



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	06-10
Applicant:	Milan Bodoki
Assessment Manager:	GMA Certification Group Pty Ltd
Concurrence Agency: (if applicable)	Gold Coast City Council (Council)
Site Address:	47 Cozens Way, Highland Park and described as lot 1 RP 224492 – the subject site

Appeal

Appeal under Section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of GMA Certification Group Pty Ltd as the assessment manager to refuse a development application for construction of extensions to a dwelling within the road boundary setback, comprising a habitable space to the dwelling to within 4.9 metres, a carport to within 1.5 metres and a “Bali Hut” to within 2.0 metres of a road alignment. This decision was based on a deemed refusal by Council.

Date of hearing:	Wednesday 10 February 2010 at 12.00pm
Place of hearing:	The subject site
Committee:	Dennis Leadbetter – Chairperson Greg Rust – General referee
Present:	Milan Bodoki – Applicant/owner Geoff Mitchell – Assessment manager Tanya Smith – Assessment manager Andrew Kewell – Council representative Patrick Giess – Council representative Richard Webber – Council representative

Decision:

The Committee, in accordance with section 564 of the SPA, **sets aside** the decision of GMA Certification Group dated 7 January 2010, based on the deemed refusal by the concurrence agency and replaces it with the following decision:

The assessment manager, in accordance with Section 564 (1) of the SPA, is **directed** to decide the development application for building works as if there were no concurrence agency requirements, with the following conditions:

(a) Habitable extension to residence:

No further conditions.

(b) Carport:

- The carport can be constructed in the position indicated on drawing numbered 085_10_NCD dated 25.05.10 to within 1.5 metres measured to the outer most projection to the street alignment;
- The carport to remain open on two sides and not less than 1/3 of its perimeter shall remain open.
- At least 60% of its perimeter along the line of supports of all areas within the 6 metre road alignment setback shall open.
- The carport may have a door for security, but the portion of the door above 2.0 metres above ground level shall be open or of a grille nature. Such a door shall be considered as “open” in calculating that portion of the perimeter along the line of supports within the 6 metre road alignment setback.

(c) Bali Hut:

It shall remain open to the perimeter.

Background

The applicant lodged a development application with the assessment manager for approval of a development permit for building works, for the construction of extensions to an existing dwelling, comprising habitable space, carport and a Bali Hut on the subject site.

The assessment manager lodged a concurrence agency application with Council as these works encroached on the road boundary setback.

Council issued a concurrence agency response – unsatisfactory application to the applicant on 14 October 2009. Council refused the application on the grounds that:

The application was determined by Council to be an “unsatisfactory application” as:

- The submitted application form as lodged is not current. Please complete the prescribed “Referral Agency Assessment Application” a copy of which may be obtained from a Council office or online at www.goldcoast.qld.gov.au ; and
- The applicant has not completed/fulfilled the following mandatory sections of the prescribed application form.

As the response from Council did not approve the application either wholly or with conditions, it was deemed to be refused by the assessment manager. The assessment manager issued a decision notice to the applicant refusing the development permit for building works on 7 January 2010.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Notice of Appeal and grounds of appeal contained therein received by the Registrar on 25 January 2010.
2. Drawings submitted with the appeal.
3. Decision notice issued by the assessment manager on 7 January 2010

4. Concurrence agency response from Council dated 14 October 2009
5. Verbal submissions from those attending the appeal hearing.
6. *The SPA.*
7. The Sustainable Planning Regulation 2009 (SPR)
8. The *Building Act 1975.*
9. The Queensland Development Code (QDC) Part MP 1.2.
10. Additional drawings submitted by the applicant on 1 March 2010 and subsequent drawings submitted on 10 September 2010, as requested by the Committee.

Findings of Fact

The Committee makes the following findings of fact:

1. The dwelling and Bali Hut are existing on the site.
2. The dwelling is a single story structure.
3. The site has an area of 820 metres² and is of a basic rectangular shape.
4. The site is a corner site, with the main frontage to Cozens Way
5. The site has a reasonable fall across the site from south west to north east, and a building platform has been cut resulting in a rising bank along Explorers Way increasing in height from approximately 600 mm at the corner with Cozens Way to a substantial bank adjacent the location of the Bali Hut, such that the height of the roof above the level of the road boundary is minimal. The site has been filled to the eastern alignment to approx 1.2 metres above the Cozens Way road reserve level
6. Vehicular access to the site is from Cozens Way adjacent to the corner. This restricts visibility considerably.
7. The area is a developed residential neighbourhood comprising mostly single story dwellings.

Reasons for the Decision

Council representatives at the hearing indicated that they did not have any objection to the development concept, but were concerned with the content of the submission and its inadequacy to allow an adequate and reasonable assessment of the proposed development. The Committee agrees with Council that the quality of the submission was unacceptable.

A subsequent submission was also inadequate, as it did not clearly show the extent of the works.

The plans submitted on 10 September 2010 provide a scale drawing showing dimensions to boundaries from structure and eaves, but still leaves considerable detail undefined.

The proposed structures do comply with the provisions of the QDC MP 1.2 for carports and garden structures (Bali Hut) within the road boundary setback. The topography of the site also minimizes the potential impact on traffic vision at the corner, because of the extent of the cut to the site.

The final matter is the encroachment of the habitable space, for a media room, to within 4.9 metres of the road boundary alignment. The Explorers Way road frontage is a secondary road frontage, and the topography of the site would result in the extension to the dwelling having little impact on the streetscape. If Explorers Way were the nominated road frontage, under QDC MP1.2 a reduction to the street alignment setback to around 4 metres would be allowable. In a non-corner block the allowable side alignment set back would be 1.5 metres, having cognizance of the building's single story height. Many local authorities provide for reduced secondary road boundary set backs within their planning schemes substantially greater than what is requested in this instance.

Dennis Leadbetter

Dip Arch QUT, Grad Dip Proj Man QUT, METM UQ

Building and Development Committee Chair

Date: 7 April 2011

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
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