



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

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| Appeal Number: | 41 - 12 |
| Applicant: | Barry Hurst |
| Assessment Manager: | Leonard Williams, Building Certifier, Rum City Certifiers |
| Concurrence Agency: (if applicable) | Bundaberg Regional Council (Council) |
| Site Address: | 34 Woongarra Scenic Drive, Bargara and described as Lot 1 on SP 127375 – the subject site |

Appeal

Appeal under section 526 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a building application for additions to a dwelling. The Assessment Manager was directed to refuse the application by Bundaberg Regional Council as a Concurrence Agency pursuant to Schedule 7, Table 1, Item 19 Design and Siting of the Sustainable Planning Regulation 2009 (SPR).

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| Date of hearing: | 10 am on 8 November 2012 |
| Place of hearing: | The subject site |
| Committee: | Ain Kuru – Chair |
| Present: | Barry Hirst – Applicant John Gatley – Gatley Building Designs Michael Johnston – Gatley Building Designs Leonard Williams – Private Certifier, Rum City Certifiers Stephen Curran - Building and Plumbing Manager – Bundaberg Regional Council Brad Geaney, Building Certifier – Bundaberg Regional Council |

Decision:

The Building and Development Dispute Resolution Committee (Committee) in accordance with section 564 (2)(c) of the SPA, **sets aside** the decision of the Assessment Manager and approves the amended design by Gatley Building Designs provided to the Committee on 14 January 2013. The amended design satisfies the performance requirements of the Queensland Development Code MP 1.2. in that it has an open roofed deck 2.705 metres from the Bussey Street frontage; the studio wall sited 4.5 metres from this frontage; and a maximum height of 6.33 metres.

Please note that this approval is to be treated as a Preliminary Approval in accordance with section 241 of the SPA and that the issue of a Development Permit is a matter for the Private Certifier following the assessment of detailed working drawings in accordance with the *Building Act 1975*.

Background

The Applicant lodged a Development Application (Application) for dwelling additions to the Assessment Manager, Leonard Williams, Rum City Certifiers on 8 June 2012.

The Application involves second storey additions over an existing covered patio and former carport at the rear of the existing house. The additions comprise a studio, deck, bathroom, storeroom and stairs having a total area of about 90 square metres. The studio and deck are proposed to be sited 2.206 metres from the secondary Bussey Street frontage. The walls are to have a render finish to match the existing dwelling, with 12.5 degree sheet metal skillion roof and feature stone wall having a maximum height of 7.5 metres.

The primary frontage of the house is to Woongarra Scenic Drive, which is a formed collector road providing public access to the ocean and surrounding areas. Bussey Street on the other hand is a local street providing access to nearby houses only; has a narrow pavement and is flanked with extensive stands of vegetation on both sides.

The Assessment Manager referred the Application for the additions to Council for their concurrence as, the setback from Bussey Street did not comply with the Queensland Development Code MP 1.2 Design and Siting Standard for Single Detached Housing (QDC MP 1.2), as Acceptable Solution A1 (a) provides for a minimum road setback of 6 m.

The Council directed the Assessment Manager to refuse the Application on 15 August 2012 for the following reasons:

- The height and size of the proposed addition has been considered inappropriate for its location;
- The proposal is not consistent with the road boundary setbacks of other buildings and structures within the immediate area; and
- The proposal will impact on the outlook and views of the neighbouring residents.

The Assessment Manager refused the application on 21 August 2012.

The Applicants lodged an appeal on the 29 August 2012 to the Building and Development Registry on the following grounds:

- Due to the small size of the site being 599 square metres, the owner is trying to increase the habitable area of the building by constructing this extension. With the existing useable area of the current house being limited, this proposal will significantly improve the amenity of the building;
- The building is 2.2 metres from the Bussey Street boundary which is still over 2 metres from the furthest projection of the existing lower floor of the building. There is an existing carport below the proposed extension which is on the boundary; and
- The adjoining neighbour to 3 Bussey Street is supportive of the proposal and has provided an e mail outlining her support.

