



Building and Development Dispute Resolutions Committee – Decision

Sustainable Planning Act 2009

Appeal Number:	41-17
Appellant:	Peter and Georgie Edser
Assessment Manager:	Grant Forde (A1153419) Integrated Building Certification
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council
Site Address:	9 Hume Street Golden Beach and described as Lot 184 RP 50056 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse a development application for building works, for the extension and alteration of a Class 10a shed and a side boundary fence greater than 2 m in height. The Assessment Manager issued a deemed refusal on the grounds the referral agency Sunshine Coast Regional Council (Council) had not responded within the statutory assessment period.

Date and time of hearing:	18 December 2017 at 2.00pm
Place of hearing:	The subject site
Tribunal:	Ms Debbie Johnson – Chair Mr Richard Prout - Member
Present:	Mr Peter Edser - Property owner (Applicant) Mrs Georgie Edser – Property owner (Applicant) Mr Steven Tucker– Sunshine Coast Regional Council representatives Mr Vince Whitburn– Sunshine Coast Regional Council representatives Mr Grant Forde – Integrated Building Certification representative (Assessment Manager)

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(2)(c) of the SPA **sets aside** the Assessment Manager's decision to refuse the building works.

The Committee finds that the development requires a separate Preliminary Approval for Building Work (Code Assessment) pursuant to the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, to be assessed by Council before this current application can be decided.

In regards to the Concurrence Agency Referral for the Class 10b boundary fence, the Committee directs the Applicant to carry out one of the following within 25 business days from the date of this Decision Notice:

1. Request the Council in writing to complete the assessment of the Concurrency Agency Referral; or
2. Withdraw the Concurrency Agency Referral and request the Council refund the assessment fee.

The Council if requested by the Applicant is to complete the assessment of Concurrency Agency Referral within the statutory assessment period, with the time period commencing from when they receive the written request from the Applicant.

Background

The subject site is level and rectangular with a site area of 607m² and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The frontage is 12.19 m wide and the depth of the site is 49.789 m. The site is located in an established beachside community where many of the original homes have been demolished and replaced or extensively renovated.

In 2015, following an approval to demolish the original dwelling on the site, an application was approved to erect a low set single storey home with an in ground swimming pool. Approval was also given for a free standing steel framed shed located at the rear of the site.

On 17 April 2017, the Applicant lodged a Development Application for Building Work with a private building certifier, Integrated Building Certification (Assessment Manager) for the following:

- A side boundary fence located along the northern boundary for a length of approximately 13 m and a height of 2.4 m above natural ground level;
- An addition to the existing shed at the property located on the eastern side of the building for a length of 5 m and width of 2.5 m with a 200 mm setback from the rear eastern boundary. The extended part of the shed was also located over a Unitywater sewer main which runs parallel with the rear eastern boundary; and
- An existing unapproved awning attached to the southern side of the existing shed for a length of 6 m and width of 2.02 m built up to the southern side boundary.

The additions to the shed increased the combined floor area of the garage from 54 m² to 79 m². The site cover of all proposed and built buildings is stated on the drawings submitted to the Committee as 53%.

The proposed development did not comply with the following Acceptable Outcomes and Acceptable Solutions:

1. The shed additions did not comply with Acceptable Outcome A02.1(c) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

Where located on a lot in a residential zones, a garage, carport or shed:-

(c) has a total floor area that does not exceed 56 m².

2. The proposed fence did not comply with Acceptable Solution A2(c)(iii) of the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing on Lots 450m² and Over) (QDC MP1.2) which states the following:

A2 The side and rear boundary clearance for a part of the building or structure is –

(iii) a screen, fence or retaining wall or a combination of screens, fences or retaining walls is not more than 2m in height.

As such the Assessment Manager lodged a request for referral agency response for building work with Council on 28 April 2017.

On 15 May 2017, a Council representative contacted the Assessment Manager by email, stating that as the shed was over 56 m² the proposed development triggered a Code Assessment against the Performance Outcomes P2 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1.

The Council representative further advised the Assessment Manager to cancel the concurrence agency referral and submit a Code Assessable Preliminary Building Application (PBA).

On 23 August 2017 the Assessment Manager refused the development application on the grounds of a deemed refusal as the referral agency (Council) had not responded within the statutory assessment period.

On 14 September 2017, the Appellants lodged a Form 10 – Application for appeal with the Registrar, Building and Development Dispute Resolution Committees.

