



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	43/2011
Applicant:	Gary and Sharon Wedel
Assessment Manager:	Alliance Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	21 Acacia Avenue, Coolum Beach, and described as Lot 226 on RP 91490 — the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the assessment manager's decision, dated 20 May 2011, to refuse a development application for building works for a dwelling house (class 1A).

Date of hearing:	10am on Wednesday 29 June 2011
Place of hearing:	The subject site
Committee:	Ms Kari Stephens – Chairperson
Present:	Mr Paul Riley – Council representative Mr Gary Wedel – Owner Mr Ian Simpson – Assessment Manager

Decision

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of the assessment manager, and **directs** the assessment manager to **approve** the development application, including all original conditions as per the decision dated 20 May 2011, save for the removal of condition BA9, which shall be replaced with the following condition:-

BA9 The ground level of the building may only be utilised for non-habitable purposes. Any habitable room must have a finished floor level of at least 4.0m AHD. To this end:

- i) A notation shall be placed on the Council property rates notice stating that the ground floor of the building shall be non-habitable due to flooding and/or drainage constraints; and
- ii) Any walls around the perimeter of the ground level of the building shall be slatted or otherwise constructed to allow for the conveyance of flood/stormwater flow through the building during flood events.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar.
2. An inspection of the site and the locality, undertaken by the Chairperson.
3. The assessment manager's decision notice dated 20 May 2011.
4. Submissions from the parties at the hearing.
5. The Planning Scheme for the former Maroochy Shire Council – in particular, code 4.1 "Code for the Development of Detached Houses and Display Homes".
6. The Queensland Development Code (QDC) – Part MP1.2.
7. The Building Regulation 2006.
8. The *Sustainable Planning Act 2009* and its regulations.

Background

The subject site is located in the suburb of Coolum Beach in an area characterised by older style detached residential dwellings, primarily single-storey. The subject site is located within a "neighbourhood residential" precinct in the Maroochy Plan 2000.

The land is flat and is located in an area designated as "drainage deficient". The site is vacant and has an area of approximately 607m². This allotment size is fairly typical for the area. The site is bounded by detached houses on each of the side and rear boundaries.

The proposed house is intended to be constructed as a two-storey elevated home with the habitable areas on the second floor. The ground floor will comprise only a garage and a laundry. The balance of the undercroft area is proposed to be screened with vertical timber batons.

Findings of Fact

The Committee makes the following findings of fact:

The Sunshine Coast Regional Council was a concurrence agency for the application. The concurrence agency response, dated 18 May 2011 recommends refusal of the application because of on an alleged non-compliance with the provisions of code 4.1 "Code for the Development of Detached Houses and Display Homes" (the code) of the Maroochy Plan 2000. The reason for refusal is as follows:

Floor levels of detached houses and display homes are provided at a height above flood levels at which the safety of people on the site is maintained and potential damage to property on the site is minimised.

The assessment manager, despite the recommendation for refusal from the concurrence agency, approved the application for building works but included condition BA9, which requires a minimum floor level of 4.0 m AHD and filling across the whole of the block.

Existing ground level is approximately 3.12m adjacent to Acacia Avenue, and 2.92m at the rear of the site. According to the Sunshine Coast Council's flood search certificate dated 27 April 2011, the defined flood level is 3.28m AHD and the required minimum floor level is 4.0m AHD.

Compliance with the assessment manager's condition would result in fill to a depth of 800mm to 1.0m across the site, which in turn would mean finished floor levels for the ground floor would be at, or above, the minimum of 4.0m AHD.

The reason for refusal provided by the concurrence agency, is a replication of performance criteria P1 of Element 9: Flooding from the code. The purpose of the element, together with the acceptable measures are provided below:

(9) Element: Flooding

PURPOSE

To ensure acceptable levels of flood immunity for people and buildings.

