



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	38 - 13
Applicant:	Mr Scott Mclvor on behalf of Mclvor Constructions
Assessment Manager:	Building Certification Group (BCG)
Concurrence Agency: (if applicable)	Brisbane City Council (Council)
Site Address:	41 Watson Street, Newmarket and described as Lot 21 on RP 42424 – the subject site

Appeal

The appeal is made pursuant to section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the BCG as the Assessment Manager to refuse a Building Development Application (the Application) for the design and siting of a structure incorporating an unroofed swimming pool deck, a class 10b swimming pool and a 1.2m high open fence around the perimeter of the deck.

Date and time of hearing:	Friday 17 January 2014 at 10am
Place of hearing:	The subject site
Committee:	Mr Peter Rourke - Chair
Present:	Mr Scott Mclvor – Applicant Ms Adrienne Mclvor - Observer Mr Rod Retell – Applicants representative Mr Duncan Kirk - Built Environment Officer, Compliance and Regulatory Services, Brisbane Lifestyle, Brisbane City Council Mr Nicholas Knowlman - Built Environment Officer, Compliance and Regulatory Services, Brisbane Lifestyle, Brisbane City Council.

Decision:

In accordance with section 564(2) (c) of the SPA, the Committee **sets aside** the decision of the Assessment Manager and approves the building work incorporating the unroofed swimming pool deck and the 1.2m high perimeter fence as shown on drawings identified as 12010 Dwg 01 (issue date 12/09/13) Dwg 08 and 09 (issue date 23//09/13).

Background

The subject site is rectangular in shape and approximately 960 m² in area. The subject building work is located at the rear of the property. The natural ground falls approximately 4m from east to west over the area where the class 10a building is constructed.

The adjacent neighbour's land is similarly sloping making it difficult to build anything on any of the sites without having some visual impact.

The existing house is located on a flat part of the land. Rather than fill the area over the sloping part of the site to bring it up to the ground level of the existing house, the owners chose to construct an elevated, reinforced concrete deck supported off concrete block walls. The deck also forms the roof of storerooms and a pool pump enclosure underneath. The reinforced concrete pool is located approximately central in the deck and is flush with the surface of the deck. An open, 1.2 m high metal pool fence has been placed around the perimeter of the deck.

At the north, south (side) and west (rear) elevations, the walls supporting the concrete deck vary in height but their height, measured to the top of the unroofed deck from the adjacent natural ground level, do not exceed the 4.5m maximum height permitted by the Acceptable Solution A2 (a) of Queensland Development Code (QDC MP1.2). The only part of the structure that exceeds the maximum 4.5m height permitted in A2 of QDC MP1.2 is the open metal fence located around the perimeter of the deck. To satisfy Acceptable Solution A2 of QDC MP1.2, the parts of the building work in excess of 4.5 m high must be set back at least 2m from the side and rear boundaries or alternatively, be shown to comply with the relevant Performance Criteria of QDC MP1.2 before the BCG can approve the application. The Council can only undertake assessment against Performance criterion P2 of MP1.2 of the QDC.

On 22 December 2013, pursuant to section 287 (2) (b) of the SPA, the Assessment Manager was directed to refuse the application on the grounds that the Council, as the concurrence agency, reasonably believes the design and siting of the structures does not comply with performance criteria P1, P2, P3 and P6 of QDC MP1.2.

The reasons given by the council for its decision are that:

- The unenclosed nature of the elevated deck will adversely impact on the privacy of neighbouring properties.
- The bulk and articulation of the building will have an adverse impact on the amenity of neighbouring properties.
- Alternative siting of the structure is available on the 968m² parcel of land that would comply with the design and siting standard.

The Applicant indicated that it was not possible to place the structure in another location on the site. Large trees are situated in the only available space on the site. The trees are subject to a vegetation protection order by the Council. The Applicant indicated that advice received from an arborist suggests that serious damage to the trees' root system would occur if construction activities were carried out too close.

It was agreed at the hearing that Performance Criteria P1, P3 and P6 of QDC MP 1.2 are not relevant to this appeal. The only Performance criterion relevant to the appeal is P2. Performance criterion P2 requires building and structures:

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

It was agreed at the hearing that the only element of Performance Criterion P2 relevant to the appeal is P2 (c). Buildings and structures adjacent to side and rear boundaries that do not exceed 4.5m in height are deemed to satisfy P2 of QDC MP1.2.

There are no alternative siting standards, pursuant to section 33 of the *Building Act 1975*, applicable to the subject site.

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 11 December 2013.

2. Queensland Development Code Part MP1.2 – Design and siting standards for single detached housing – on lots greater than 450m² (QDC MP1.2)
3. *Sustainable Planning Act 2009*.(SPA)
4. *Building Act 1975*. (BA)
5. Council’s response for design and siting dated 22/11/13.

Findings of Fact

The Committee makes the following findings of fact.

- The building work for the structure, measured to the top of the perimeter fence from the adjacent natural ground level, is in excess of 4.5m and is therefore subject to concurrence referral.
- There are no alternative siting standards, pursuant to section 33 of the *Building Act 1975*, applicable to the site.
- Because the land area exceeds 450m², QDC MP1.2 applies to the site.
- The only Performance Criterion of QDC MP1.2 relevant to the appeal is P2 (c)
- The height of the structure measured to the top of the unroofed decked does not exceed 4.5 m in height. The only part of the structure exceeding 4.5 m in height is the open metal fence around the perimeter of the deck. Without the fence, the structure would comply with the QDC MP 1.2.

Reasons for the Decision

- The supporting walls and unroofed deck form the bulk of the building work. Those parts of the structure comply with QDC MP1.2. The parts of the fence around the perimeter of the deck, which are in excess of 4.5 metres above the adjacent ground level, could be set back an additional 500mm to comply with the Acceptable Solution of A2 of the QDC MP1.2 but little would be gained by doing so.
- The open metal fence has no adverse impact on the amenity and privacy of residents on adjoining lots.
- The steep nature of the subject site and adjoining side and rear properties is such that placing the structure 2m or more from the boundaries, so that it complies with Acceptable Solution A2 of QDC MP1.2, would not lessen its impact on the neighbouring properties.
- The structure complies with Performance Criterion P2 (c) of QDC MP 1.2 in its current location.

Peter Rourke
Building and Development Committee Chair
Date: 21 January 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
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