



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	41-13
Applicant:	Barry Ingram and Jennifer Ingram
Assessment Manager:	Fastrack Building Certification (Assessment Manager)
Concurrence Agency:	Sunshine Coast Regional Council (Council)
Site Address:	26 Beltana Crescent Buddina described as Lot 623 on B 92913 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse in part a Development Application for a Building Approval (Application) relating to the construction of an outdoor entertainment area associated with a new proposed dwelling. The decision followed a Concurrence Agency response for the siting of the outdoor entertainment area part of the proposed new dwelling.

Date and time of hearing:	9.00am, 3 February 2014
Place of hearing:	26 Beltana Crescent Buddina
Committee:	John Dunn – Chair Chris Schomburgk – Member
Present:	Barry Ingram and Jennifer Ingram - Applicant Dean Rosolen – Ropann Constructions Pty Ltd – Applicant's builder Gary Sheffield - Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(2)(c) of the SPA **sets aside** the part refusal appealed against and replaces it with the following decision:

The Application is approved subject to the following condition:

- The design and siting on the outdoor entertainment area is to comply with the architectural drawings prepared by Ropann Constructions Pty Ltd. These drawings are identified as Project number Jc420 sheets A000, A101, A201 and A202 all being Issue D dated 11 February 2014.

Background

The subject site abuts a Council Reserve on its north alignment and the canal on the west alignment. There is a 2 storey dwelling on the south side of the subject site.

The existing dwelling on the subject site is being demolished and will be replaced with a new larger dwelling that has been approved in part by the Assessment Manager.

Previous works on the property that are not being demolished are the swimming pool, the existing retaining wall adjacent to the canal revetment wall, and the prescribed tidal works pontoon and access walkway.

An application was made to Council, as Concurrence Agency advice, for a siting variation which included the following aspects:

- 1) Garage-workshop wall length of 11.79 metres within 1.50 metres of the north side alignment;
- 2) Outdoor entertainment area at the rear of the dwelling located 200mm from the south side alignment and 1.79 metres from the canal alignment.

Council's advice letter VW001:lxw: Ref No RAB13/0611 dated 4 December 2013 includes a part approval and part refusal of the Application. The part refusal stated:

- *The proposed siting of 1.790 metres for the covered outdoor entertainment area does not comply and cannot be conditioned to comply with the Caloundra City Plan 2004, Specific Outcome O4 (4.50 metres) Setbacks to Canals and Artificial Waterways.*
 - O4 – Buildings and structures are Buildings and structures are adequately setback from canals and other artificial waterways (e.g. lakes) to:*
 - (b) ensure no unreasonable loss of amenity to adjacent land and dwellings occurs having regard to:*
 - (i) ~~privacy and overlooking;~~*
 - (ii) views and vistas;*
 - (iii) building character and appearance; and*
 - (iv) building massing and scale as seen from neighbouring premises.*

The Council endorsed plans (refer to RAB13/0611 – SK1 – Site Plan, SK2 – Floor Plan and SK3 – Elevations) attached to the advice letter do not have a notation on the plans indicating the part refusal for the outdoor entertainment area. However, the plans attached to the Council letter have been stamped “*This plan accompanies the Concurrence Agency Response*”.

The Assessment Manager issued a Decision Notice and the associated plans dated 17 December 2013 which included a part refusal for the covered outdoor entertainment area at the rear of the dwelling as per Council's advice letter.

The Applicants lodged an appeal against the Assessment Manager's Decision Notice with the Committees Registrar on 24 December 2013. A hearing was held on site at 9am on 3 February 2014.

The proposed design, the subject of the Appeal, presented walls at approximately 4.00 metres in height above the existing ground level and setback approximately 200mm from the south side alignment and 1.79 metres from the canal alignment. This has the potential to be inconsistent with other dwellings in the area when viewed from the subject site.

Caloundra City Plan 2004, Code 8.5 Detached House Code includes specific alternative provisions for setbacks to canals and artificial waterways. However the Queensland Development Code MP 1.2 (QDC), P2 and A2 apply to all other side boundary setbacks not within the prescribed 4.50 metre canal or artificial waterway setback zone.

The Council advice letter is silent on the part of the outdoor entertainment area that encroaches into the QDC MP 1.2, section A2 requirements for the part of the outdoor entertainment area not within the 4.50 metre canal setback zone. The Committee therefore assumed that Council had no issues with that part of the outdoor entertainment area not within the canal setback requirements.

Discussions between parties at the hearing indicated that conditions could be imposed to remove the likely impacts on views from nearby properties including amending the setbacks and building height within the 4.50 metre canal setback zone.

After the hearing the Applicant through their Builder, submitted an amended design based on the discussions at the hearing. The revised design included a canal setback of 2.39 metres from the canal, 200mm from the side boundary and a modified roof design.

The amended design was then submitted to Council by the Committee for review and comments. Council's comments included a 3.00 metre setback from the canal alignment and side boundary articulation in accordance with QDC MP 1.2, section A2(a) and the National Construction Code 2013, Section 3.7.1 requirements (NCC 2013).

The Committee reviewed Council's comments and presented the builder with a compromise that is now the revised design submission dated 11 February 2014.

The revised design increases the setback from the canal to 2.40 metres, provides articulation to the side boundary wall at the 4.50 m setback point and reduces building height with a roof design that is more consistent with the proposed dwelling. Even though the length of canal elevation has increased by approximately 3.00 metres, the overall design of the amended proposal is considered to have a minimal impact on the amenity of the adjoining property and the amenity of the area.

