



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	47 - 10
Applicant:	Bevan and Beth Walker
Assessment Manager:	N/A
Concurrence Agency:	Sunshine Coast Regional Council (Council)
Site Address:	32 Coonowrin Street Battery Hill, Caloundra described as Lot 42 on RP 164092 – the subject site.

Appeal

Appeal under section 527 of the Sustainable Planning Act 2009 (SPA) against the decision of Council to approve a preliminary development application for building works, namely for siting of an annexed unit, with conditions.

Date of hearing:	10:30am – Monday 2 August 2010
Place of hearing:	Council Chambers - 1 Omrah Avenue, Caloundra
Committee:	Mr Leo Blumkie – Chair
Present:	Mr Bevan Walker – Applicant Mrs Beth Walker – Applicant Mr Richard Prout – Sunshine Coast Regional Council

Decision:

The Committee, in accordance with section 564 of the SPA **changes** items 4 and 5 of the approval issued by the Council on 20 May 2010 and directs Council to issue an amended approval which includes the following:-

Item 4 - ASSESSMENT MANAGER CONDITIONS

Delete conditions 1 to 6 and replace them with the following conditions:-

1. The siting variation application approved applies only to the **annexed unit** (currently existing Class 10a Building) with a rear building setback distance of **240mm** from the **rear north West** boundary.
2. The existing 230mm brick wall on the north west wall is to remain a maintenance free wall and

is to have a maintenance free, aesthetically acceptable parapet capping, installed to enhance the appearance of the wall when viewed from the rear neighbours property, all to the satisfaction of the Council.

3. The side walls are to be modified to achieve a sound rating equivalent to that of a 230mm solid brick wall for a minimum distance of 1500mm from the rear boundary.
4. The ceiling is to have insulation installed to achieve an appropriate sound rating.
5. No windows are to be installed in the rear wall or be located within 1500mm from the north east rear boundary.
6. All external walls and floor are to achieve minimum standards for water penetration as required by Queensland Building Legislation.
7. Modifications are to be carried out to ensure that the building complies with the building standards for habitable construction.
8. The shower/toilet cubicle is to have the shower adjacent to the rear wall with the toilet suite at the opposite end.
9. The plumbing vent is to be located as far as possible from the rear boundary in a location that satisfies Plumbing and Drainage legislation and located to the satisfaction of Council.
10. No building works are to commence on site until such time as a Development Application for Building Work has been applied for and approved by a Building Certifier.
11. Should a building application not be submitted within **2 years** of the date of this appeal decision, this approval will become void, and
12. Siting is to be carried out in accordance with the plans included with the application for Siting Variation dated 8 April 2010 submitted by Trinder Drafting and Design.

Item 5 - PLANS/DOCUMENTS APPROVED

Delete the words under this heading and include new words that refer to the plans submitted with the application for Siting Variation dated 8 April 2010, submitted by Trinder Drafting and Design.

Attach the plans to the changed approval decision and stamp them as “stamped endorsed plans”.

Include the words:-

“The plans for this development are the attached stamped endorsed plans”.

Background

The site is a 555m² rectangular allotment located at 32 Coonowrin Street, Battery Hill, Caloundra and is within a low density residential precinct as per the Caloundra City Plan 2004.

The site is developed with a

- single storey class 1 building and
- class 10a building sited 240mm off the rear north west rear boundary and 1500mm off the north east side boundary.

Both buildings have existed for approximately 30 years and Council has no records of previous approvals available.

The applicant applied to Council for a siting variation on 9 April 2010 for the conversion of an existing class 10a shed to a class 1a annexed unit.

This was necessary as the existing building setback did not comply with the requirements of the Queensland Development Code (QDC) MP 1.2 (Design and siting standard for single detached housing – on lots 450m2 and over).

The proposal triggered an application to Council as the concurrence agency for preliminary approval for building work.

Prior to the lodgement of the application, the applicant had a number of discussions with Council officers regarding the proposal and was advised that it was not Council policy to allow class 1a buildings to be sited within the prescribed side and rear boundary clearances.

However, the applicant was advised that given the building was existing and was of brick construction, Council would give consideration to the application, subject to the support of the surrounding property owners.

Both adjoining property owners to the sides had no objection to the proposal, however the adjoining property owner to the rear was not supportive of the proposal.

Council officers met with the owners of the adjoining property at the rear of the site, who again advised that they did not support the conversion of the garage, as they were concerned with:-

- potential loss of privacy;
- potential increased noise;
- potential smells from the plumbing vent pipe, as it was located so close to their rear upper storey balcony;
- potential for the annexed unit to be rented out separately from the dwelling, which could increase all of the above issues.

The issues were discussed with the applicant and it was agreed to change the design to incorporate a storeroom between the annexed unit and the boundary.

An Information request was sent to the applicant on 19 April 2010 requesting:-

- Amended drawings incorporating a class 10a storeroom between the annexed unit and the boundary so that the unit was a minimum of 1500mm from the rear boundary or
- Demonstrate how the proposal complies with the Performance Criteria of MP 1.2 of the QDC.

The applicant submitted a response to the information request on 17 May 2010.

On the 20 May 2010 Council issued a conditional approval for the siting variation which included the incorporation of the class 10a storeroom between the unit and the boundary.

