



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

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| <b>Appeal Number:</b>                         | 01/2010  |
| <b>Applicant:</b>                             | Mr Robert Schmitz  |
| <b>Assessment Manager:</b>                    | Sunshine Coast Regional Council  |
| <b>Concurrence Agency:</b><br>(if applicable) | Not applicable   |
| <b>Site Address:</b>                          | 2 Caffery Court, Coolum Beach and described as Lot 2 on SP 216093 — the subject site |

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### Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the assessment manager's decision, dated 3 December 2009, to refuse a development application for building works for the siting of a patio.

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| <b>Date of hearing:</b>  | 1 March 2010  |
| <b>Place of hearing:</b> | 2 Caffery Court, Coolum Beach   |
| <b>Committee:</b>        | Mr Chris Schomburgk – Chairperson<br>Ms Kari Stephens - General Referee           |
| <b>Present:</b>          | Mr Fred Vicary – Sunshine Coast Regional Council<br>Mr Robert Schmitz – Applicant |

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### Decision:

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of Sunshine Coast Regional Council to direct the refusal of a development application for siting of a patio; and replaces it with the following decision:-

The Committee, in accordance with section 564 of the SPA **directs** the assessment manager to **approve** the development application, subject to compliance with the following conditions:-

1. The roof of the patio shall be constructed with tiles which match the shape and colour of the tiles on the roof of the house.
2. A timber fence with a height of not less than 1.6m shall be constructed along the north-eastern property boundary, adjacent to Ella-Marie Drive.
3. Landscaping is to be provided between the fence described in point 2 above, and the patio. Such landscaping shall comply with Council's Code for Landscaping Design. Trees and shrubs are to have a minimum height of 1.0 metres at planting, and be of a type/species to achieve visual screening of the patio within three years.

## 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 on 4 January 2010.
2. A site inspection of the site and the locality, undertaken by the Chairperson and General Referee.
3. The assessment manager's decision notice dated 3 December 2009.
4. Verbal and written submissions from the parties at the hearing.
5. The 2000 Planning Scheme for the former Maroochy Shire Council – in particular, Code 4.1 Code for Development of Detached Houses and Display Homes.
6. The Queensland Development Code (QDC) – Part MP1.2.
7. The *Integrated Planning Act 1997* and its regulations, and the *Sustainable Planning Act 2009* and its regulations.

## Background

- The subject site is currently occupied by a single-storey dwelling. It is located in a new estate occupied by new or currently under construction dwellings, predominantly of a single storey height. The site is bounded by a detached house on the side and rear boundaries.
- The site is located on the corner of Ella-Marie Drive and Caffery Court and has an area of approximately 640m<sup>2</sup>. The site is of a regular, rectangular shape with a frontage of 15.085 metres to Caffery Court and its longer frontage to Ella-Marie Drive. The proposed patio is located adjacent to Ella-Marie Drive.
- The site is generally flat, although this is the result of retaining walls on some of the boundaries. When viewed from Ella-Marie Drive, the house located on the subject site is below the level of the road. The retaining wall adjacent to Ella-Marie Drive and in proximity to the proposed patio is approximately 1.1 metres in height.
- The proposed patio adjoins an indoor living area within the house. The patio is proposed to extend from the roof of the existing house to the inner edge of the retaining wall, meaning the patio will be located approximately 1.5 metres from the property boundary. The area between the retaining wall and the property boundary is currently formed as a landscaped bed, approximately 1.2m wide. A selection of plants has recently been planted in this area, although they are of a low height and planting density, and have not yet fully established.
- The proposed patio is to be open on three sides. The patio will have a height of 2.6 metres at its outermost edge and the roof is proposed to be made from a colorbond material. A concrete slab has been established in the location of the proposed patio.

## Findings of Fact

The Committee makes the following findings of fact:

- Council's decision to refuse the application is based on alleged non-compliance with provisions of the Code for the Development of Detached Houses and Display Homes, in particular Element 1, Performance Criterion P2, which states:

**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.*

- At the hearing on site, the Council provided a written statement, and the applicant provided a verbal statement. Helpfully, the applicant demonstrated the height of the patio by holding a measured length of wood against the height of the retaining wall. The result being, that 1.5m of the patio would be visible from Ella-Marie Drive, above the retaining wall.
- Some concerns were expressed by the Council representative about the visual impact of the patio given its proximity to the road reserve. The applicant advised of his intention to build a timber fence along the property boundary, being 1.6m in height. The proposed fence (1.6m), in conjunction with the retaining wall (1.1m) would result in the patio being completely screened from Ella Marie Drive. The applicant also advised his intention to add further landscaping to this area.
- At the hearing, the Council representative helpfully agreed that the combination of the fence and the landscaping would assist in alleviating Council's concerns.

Based on an assessment of these facts, it is the Committee's decision that the decision notice being appealed against be **set aside** and that the building works application for siting of a patio be **approved**, subject to compliance with the following conditions:

1. The roof of the patio shall be constructed with tiles which match the shape and colour of the tiles on the roof of the house.
2. A timber fence with a height of not less than 1.6m shall be constructed along the north-eastern property boundary, adjacent to Ella-Marie Drive.
3. Landscaping is to be provided between the fence described in point 2 above, and the patio. Such landscaping shall comply with Council's Code for Landscaping Design. Trees and shrubs are to have a minimum height of 1.0 metres at planting, and be of a type/species to achieve visual screening of the patio within three years.

### **Reasons for the Decision**

The conditions as set out above will ensure that the patio is not intrusive into the streetscape.

No detrimental impacts are likely to be caused to views and vistas or casual surveillance.

Fencing and landscaping can be provided on site and these elements, in the opinion of the Committee, will improve building character and appearance, and be in keeping with other properties in the locality.

The proposal, as amended by these conditions, will comply with the purpose and relevant Performance Criteria of the Planning Scheme Code for Detached Houses and Display Homes.

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**Chris Schomburgk**  
**Chairperson**  
**Building and Development Committee Chair**  
**Date: 22 April 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**