



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	31-16
Applicant:	Brent Fitzgerald & Tania Fitzgerald
Assessment Manager:	The Certifier Pty. Ltd.
Concurrence Agency: (if applicable)	Moreton Bay Regional Council (Council)
Site Address:	1 Thomson Close North Lakes 4509, described as Lot 44 on SP163652 (the subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice of The Certifier Pty Ltd as the Assessment Manager to refuse a Development Application (Application) for two patio roof structures within the prescribed setbacks of the road and rear boundary prescribed under the North Lakes Sector Plan. Moreton Bay Regional Council as the concurrence agency, directed the refusal

Date and time of hearing:	15 September 2015, 10:30am - 1:00pm
Place of hearing:	The subject site
Committee:	James Dunstan – Chair Linda Tait – General Referee
Present:	Brent Fitzgerald – Property Owner Graham Dewar - Builder Chris Trewin – Council Representative Melanie Marsellos – Council Representative Murray Ross – 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 on 6 September 2016 to refuse the Application for the proposed patio structures and approves the siting subject to the following conditions:

1. The patio cover to the rear boundary is to be sited and constructed generally in accordance with the plans prepared and submitted to the committee on Monday 10 October 2016 subject to the following:
 - a. The rear setback is to be a minimum 1.5m measured to the outermost projection;
and

- b. A minimum 500mm wide landscaping area is to be provided between the rear patio and rear boundary fencing to allow for soft landscaping to enhance privacy; and
 - c. Battens/louvres to be provided to the underside of the patio roof for a minimum depth of 400mm to provide visual privacy from upper floor windows of the adjoining dwelling;
2. The patio cover to the secondary road boundary is to be sited and constructed generally in accordance with the plans prepared and submitted to the committee on Monday 10 October 2016 subject to the following:
 - a. The secondary frontage setback is to be a minimum 400mm measured to the outermost projection; and
 - b. No more than 2000mm of the structure is permitted to be roofed, measured from the existing dwelling, with the remainder being an unroofed, pergola structure; and
 - c. Soft landscaping is to be planted between the edge of the open pergola structure and boundary;

Background

The site is a 721m² allotment located on the corner of Thomson Close and Marsh Parade within sector 32 of the North Lakes residential development.

The existing development on the site is a two storey detached dwelling, swimming pool and existing outbuilding structure.

A Development Application (Application) was submitted for a building approval for construction of two new patio covers, located within the prescribed secondary road boundary, and rear boundary setbacks prescribed under the Mango Hill Infrastructure Development Control Plan, Residential Sector Thirty Two (DCP).

The Assessment Manager refused the Application in part in accordance with the Concurrence Agency advice being deemed inconsistent with the intent and desired outcomes of the DCP.

Council issued the concurrence refusal on the following grounds:

“The proposal is not supported by council. It has been determined that due to the topographical positioning and prominence of the patios that the building work in its built form is considered to negatively impact upon the existing streetscape character and neighbourhood amenity.”

The Assessment Manager, upon receiving the Council advice issued a Decision Notice dated 6 September 2016, refusing the development permit due to the concurrence agency advice.

The Applicant then lodged an Application for Appeal (Form 10) with the Committee’s Registrar on 7 September 2016. A hearing was conducted on the subject site at 10.30am on 15 September 2016

Prior to the hearing, a drive-by inspection of the subject site and surrounding streets was undertaken to identify the existing established streetscape character of the area.

The Applicant, Builder and Council representatives made representations at hearing.

Applicant representations:

- The proposed structures are to enhance the use of the existing private open space for recreational purposes;
- The adjoining dwelling located at number 6 Marsh Parade, is setback approximately 900mm from the side boundary, and is two storey with windows directly overlooking the outdoor space;

- The proposed patio to the rear would provide additional privacy;
- The patio to the rear cannot be relocated as there is an existing pool structure and due to the nature of a corner lot;
- The patio to the secondary frontage is to provide additional covered area for recreational use;
- Intent is to locate outdoor facilities such as BBQ outside the main entertaining area.

Council's representations:

- The rear setback prescribed under the sector plan for this type of allotment is 6m, with an encroachment to 3m for 60% of the rear boundary length permitted;
- The proposal for the rear patio to be sited 900mm from the rear boundary, was considered to have a negative impact on the neighbour;
- Due to the size of the lot, council has concerns of potential overdevelopment of the site;
- The patio to the secondary frontage is considered to have a negative impact on the streetscape when viewed from Marsh Parade;
- The opposite frontage of Marsh Parade is for open parklands, and council is intent on maintaining this open park streetscape for the community;
- Council takes the position that they need to protect the amenity of neighbours and that even with consent, only minor encroachments would likely be considered.