An appeal hearing was held on site on 8 November 2012. Prior to the hearing, Council advised that it had not received a Notice of Engagement from the Private Certifier, and asked whether this would have any bearing on the appeal. The Committee advised that in its view, this was a procedural step required to be followed by the Private Certifier in notifying Council of the Application under the *Building Act 1975*, and that this would not impact on the standing of the Application.

At the hearing, Michael Johnston on behalf of the Applicant advised that the proposed addition was an art studio which would capture ocean views, and that the neighbour has reviewed the proposed plans and provided written advice stating the addition would have no impact on their dwelling. He advised that the siting concession was necessary as the lot was small and cited other examples in the area where houses had been built close to the road boundary.

Stephen Curran on behalf of Council advised that the Application had been assessed under the QDC, and because it is a corner lot with an average width of 19.85 metres, the QDC permits a reduced setback to one road frontage of 5.3 metres. However, a previous siting relaxation of 3.4 metres had already been

granted for the Woongarra Scenic Drive frontage of the property, and therefore Bussey Street was considered to be the primary frontage. Therefore the Acceptable Solution for siting to Bussey Street would be 6 metres.

The Committee then asked the parties to consider how the proposed additions satisfied the Performance Criteria under P1 of the QDC MP 1.2:

The bulk of the building or structure

Council advised that the bulk was not appropriate to the streetscape as the proposed additions were 7.5 metres high, 1 to 1.5 metres higher than the existing building and only 2.2 metres from the road frontage.

Representatives for the Applicant advised that the bulk would not impact on Woongarra Scenic Drive given that the existing building is very bulky.

The road boundary setbacks of neighbouring buildings or structures

Council advised that the general setback in the area is 6 metres; therefore the proposed addition would not facilitate an appropriate streetscape.

Representatives for the Applicant advised there were other houses in the area which were sited close to the road frontage though these were not in the immediate vicinity.

The road boundary setbacks of neighbouring buildings or structures

Council advised that the proposed addition would have a significant impact on neighbouring residents, and that an alternate design utilising land at the rear of the lot should be considered.

Representatives for the Applicant stated that the proposed addition was favourable to the neighbour, and that the suggested alternative design would have a greater impact as it would be sited closer to their boundary.

Council advised that consideration must also be given to the impact on other residents as well.

Nuisance and safety to the public

All parties agreed there were no issues in respect of nuisance and public safety.

Under section 564(2)(e) of the SPA Committee may, with the consent of the Applicant, vary the application so that the Committee is satisfied that:

- (i) the building, when erected, will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood; and
- (ii) the aesthetics of the building, when erected, will not be in extreme conflict with the character of the building's neighbourhood.

The Committee considered that due to the setback and height of the proposed additions to the existing house, it would have an extremely adverse effect on the streetscape of Bussey Street and therefore will not facilitate an acceptable streetscape appropriate for the area. The Committee noted that houses in the immediate vicinity are setback 6 metres from the road.

The Committee formed the view that Woongarra Scenic Drive should be treated as the nominated road frontage of the existing house even though a relaxation had already been granted by the Council because Woongarra Scenic Drive is the narrow frontage to which the front of the house faces. While the frontage setback is 3.4 metres, there is an open verandah which gives the appearance that the house is setback further than it actually is (the distance to the wall being 6.2 metres). Bussey Street on the other hand should be treated as a secondary road frontage for the purposes of the QDC.

Given the site is a small corner lot, the Committee believes that a reduced setback to Bussey Street is appropriate, provided the streetscape is addressed. The Committee therefore considers that a minimum setback of 4.5 m from Bussey Street could satisfy the performance requirements of the QDC in relation to the impact of the bulk of the building and its setback on the streetscape.

On 6 December 2012 The Committee sought an amended design consistent with these proposed variations. On 18 December 2012, John Gatley wrote to the Committee on behalf of the Applicant requesting a reduced setback of 3.65 metres instead of 4.5 metres. On Friday 21 December 2012 the Committee advised that while it was of the view that the setback of the proposed house wall should remain at 4.5 metres, it would consider a reduced setback for an open deck appropriate. The design of the deck must minimise any impact on the visual amenity of the streetscape, and in this regard the Committee suggest it should be open on three sides, be constructed from lightweight materials and have a roof with a low pitch. An amended design was received by the Committee on 14 January 2013.