On 12 February 2014, the builder made a verbal allegation by phone against the Committee to the Committees Registrar. The builder alleged the Committee had not afforded him or the Applicant procedural fairness, and he considered that the negotiations between the Committee and Council following the hearing had been conducted in a biased manner.

On 12 February 2014, the Chairperson requested the Committees Registrar to send an email to all parties advising that an allegation of lack of procedural fairness and perceived bias had been made against the Committee and as such, all parties were being provided with a further opportunity to review and provide comments on the revised design by COB Monday 17 February 2014 to the Registrar.

On 16 February 2014, the builder emailed a submission to the Registrar. This submission included a letter from the Applicant, adjoining owner consent letter dated 17 November 2013 and photographs of other properties.

On 17 February 2014, the Assessment Manager emailed a submission to the Registrar. This submission questioned the validity of the Council's advice letter under section 287 of the SPA. It is noted that the Assessment Manager's approved plans attached to the Decision Notice dated 17 December 2013 includes a written notation for the part refusal of the outdoor entertainment area. As previously stated, the Committee noted that even though the Council plans did not include a similar notation, the stamp on the plans states "*This plan accompanies the Concurrence Agency Response*". The Committee is of the view that this connects the plans directly to the content of the Council response letter.

No response was received from Council in relation to the amended setbacks indicated on the architectural drawings prepared by Ropann Constructions Pty Ltd identified as Project number Jc420 sheets A000, A101, A201 and A202 all being Issue D dated 11 February 2014.

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 24 December 2013.
2. The referral agency response dated 4 December 2013 from Council to Fastrack Building Certification
3. The development application Decision Notice dated 17 December 2013 from Fastrack building Certification to the Applicant.
4. Verbal submission made by the Applicant and Builder at the hearing.
5. Verbal and written submissions made by Council at the hearing.
6. *Sustainable Planning Act 2009 (SPA)*.
7. Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.

8. Queensland Development Code MP 1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m2 and over (QDC MP1.2)
9. National Construction Code 2013, Volume 2, Section 3.7.1 – Fire Separation (NCC 2013).
10. Email correspondence from the Builder dated 7 February 2014 – Site Plan and 3D view of a modified design.
11. Email correspondence from Council dated 7 February 2014 – Council’s comments in relation to the modified design.
12. Email correspondence from the Committee to the Builder dated 8 February 2014 with the Committee’s acceptable design modifications after considering Council’s comments in relation the modified design.
13. Email correspondence to the Committee from the Builder dated 11 February 2014 with an amended design – articulated side setback, 2.40 metres setback to the canal and skillion roof.
14. Email correspondence from the Registrar to all Parties dated 12 February 2014.
15. Email correspondence to the Registrar from the Builder dated Sunday 16 February 2014
16. Email correspondence to the Registrar from the Assessment Manager dated 17 February 2014.

Findings of Fact

The Committee makes the following findings of fact:

- The subject site abuts a Council Reserve on its north alignment and the canal on the west alignment. There is a 2 storey dwelling on the south side of the subject site. The existing dwelling is being demolished and will be replaced with a new larger dwelling that includes an outdoor entertainment area.
- An Application was made to Council, as Concurrence Agency, for a siting variation for the Garage and Outdoor entertainment area components.
- Concurrence Agency advice included a part approval and part refusal of the Application. The refused part involved the outdoor entertainment area and the reasons for refusal were stated as:

The proposed siting of 1.790 metres for the covered outdoor entertainment area does not comply and cannot be conditioned to comply with the Caloundra City Plan 2004, Specific Outcome O4 (4.50 metres) Setbacks to Canals and Artificial Waterways.

O4 – Buildings and structures are Buildings and structures are adequately setback from canals and other artificial waterways (e.g. lakes) to:

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

(i) ~~privacy and overlooking;~~

(ii) views and vistas;

(iii) building character and appearance; and

(iv) building massing and scale as seen from neighbouring premises

- The Assessment Manager issued a Decision Notice which part refused the Application based on Council’s advice letter.
- The Caloundra City Plan 2004, Code 8.5 Detached House Code includes specific alternative provisions for setbacks to canals and artificial waterways.
- The QDC MP 1.2 determines the design and siting standard for single detached housing on lots 450sq/m and over. Section P2 for side and rear boundary clearance requirements states:

Buildings and structures -

- (a) provide adequate daylight and ventilation to habitable rooms; and*
- (b) allow adequate light and ventilation to habitable rooms on adjoining lots.*
- (c) does not adversely impact on the amenity and privacy of residents on adjoining lots.*

- The Council advice letter is silent on the part of the outdoor entertainment area that encroaches into the QDC MP 1.2, section A2 requirements. The Committee considered that Council has no issues with that part of the outdoor entertainment area not within the canal setback requirements.
- Negotiations after the appeal hearing culminated in all parties agreeing to a set of architectural drawings prepared by Ropann Constructions Pty Ltd. These drawings are identified as Project number Jc420 sheets A000, A101, A201 and A202 all being Issue D dated 11 February 2014.

Reasons for the Decision

Having regard to the above, the Committee considers that subject to conditions including compliance with the revised plans referenced above, the amended proposal satisfies Specific Outcome O4 (Setbacks to Canals and Artificial Waterways).

The proposal as amended has increased the setback from the canal to 2.40metres, provides articulation to the side boundary wall at the 4.50 metre setback point and reduced the building height with a roof design that is more consistent with the proposed dwelling.

Even though the length of canal elevation has increased by approximately 3.00 metres, the overall design of the amended proposal is considered to have a minimal impact on the amenity of the adjoining property and the amenity of the area.

John Dunn
Building and Development Committee Chair
Date: 3 March 2014

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 Planning and Environment Court 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) 3237 0403 Facsimile (07) 3237 1248