



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal number:	39-10
Appellant:	Narelle and Robert Polzin
Assessment manager:	Sunshine Coast Building Approvals
Concurrence agency:	Sunshine Coast Regional Council (Council)
Site address:	5 Wallace Close, Coes Creek and described Lot 3 on SP195794 – 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 works (siting variation), for a new dwelling, based on advice from Council as the concurrence agency.

Date of hearing:	11:00am on Thursday 24 June 2010, then adjourned to allow parties to receive and consider supplementary materials.
Place of hearing:	The subject site
Tribunal:	Mr Phil Dance
Present:	Narelle Polzin – Owner/Appellant Robert Polzin – Owner/Appellant John Hill – Suncoast Building Approvals Fred Vicary – Council

Decision:

The Committee, in accordance with Section 564(2)(a) of the SPA, **confirms** the decision of the assessment manager and dismisses the appeal.

The decision made in relation to this application is separate to any other applications which may be made in connection with the property.

Background

The property is a 989m² residential block and is located in the Neighbourhood Residential Zone of the former Maroochydore Shire Planning Scheme area.

The land is within a new subdivision and is a hatchet style allotment which has access from an internal road (Wallace Close), but also has an abutment of approximately 37 metres to Coes Creek Road.

The site is elevated above Coes Creek Road, and is supported by a rock retaining wall approximately two metres in height. The property boundary is near the foot of the wall, so that the entire wall is within the site.

A development application seeking a building permit for a detached house was lodged with the assessment manager. The application required approval of a siting variation to allow part of the dwelling to be erected at a distance of 2.475 metres from a boundary abutting a road (Coes Creek Road).

Council, as concurrence agency for the siting variation, directed the assessment manager to refuse the application as the proposed development did not comply with, and could not be conditioned to comply with performance criteria contained in Code 4.1, Element 1, P2 of the (former) Maroochydore Shire Planning Scheme.

At the hearing, Council's representative tabled a report entitled "Report for Queensland Building and Development Dispute Resolution Committee". Copies were provided for all parties to the appeal, and all parties were given time to read and consider the report before the hearing progressed.

Subsequent to the initial hearing on site, Council provided a copy of the (changed) development approval reconfiguration that created the subject site. Through that permit, the site is affected by a covenant that requires a dwelling on the site to achieve a specific level of protection from traffic noise on Coes Creek Road. It may be relevant that achievement of the required acoustic protection includes:

- limiting construction to single storey; or
- incorporating design features in the upper level of a two storey house to mitigate noise intrusion.

Subsequent to the hearing on site, the assessment manager provided a copy of the covenant document and a report dealing with management of traffic noise at the subject site.

These supplementary materials were provided to all parties to the appeal and opportunity was provided for written responses. No further responses were made.

The performance criterion which the Council relies on for its refusal is:

"P2 Buildings and structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

- (a) views and vistas;*
- (b) building character and appearance;*
- (c) casual surveillance; and*
- (d) ~~an adequate area suitable for landscaping being provided for at the front of a lot.~~"*

In its letter of 27 May 2010, the Council directed the assessment manager to refuse the application in accordance with Section 287(2)(b) of the SPA, as the development did not comply with and could not be conditioned to comply with the abovementioned performance criterion. In its letter of 1 June 2010, the assessment manager advised Hallmark Homes Pty Ltd that the application was refused in accordance with the direction given by the Council.

It is noted, the applicant for the building work permit was Hallmark Homes Pty Ltd, acting for N & R Polzin, the owners. Nevertheless, N & R Polzin lodged their notice of appeal in their own name, and came forward to represent themselves at the hearing. This anomaly was pointed out to those present at the hearing, and at that time, the parties agreed that the hearing and determination should proceed without interruption.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice lodged with the Registrar on 7 June 2010;
2. Concurrence agency correspondence of 27 May 2010, instructing the assessment manager to refuse the building application due to non-compliance with aspects of the Maroochy Plan 2000;
3. Decision notice from the assessment manager dated 1 June 2010;
4. Code 4.1 of the Maroochy Plan 2000;
5. The report dated 23 June 2010, prepared by Council;
6. The negotiated decision notice approving the reconfiguration of land to create 49 lots, including the subject land which became Lot 3 of SP195794;
7. The road traffic noise assessment dated 15 March 2006, prepared by ASK Consulting Engineers;
8. The covenant registered over Lot 3 on SP195794 whose purpose is to ensure that the land is used for the construction of a noise sensitive residential dwelling;
9. The SPA

The physical circumstances of the land and locality were also considered in reaching a decision.

Findings of Fact

The Committee makes the following findings of fact:

1. The dwelling has a setback in part from the fascia to the Coes Creek Road boundary of 2.457m.
2. The eaves appear to be drawn as 450mm. At the narrowest point, the wall of the proposed dwelling would be approximately 3m from the Coes Creek Road boundary.
3. A complying building would be set back a minimum of 6m from the road frontage, or, if the eaves are at least 600mm and a habitable room faces the street, a minimum of 4.5m.
4. The retaining wall abutting Coes Creek Road is contained within the allotment so the top of the building wall is 1m or a little more from the boundary.

Reasons for the Decision

The overall purpose of the “Code for Development of Detached Houses and Display Homes” which is relied upon by the Council is:

“To facilitate and encourage the development of a range of Detached house and Display home types and densities at suitable locations across the Shire, in ways that integrate new premises with:

- the natural landscape;
- the character and amenity of surrounding premises;
- movement networks; and
- utility and community infrastructure,

and which ensures such development does not adversely impact on environmentally sensitive areas within the Shire.”

The purpose of the particular element relied upon by the Council is:

“That the height, siting and design of Detached houses and Display homes achieves an acceptable level of privacy, daylight, casual surveillance and amenity for residents of the premises and adjoining premises, while protecting the integrity of existing and required utilities.”

The particular performance criterion relied upon by the Council is:

“P2 Buildings and structures are sited to contribute positively to the streetscape, maximise community

safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

(a) views and vistas;

(b) building character and appearance;

(c) causal surveillance; and

(d) an adequate area suitable for landscaping being provided for at the front of a lot.”

The Council does not rely on item (d) in arriving at its decision.

The allotment has no residential neighbours immediately to the north or south. The land to both the north and south which abuts Coes Creek Road is parkland. Thus, the allotment, which is elevated above Coes Creek Road, is quite prominent in the immediate locale, and any buildings erected upon it will likewise be visually prominent and have a close interface with Coes Creek Road and the traffic using that road. This interface was perhaps recognised by the Council when it imposed a condition on the reconfiguration which manages the noise impact of the road on a dwelling erected on this land.

The retaining wall abutting Coes Creek Road is contained within the allotment. It is not vertical, but canted back, such that the top of the wall is approximately 1.0 to 1.2 metres from the property boundary. Thus, the apparent, rather than actual edge of the allotment, is the top of the retaining wall.

A structure erected at approximately 3 metres from the boundary will have the appearance of being about 2 metres from that boundary.

Coes Creek Road is the distributor road for the locality and is quite heavily trafficked. The site is near a low point in the road and motorists approaching from either direction, particularly from the south, approach from elevated positions. Any structure erected on the site will be prominent in the streetscape.

Performance Criterion P2 mandates that buildings are sited to contribute positively to the streetscape, and maintain the amenity of adjacent land by having regard to views and vistas and building character and appearance. It is the view of the Committee that the siting relaxation, if approved, would prevent achievement of the performance criterion.

Phil Dance
Building and Development Committee Chair
Date: 14 July 2010

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