



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	06-14
Applicant:	Mr John Elks
Assessment Manager:	Mr Bruce Milgate, Alliance Building Approvals.
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	441 Mount Mellum Road Mount Mellum described as Lot 1 on RP 200782 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application for Building Work for the increase in the height of and existing tennis court fence based upon the direction of the Concurrence Agency.

Date and time of hearing:	10.00 am, 20 March 2014.
Place of hearing:	The subject site.
Committee:	Mr Don Grehan – Chair
Present:	Mr John Elks – Owner; Mr Ian Plevy – Applicant's representative; Mr Ian Simpson – Assessment Managers representative; Mr Gary Sheffield – Council representative.

Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564(2)(a) of SPA **confirms** the decision of the Assessment Manager to refuse the Application based on Concurrence Agency advice.

Background

Alliance Building Approvals refused a Development Application (Application) for Building Works in relation to a proposal to extend the height of an existing tennis court fence located within 1.5m of the side boundary of an allotment following receipt of a Concurrence Agency advice from the Sunshine Coast Regional Council.

The proposal to increase the height of the structure by an additional 2.0m arose in response to ongoing issues of neighbourhood dispute, privacy and nuisance and included the provision of screening material or fabric.

The Council, in directing the refusal, considered that the adjoining residents would be adversely impacted in terms of the bulk of the structure, outlook, views, nuisance and safety.

The Applicant, dissatisfied with the refusal, lodged an appeal on 5 March 2014 with the Committees Registrar against the decision of the Assessment Manager.

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 05 March 2014.
2. Alliance Building Approvals Decision Notice, Reference No.2014/011 dated 26 February 2014.
3. Sunshine Coast Region Councils Concurrence Agency Response, Reference No. RAB14/0022 dated 07 February 2014.
4. Caloundra City Council's Boundary Setback Relaxation, Reference No. 700-002-000/33136-3 dated 19 September 1997.
5. Verbal submissions from the Applicant's representative at the hearing.
6. Verbal submissions from Council's representative at the hearing.
7. The *Sustainable Planning Act 2009* (SPA).
8. The *Building Act 1975* (BA).
9. Queensland Development Code Mandatory Part 1.2 Design and Siting Standard for Single Detached Housing – On Lots 450m² and Over (QDC MP1.2).

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is a 6776m² rural allotment situated on the escarpment at the southern end of the Blackall Range and accommodates an established two storey dwelling, swimming pool and tennis court.
- The appeal relates to the height of the tennis court fence constructed midway along and within 1.5m of the eastern property boundary of the subject site.
- Council records indicate that the tennis court was constructed circa 1997/1998 with an Application for relaxation of the siting provision of the Standard Building Law having been approved by Caloundra City Council on the 19th of September 1997.
- Council records indicate that the 1997 Boundary Setback Relaxation permitted the construction of a chain wire fence to a height of 3.0m above the level of a 1.2m high concrete block retaining wall that had been constructed to facilitate a level platform for the tennis court subject to the fence being "*of and open weave type not to obstruct the outlook from adjoining properties*".
- The effective height of the tennis court fence permitted by the 1997 Boundary Setback Relaxation above the level of natural ground at the allotment boundary is 5.2m.
- Council records indicate that in 2009 a new dwelling was constructed on the adjoining allotment to the east of the subject site at 439 Mount Mellum Road, Mount Mellum in 2009.
- The dwelling constructed at 439 Mount Mellum Road, Mount Mellum is located adjacent to the tennis court fence and is sited approximately 6.0m from the dividing boundary. Topographically, the dwelling is situated down slope from the natural ground level at the allotment boundary and has incorporated a cut into the embankment to facilitate a level building platform.

- Conservatively, considering natural topography and the provision of the cut, the estimated effective height of the tennis court fence permitted by the 1997 Boundary Setback Relaxation relative to the building platform on the adjoining allotment is 6.7m.
- The Applicant's proposal to extend the height of the existing tennis court fence with 1.5m of the eastern property boundary of the subject site by 2.0m would result in:
 - (a) The effective height of the structure above the level of natural ground at the allotment boundary of 7.2m; and
 - (b) An estimated effective height at the level of building platform of the dwelling on the adjoining allotment of 8.7m.
- The works in relation to extending the height of the fence have been completed in the absence of a Development Approval for Building Works prior to lodging the request for Concurrence Agency Advice. Notwithstanding, this Appeal relates solely to the issue of height and Council retains discretion in pursuing Show Cause or Enforcement action.
- The owners of the adjoining 439 Mount Mellum Road, Mount Mellum are not party to this appeal, accordingly access to that property to obtain definitive measurements in relation to height and setback was not available.
- There is a history of neighbourhood dispute in relation to both the boundary fencing and nuisance arising from errant tennis balls.
- The Applicant has raised concerns surrounding the loss of privacy in relation to the swimming pool on the subject site with particular reference to the restriction on the provision of screening material or fabric arising from the 1997 Boundary Setback Relaxation.
- Council has concerns surrounding the structural adequacy of the tennis court fence given the additional wind loads associated with the provision of a screening material or fabric.
- The Council believes that increasing the height of the existing tennis court fence would adversely impact the residents of the adjoining allotment in terms of the bulk of the structure, outlook, views, nuisance and safety.
- The parties to the appeal acknowledge that both Assessment Manager and Concurrence Agency erred in submitting and deciding the request on the basis of QDC Performance Criteria P1 of MP1.2.
- The parties to the appeal acknowledge that the appropriate assessment instrument is Performance Criteria P2 of QDC MP1.2 and have no objection about the appeal considering the relevant elements namely:
 - P2 Buildings 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.*
 - (c) do not adversely impact on the amenity and privacy of residents on adjoining lots.*

Reasons for the Decision

- The Committee is satisfied that the dwelling constructed at 439 Mount Mellum Road, Mount Mellum was designed, sited and constructed with full knowledge of the location of the existing tennis court and height of the existing tennis court fence inclusive of a reasonable expectation that the facility would be used for its intended purpose.
- The Committee acknowledges the Applicant's concerns regarding loss of privacy in relation to the swimming pool on the subject site and notes that the restriction placed on provision of screening

material or fabric via the 1997 Boundary Setback Relaxation relates solely to that part of the tennis court fence within 1.5m of the side boundary and that, subject to adequate structural consideration, there are no restrictions on the provision of screening material or fabric elsewhere around the enclosure.

- The Committee is not satisfied that the proposed extension in the height of the existing tennis court fence located on the property boundary will not adversely impact on the amenity of residents on the adjoining lot.

Don Grehan
Building and Development Committee Chair
Date: 3 June 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 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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