An appeal was lodged with the Building and Development Committee Registry 2 June 2010.

The Registrar advised Council on 29 June 2010 that an appeal had been lodged in relation to the conditional approval.

On 7 July 2010 the Building and Development Committee Chairperson advised Council and the applicant of the date, time and place for the hearing.

The location for the hearing was changed from the subject site to Council chambers by email from the Registrar on 12 July 2010.

Material Considered

The material considered in arriving at this decision comprises:-

1. Form 10 – Notice of Appeal, drawings, extracts, photographs and correspondence accompanying the appeal lodged with the Registrar on 2 June 2010.
2. The decision notice issued by Council as the assessment manager dated 20 May 2010.
3. Verbal submissions from the applicant at the hearing.
4. Verbal submissions from the Council representatives at the hearing.
5. Verbal submissions from the rear adjoining owner after the hearing at the adjoining owner's residence.
6. Correspondence from the rear adjoining owner dated 25 July 2010 who indicated their interest in the appeal.
7. Additional photographs supplied by the applicant to the Registry.
8. Caloundra City Plan 2004 – Detached House Code.
9. Locality diagram for Battery Hill
10. QDC MP 1.2 Design and Siting Standard for single detached housing - on lots 450m² and over.
11. Building Act 1975.
12. Building Regulation 2006.
13. SPA.
14. Building Code of Australia.

Findings of Fact

The Committee makes the following findings of fact:-

- The allotment is 555m² in area.
- An existing class 10a single storey building is sited 240mm from the rear boundary.
- The wall facing the rear boundary is 230mm face brick and has an incomplete unsightly parapet capping.
- The height of the wall is less than 4500mm
- The closest window in the side walls of the Class 10a building is 1930mm from the rear boundary.
- The rear neighbour has a two storey class 1 building, which includes a deck on the upper level, approximately 2000mm from the subject boundary and overlooking the subject existing class 10a building.
- The rear neighbour does not support the proposal.
- The Caloundra City Plan 2004 permits annexed units subject to specific conditions being satisfied.
- The proposal satisfies the conditions listed under acceptable solutions outlined in the City Plan for annexed units.
- MP 1.2 of the QDC is the applicable code for siting of single detached housing on lots over 450m².

Reasons for the Decision

Council is of the opinion that the proposal does not satisfy Performance Criteria (P2) clauses (b) and (c) namely:-

- (b) Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots;
- (c) Do not adversely impact on the amenity and privacy of residents on adjoining lots.

In response to (b)

The rear wall to the proposed unit is existing, there is no change to the length or height of the wall even the roof remains the same. Hence, there is no change to daylight available to habitable rooms on adjoining lots.

For similar reasons, there is no change to ventilation available to the habitable rooms on the adjoining lot.

The insertion of a storeroom between the unit and the boundary i.e within the same outer shell makes no difference to light and ventilation available to habitable rooms on adjoining lots.

In response to (c)

It is the Applicants right under the City plan to have an annexed unit provided it satisfies both the City Plan and the QDC MP 1.2

As mentioned under findings of facts the proposal satisfies the City plan.

Under (c) of MP1.2 the applicant under acceptable solutions could “as of right”

- locate an annexed unit 1500mm from the rear boundary and have windows facing the boundary;
- locate the toilet shower cubicle on the side facing the boundary and have windows to same facing the boundary.

This would have a far greater impact on the amenity and privacy of residents on the rear allotment, particularly when the proposal has:-

- no windows within 1930mm of the rear boundary and even then are not facing but are at 90 degrees to the rear boundary
- a 230mm solid brick wall which achieves a sound rating to the rear allotment.

and the applicant has agreed to:-

- provide a sound rating to the side walls
- provide sound insulation to the ceiling.

In regard to the neighbours submission:-

- Loss of amenity

Consider what the applicant could build as “as of right”. This would have a far greater impact on amenity. It would be possible to look directly into the unit from the deck. This is not possible under the proposal. It has been agreed to locate the vent as far as possible away from the rear boundary which eliminates that concern.

- Noise factor

The dwelling unit is an “as of right” under the City Plan. It is pointed out a class 10a building can be lawfully used to:-

- play hifi music,
- practice musical instruments
- wood turning, grinding etc

Although the proposed building would be built close to the boundary, it does not increase the noise factor, as it will not have any windows within 1930mm of the rear boundary. The noise factor could in fact be worsened if it was constructed within the normal minimum boundary setback, as windows facing the rear boundary would be permitted. Changing from a class 10a to a class 1a does not logically increase the potential noise factor.

- Loss of value/resale value of my property

Again consider the “as of right”. The Committee does not agree that the proposal impacts on the value. Again there is no authority to deny the applicant their right to build an annexed unit.

- Change of Council regulations

The change to the City Plan in 2004 allows owners to have annexed units subject to conditions. There is no power to deny the applicants rights to have an annexed unit.

- Future rental property

It is the applicants right to decide whether or not to rent the property. The Committee is of the opinion the unit would be suitable for 2 people.

The conditions included in the decision help to address the legitimate concerns raised by Council and the rear adjoining property owner.

The Committee believes that with the conditions included in the decision the proposal satisfies the performance criteria set out in the QDC MP 1.2.

Leo Blumkie
Building and Development Committee Chair
Date: 6 August 2010

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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248