, SK5.01, SK5.02, SK5.03, SK5.04 This information was forwarded to Council on the 2 February 2016;
- Council responded on the 3 February 2016 stating the following:

Council considers that the amended plans are only altered slightly and Councils position on the proposal is unchanged.

- Swimming pool - The drawings provided detail of the location of the pool clear of the side boundary by a minimum 750 mm. This setback is in accordance with the Acceptable Solutions of the QDC MP1.2 and is therefore an as of right;
- Stair wall – The drawings provided confirm the height of the stair wall has been reduced and when the stair wall is measured against the height of the finished ground level on 62 Buderim Avenue is generally complying with the Acceptable Measures A1.9 (a), A1.9 (b) and A1.9(c) of the Small Lot Housing Code. As previously noted the ground level at 62 Buderim Avenue has been raised approximately 2 m above natural ground level;
- The proposed garage built to boundary on the eastern side of the subject site is adjacent to the garage wall of 62 Buderim Avenue which has been built to boundary. The proposed garage is lower in overall height than the garage on 62 Buderim Avenue and is therefore complying with the Acceptable Measures A1.9 (a), A1.9 (b) and A1.9(c) of the Small Lot Housing Code;
- Letter of support - The letter of support from the owners of 62 Buderim Avenue, Alexandra Headland is dated 29 September 2014. It should be noted that at this date the proposed stair wall on the boundary was considerably higher with a greater impact than the amended design submitted to the Committee on the 2 February 2016;

The Committee again contacted Council for a comment on the amended drawings from a senior staff member who provided the following statement on the 12 February 2016:

To clarify, the SCRC recognises that the alterations made to the design such as moving the proposed swimming pool in from the side boundary, increasing the setback to the walkway, reducing the height of the boundary wall are improvements to the design.

Council is still of the opinion that the mass, scale and height of the proposed building in close proximity to side boundaries does not maintain the amenity of adjacent land and dwellings.

Having said that, Council recognises that there are inherent difficulties in designing a dwelling on a narrow allotment.

Reasons for the Decision

The Committee sets aside the decision of the Assessment Manager and approves the dwelling and swimming pool with conditions as outlined on the first page of this decision.

The Committee has made their decision for the following reasons:

Even though the proposed dwelling does not comply with the Acceptable Measures A2.1 and A2.2 of Council's Special Requirements in relation to Steep or Unstable Land Code the Committee is of the view that the above Acceptable Measures are simply not practical outcomes on such a narrow steep allotment.

In assessing the proposed dwelling against the Performance Outcomes of the Steep or Unstable Code P2 the Committee considered the following:

- The building has been designed and sited to minimise any adverse impacts on the amenity of neighbouring allotments;
- The building does not affect the natural light and ventilation to the adjoining allotments;
- The building does not impact the views and outlook from the adjoining allotments. In making this determination the following should be noted:

1. The main view line from this property and the surrounding properties is due North as such none of the surrounding allotments main views will be affected by the proposed development;
 2. The owners of 62 Buderim Avenue have provided a letter of support and the parts of the proposed dwelling that have been built to boundary correspond to the areas that have been built to boundary on 62 Buderim Avenue. As such there is no impact in this regard;
 3. The main view line from 66 Buderim Avenue is due North which will not be affected by the proposed development. It should be noted that any development on the subject site will have an impact on any view line from 66 Buderim Avenue to the East however this does not override the Applicants as of right to develop the subject site;
 4. The views from 53 George Street will not be affected as the building line of the proposed building is behind the front elevation of 53 George Street and there are no windows along the Western elevation of the dwelling; and
 5. The main views from 57 George Street, which has not been developed, are due North and it would be envisaged that any development would be forward of the line of the proposed dwelling.
- The proposed building will not affect the privacy of the surrounding properties; and
 - The height and bulk of the proposed dwelling is generally in accordance with the dwellings in the surrounding area.

Richard Prout
Building and Development Committee Chair
Date: 17 February 2016

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