PERFORMANCE CRITERIA	ACCEPTABLE MEASURES
<p>P1 Floor levels of Detached houses and Display homes are provided at a height above flood levels at which the safety of people on the site is maintained and potential damage to property on the site is minimised.</p>	<p>A1.1 In any Flood Prone or Drainage Constraint Area as shown on Regulatory Map No 1.5, the floor levels of all buildings¹⁵ are:</p> <p>{a) the greater of:</p> <ul style="list-style-type: none"> (i) 2.5m AHD (to provide protection from storm surge events); or (ii) 400mm above the 100 year ARI flood level; or (iii) 600mm above the highest recorded flood level; <p>OR</p> <p>{b) where an extension to an existing building, not less than the floor level of existing Habitable rooms.</p> <p>A1.2 Net filling in any Flood Prone or Drainage Constraint Area as shown on Regulatory Map No 1.5 does not exceed 50m³.</p>

It is relevant to note that the performance criteria does not differentiate between habitable rooms and non-habitable rooms. That is, the whole of the building, including the garage, needs to have a floor area above flood levels. In this particular case, all of the habitable areas of the proposed dwelling are on the second level of the building, and are well clear of the defined flood level. Only the garage and the laundry (non-habitable) are located on the ground floor, which with a finished floor level of 3.2 m AHD, is below the concurrence agency is below the minimum floor level.

A garage with a finished floor level 4.0 m would also require fill to the driveway area, because of the change in levels (of up to 1.0m). In fact, condition BA9 requires that fill be provided across the whole of the block. This would result in changes of level on all four boundaries, and would involve in excess of 50m³ of fill despite acceptable measure 1.2 preferring fill to be limited to 50m³.

This proposal, in the Committee's opinion, can satisfy the performance criteria because the only floor levels which are below 4m AHD, are the garage and the laundry (non-habitable) and as a result, should a flood event occur, the safety of people can be maintained and potential damage will be minimised.

Relevantly, the Building Regulation 2006 (section 13, 1B) states that a local government may "declare the level to which the floor levels of **habitable** rooms.... on the land must be built" (author's emphasis). There is no reference to floor levels of non-habitable building areas such as garages.

In consideration of the Building Regulation 2006, there is no requirement for the Sunshine Coast Regional Council to declare minimum floor levels for anything other than habitable rooms. As the proposal includes habitable rooms on the second level, all of which are well clear of the minimum floor level stated in the flood certificate, the proposal complies with the building regulation 2006.

Section 288 of the *Sustainable Planning Act 2009* outlines the limitations on a concurrence agency's power to refuse an application. In summary, a concurrence agency can only refuse the application if the development would "compromise the intent of the designation" or if the building or structure "will have an **extremely adverse effect**" on the amenity of its character or neighbourhood (author's emphasis).

The designation of the land is Neighbourhood Residential, so the development of a dwelling house within the designation, regardless of the floor level, in the Committee's opinion, does not compromise the intent of the designation. In terms of the proposal's impact on character and amenity, the design is considered to be uncontentious and quite ordinary. It is the committee's opinion that the proposal would not have an extremely adverse effect on either the character or the amenity of the neighbourhood.

In assessment of section 288 of the *Sustainable Planning Act 2009*, it is the Committee's opinion that the concurrence agency did not have the power to refuse the application on the grounds provided.

Reasons for the Decision

The concurrence agency did not have the power to refuse the application because the proposal did not compromise the intent of the designation, nor did it have an extremely adverse effect on the amenity or character of the neighbourhood.

The Building Regulation 2006 (clause 13) only provides for the local government to set minimum floor levels on habitable rooms (as opposed to non-habitable rooms).

The proposal is for a building where all habitable rooms are located on the second storey, well clear of the minimum floor levels and possible flood inundation. Only the garage and the laundry (non-habitable) are located on the ground floor. In the event of a flood situation, it is the Committee's opinion that the safety of people can be maintained and potential damage will be minimised. Conditions reinforcing the ground floor status as non-habitable can be applied to the approval.

It is the Committee's opinion that the decision of the assessment manager be **set aside** and replaced with a decision incorporating a new condition BA9.

Kari Stephens
Chairperson
Building and Development Committee Chair
Date: 5 August 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
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248