The amended design was sent to Council who advised that the proposal will still have an adverse impact on the streetscape as it still had a substantial bulk and was out of character with surrounding housing.

Material Considered

The material considered in this decision comprises:

1. Site Plan, Floor Plan and Elevations of proposed additions prepared by Gatley Building Designs (12 August 2011);
2. Referral Agency Response (Design and Siting Provisions) – Bundaberg Regional Council (15 August 2012)
3. Decision Notice (Refusal) – Leonard Williams, Private Certifier No A1208540 (21 August 2012)
4. Form 10 – Appeal Notice and grounds for appeal including covering letter and statement from Mandy of 3 Bussey Street, Bragara – Mr Barry Hurst (21 August 2012)
5. MP 1.2 Design and Siting Standard for Single Detached Housing – on Lots over 450 m² and over, Queensland Development Code, Queensland Government (11 March 2010)
6. Bundaberg Regional Council – Concurrence Agency Assessment, Additions to Dwelling, 34 Woongarra Scenic Drive, Bargara (14 August 2012)
7. Correspondence from John Gatley Building Designs requesting an alternative setback (18 December 2012)
8. E mail from Stephen Curran, Bundaberg Regional Council commenting on revised plans (22 January 2012)
9. *Building Act 1975* (BA)
10. Building Regulation 2006 (BR)
11. *Sustainable Planning Act 2009* (SPA)
12. Sustainable Planning Regulation 2009 (SPR)

Findings of Fact

The Committee makes the following findings of fact:

1. The Application was referred to the Council as a Concurrence Agency in accordance with

Schedule 7, Table 1, Item 19 of the SPR;

2. The proposed additions were assessed by Council in accordance with the Performance Criteria of QDC MP 1.2.
3. The Performance Criteria under QDC MP 1.2 states:

P1 The location of a building or structure facilitates an acceptable streetscape, appropriate for

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- (a) the bulk of the building or structure; and*
- (b) the road boundary setbacks of neighbouring buildings or structures; and*
- (c) the outlook and views of neighbouring residents; and*
- (d) nuisance and safety to the public.*

4. The Committee found that due to the setback and height of the proposed additions to the existing house, it would have an extremely adverse effect on the streetscape of Bussey Street and therefore will not facilitate an acceptable streetscape appropriate for the area. The Committee noted that most houses in the immediate vicinity are setback 6 metres from the road.
5. The Committee subsequently requested the Applicant under section 564(2)(e) of SPA to amend the design of the additions to a minimum setback of 4.5 metres from Bussey Street as this could satisfy the performance requirements of the QDC in relation to the impact of the bulk of the building and its setback on the streetscape, taking into account that the subject site is a corner lot.
6. Further, the Committee advised that it would consider a reduced setback for an open deck appropriate provided it was open on three sides, be constructed from lightweight materials and have a roof with a low pitch.

Reasons for the Decision

The amended design shows an open roofed deck sited 2.705 metres from the Bussey Street frontage, with the studio wall sited 4.5 metres from this frontage. The maximum height of the addition is 6.33 metres.

The Committee believes that despite previous siting relaxations given for the Woongarra Scenic Drive frontage, Bussey Street should be treated as a secondary road frontage and accordingly a reduced setback is appropriate given the lot is less than 24 m wide. Under the QDC Acceptable Solutions, an average lot width of 19.85 metres would allow a reduction to 5.3 metres.

However, the Committee is of the view that a lesser setback and building height as proposed will facilitate an acceptable streetscape given the bulk and siting of the existing house. In this regard, the proposed additions are generally of a lesser height than the existing house, with its bulk setback over the existing patio structure and former carport where it will not be easily visible from the street. In addition, the open deck will improve surveillance and public safety of the street.

Ain Kuru
Building and Development Committee Chair
Date: 24 January 2013

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:

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