Following the representations made above, and reviewing the site and proposed locations, including discussions between all parties present, both council and the applicant were asked to consider if they would be willing to accept a negotiated outcome.

A period of three weeks was granted to facilitate the applicant and council the ability to negotiate a mutual outcome.

The applicant submitted revised drawings with the following modifications:

1. Rear Patio:
 - The rear setback is to be a minimum 1.5m measured to the outermost projection; and
 - A minimum 500mm wide landscaping area is to be provided between the rear patio and rear boundary fencing to allow for soft landscaping to enhance privacy; and
 - Battens/louvres to be provided to the underside of the patio roof for a minimum depth of 400mm to provide visual privacy from upper floor windows of the adjoining dwelling;
2. Secondary Frontage Patio:
 - The secondary frontage setback is to be a minimum 400mm measured to the outermost projection; and
 - No more than 2000mm of the structure is permitted to be roofed, measured from the existing dwelling, with the remainder being an unroofed, pergola structure; and
 - Soft landscaping is to be planted between the edge of the open pergola structure and boundary;

Upon receipt and review of the above modifications, council confirmed to the committee that the amended drawings were acceptable and satisfied council's requirements.

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 September 2016
2. Decision Notice – Refusal issued by The Certifier Pty. Ltd. dated 6 September 2016

3. Council Concurrence Agency response – Refused by Moreton Bay Regional Council
4. Plans and specifications provided by the applicant for the proposed patio structures
5. Neighbour's Letter – Provided by the Applicant to the committee in support of the Application after the hearing;
6. The *Sustainable Planning Act 2009* (SPA)
7. The Sustainable Planning Regulation 2009 (SPR)
8. Mango Hill Infrastructure Development Control Plan, Residential Sector Thirty Two
9. Verbal representation by the Applicant at the hearing;
10. Verbal representations by Council at the hearing;
11. Correspondence and further plans and documentation provided during the negotiation period agreed to by all parties.

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is a corner allotment located within a well established part of North Lakes;
2. The proposed patio structures did not comply with the setback provisions for a Premium Traditional allotment under the DCP;
3. The Application, made to The Certifier Pty. Ltd. as the Assessment Manager was correctly referred to Council as a Concurrence Agency under the Sustainable Planning Regulation 2009, Schedule 7, Table 1, Item 19;
4. The reason for refusal was as follows:
"The proposal is not supported by council. It has been determined that due to the topographical positioning and prominence of the patios that the building work in its built form is considered to negatively impact upon the existing streetscape character and neighbourhood amenity."
5. Revised siting and landscape plans were provided to Council for review with modifications made based on discussions during the hearing;
6. A negotiated outcome was reached between the owner and council through modifications to the proposed structures and provision of soft landscaping to reduce the impact to the adjoining neighbour and Marsh Parade streetscape.

Reasons for the Decision

The committee has considered all information provided and through negotiations and minor design modifications between Council and the applicant, a satisfactory siting outcome has been determined where council have advised that the patios will achieve the requirements and intent of the DCP.

Therefore the Application is considered to meet the design intent of the DCP, and the Committee supports the siting of the patio structures to the secondary frontage and rear boundary subject to the below conditions:

1. The patio cover to the rear boundary is to be sited and constructed generally in accordance with the plans prepared and submitted to the committee on Monday 10 October 2016 subject to the following:
 - a. The rear setback is to be a minimum 1.5m measured to the outermost projection; and
 - b. A minimum 500mm wide landscaping area is to be provided between the rear patio and rear boundary fencing to allow for soft landscaping to enhance privacy; and
 - c. Battens/louvres to be provided to the underside of the patio roof for a minimum depth of 400mm to provide visual privacy from upper floor windows of the adjoining dwelling;

2. The patio cover to the secondary road boundary is to be sited and constructed generally in accordance with the plans prepared and submitted to the committee on Monday 10 October 2016 subject to the following:
 - a. The secondary frontage setback is to be a minimum 400mm measured to the outermost projection; and
 - b. No more than 2000mm of the structure is permitted to be roofed, measured from the existing dwelling, with the remainder being an unroofed, pergola structure; and
 - c. Soft landscaping is to be planted between the edge of the open pergola structure and boundary.

James Dunstan
Building and Development Committee Chair
Date: 1 November 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
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