



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	37- 12
Applicant:	Rockhampton Building Approvals
Assessment Manager:	Rockhampton Building Approvals
Concurrence Agency: (if applicable)	Mackay Regional Council (Council)
Site Address:	9 Maryvale Circuit, Beaconsfield and described as Lot 66 on SP237257 - the -subject site

Appeal

Appeal under Section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Mackay Regional Council and Rockhampton Building Approvals as the Assessment Manager to approve with conditions, a Development Application for Building Works ,for the existing shed to be dismantled and relocated (within 3 months of the approval) to a minimum setback of 6.0m from the road boundary.

Date of hearing:	Wednesday 26th September 2012 at 9.30am.
Place of hearing:	The subject site
Committee:	Gordon Heelan - Chairperson
Present:	Wayne Marriage - Owner Bruce Krenske - Applicant/Assessment manager John Caldwell - Council representative Bob Rowley - Sunstate Garages

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(1) of the SPA dismisses the appeal on the grounds that the statutorily approved appeal application Form 10 was invalid.

The Form 10 lodged with the Committee Registrar on 9 August 2012 was signed by the Building Certifier (Rockhampton Building Approvals) and not the property owners despite the Form clearly stating that a Building Certifier cannot sign the form. In addition, the accompanying Decision Notice was dated 17 January 2012 and therefore, the application for appeal received by the Committee Registrar on 9 August 2012 exceeded the 20 business days of the Decision Notice

being given to the applicant as required by section 461(2)(a) of the SPA. Given the invalidity of the appeal application, the Committee does not have jurisdiction to make a decision.

Background

The Assessment Manager's (Building Certifier's) letter dated 6 August 2012 to the Committee Registrar stated the application to build a shed was assessed by him on 12th January 2012 and he did not consider a Concurrence Agency application was required. The Certifier subsequently approved the application and the owners proceeded to build the shed in line with that approval.

Sometime in June 2012 the shed came to the attention of the Council planning officers whilst they were conducting a routine inspection of the subdivision. Council notified the Certifier that the development required Council approval as the Concurrence Agency.

The Certifier submitted an application to Council which according to the Concurrence Agency response dated 18 July 2012, was received by Council on 4 July 2012.

The Certifier then re-issued the same Decision Notice to the property owners that was originally sent to them dated 17 January 2012, however the Certifier changed the content to read "*with reference to your application for development approval, I wish to advise that your application has been assessed and was refused on the 31 July 2012 subject to conditions.*" As this Decision Notice was not issued as an 'Amended Decision Notice', the decision notice was invalid.

The Certifier as the Assessment Manager did not comply with section 83 (1) (b) and (d) (i) of *the Building Act 1975* (BA) which states:

- (1) *The private certifier must not grant the building development approval applied for –*
- (b) *until all necessary preliminary approvals under the Planning Act are effective for other assessable parts of the development*
- Example-*
- The application must not be decided until all necessary preliminary approvals are effective for the assessment of the building work against the planning scheme*
- (d) *if, under the Planning Act, a concurrence agency has jurisdiction for a part of building assessment work—*
 - (i) *that part has been assessed by the concurrence agency, under the building assessment provisions;*

The Certifier, as the Assessment Manager, also did not comply with section 86(1) of the BA in that he did not provide the local government with a copy of his Decision Notice of approval.

Appeal Documentation – Application for Appeal/Declaration- Form10

The Application for Appeal (Form 10) was signed and dated by the Certifier on 6 August 2012 and stamped as received by the Committee Registrar on 9 August 2012.

The Form 10 lodged on 6 Aug 2012 is invalid for several reasons:

- The Decision Notice accompanying Form 10 was dated 17 January 2012. Section 461(2)(a) of the SPA states that the appeal must be started within 20 business days if a Decision Notice is given – the day the Decision Notice or negotiated Decision Notice is given to the Applicant
- The accompanying letter from the Certifier with Form 10, states that he assessed the application on 12 Jan 2012 and approved the building of the shed and the client proceeded to have the shed built based on this approval. This letter confirms the date on

the Decision Notice.

- Form 10 was completed and signed by the Certifier. The Form clearly states immediately above the signature block " Applicant's signature: **NOTE:** This section **MUST** be signed by the appeal applicant(s) and not the representative of the applicant (e.g. building certifier).

Therefore, the application for appeal received by the Committee Registrar on 9 August 2012 exceeded the 20 business days of the Decision Notice being given to the applicant.

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 Registrar on 9 August 2012.
2. The *Sustainable Planning Act 2009* (SPA).
3. The *Building Act 1975* (BA).
4. Discussions and verbal submissions from attendees at the appeal hearing.

Findings of Fact

The Committee makes the following findings of fact:

- The Assessment Manager had assessed the application for the shed on 12 January 2012 and the shed was constructed.
- The Application for Appeal (Form 10) was invalid as it was lodged outside the Applicant's appeal period and was also signed by the Building Certifier.

Reasons for the Dismissal

The Committee is required to comply with the Legislative requirements of the SPA. The appeal was not validly lodged and as such the Committee has no alternative other than to dismiss the appeal.

The Committee in accordance with section 564(1) of the SPA dismisses the appeal on the grounds that the statutory Form 10 - Application for Appeal/ Declaration was invalid and a valid Form 10 is required under section 527(2) of the SPA.

The appeal should not have progressed to a hearing however the Applicant may take benefit from the meaningful discussion at the hearing during which Council confirmed they would consider a 4.5 metre setback in-lieu of a 6m setback provided dense leafy landscaping, to be approved by Council, was provided

Gordon Heelan
Building and Development Committee Chairperson
Date: 19 November 2012

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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