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 Tribunals Registrar 14 September 2017. Those documents included:
 - Detailed written submission from the Assessment Manager
 - Copy of email correspondence with Council and the Assessment Manager
 - Copy of the Council Dwelling House Code Provisions
 - Copy of Decision Notice Refusal for Carrying Out Building Work dated 23 August 2017
 - Copy of IDAS Form 1 Applicant Details as submitted to the Assessment Manager
 - Copy of IDAS Form 2 Building work as submitted to the Assessment manager
 - Copy of Arenay Building Design Drawings No 140423A.01 and No 140423A.02 Amendment 2, illustrating the proposed building works
2. Verbal submissions by the Appellants at the hearing
3. Verbal submissions by the Assessment Manager at the hearing
4. Verbal submissions by the Council's representatives at the hearing
5. Council's record of previous applications and approvals for the subject site, submitted through the Registrar by email on 18 December 2017.
6. Council's copy of the original 6 x10M, 5.8M high shed drawings from 2015 submitted through the Registrar by email on 19 February 2018
7. Council's Information Request dated 7 October 2015, advising the Shed should be reduced in size, submitted through the Registrar by email on 19 February 2018
8. Council's approved plans and written approval dated 15 October 2015, for the Shed being 6 x 9M and 3.55M high, submitted through the Registrar by email on 19 February 2018.
9. Revised plans indicating a reduced site cover calculation as provided by the Assessment Manager through the Registrar by email on 12 April 2018
10. The *Sustainable Planning Act* 2009 (SPA)
11. The Sustainable Planning Regulation 2009 (SPR)

12. The *Building Act 1975* (BA)
13. The *Building Regulation 2006* (BR)
14. The Integrated Assessment System (IDAS)
15. The *Queensland Development Code* (QDC) Part MP 1.2
16. The *Sunshine Coast Planning Scheme 2014*.

Findings of Fact

The Committee makes the following findings of fact:

1. The site is located in an established beachside suburban environment where the original homes were mostly built in the late 1950's and early 1960s. Today many are being demolished to make way for larger contemporary family homes as has been the case on the subject site. However, while the site is zoned Low Density Residential it is identified as being in a Protected Housing Precinct where higher land use and density is generally not permitted within the scope of the local planning scheme provisions.
2. Information provided on the Building Design Drawings indicates that the proposed development together with the existing development constitutes a site cover of 53%.
3. Information provided by the Council indicates that the Appellants previously sought approval for a larger shed on the site in 2015. However, to meet the Acceptable Outcomes of the Sunshine Coast Planning Scheme's Dwelling House Code, they reduced the area of that proposed shed from 60 m² to 54 m² and the height from 4.5 m metres to 3.5 m. They were granted approval to build the shed as self-assessable building works.
4. The Sunshine Coast Planning Scheme's Dwelling House Code defines a Dwelling House, stating the use and therefore the term, includes associated outbuildings and structures. A Dwelling House use is self-assessable development against the provisions of the Dwelling House Code, where development is on a lot zoned as Low Density Residential.
5. The Dwelling House Code contains Performance Outcomes and Acceptable Outcomes for self-assessable and assessable development. Where proposed development does not meet the all of the applicable Acceptable Outcomes, the application must be referred to Council as the Concurrence Agency. Council must provide written advice, within a prescribed time frame set by the Act before the Assessment Manager can issue a Decision Notice.
6. The Dwelling House Code contains some elements that are not building assessment provisions, rather they are planning provisions. The assessment of development against the Performance Outcomes for these provisions is not within the jurisdiction of the Concurrence Agency and an additional application is required for a Preliminary Building Approval (PBA).
7. The Dwelling House Code element Garages, Carports and Sheds, AO2.1 states:

Where located on a lot in a residential zone, a garage, carport or shed:-

- (a) is setback at least 6 metres from any road frontage;*
- (b) does not exceed a height of 3.6 metres; and*
- (c) has total floor area that does not exceed 56 m².*

Note-

*AO2.1 (b) and (c) do not apply to a garage under the main roof of a Dwelling House
AO2.1 (a) is an alternative provision to QDC.*

AO2.1 (b) and (c) are planning provisions that restrict the size of free standing sheds on residential lots.

8. The Dwelling House Code contains some alternate provisions to the Queensland Development Code (QDC).
9. The QDC Part MP1.2 is the standard for the Design and Siting requirements applicable to Class 1 Dwellings and Class 10 structures on residential sites over 450 m² in area. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions. The QDC provides Performance Criteria and Acceptable Solutions. Where proposed development does not meet all of the applicable Acceptable Solutions, the application must be referred to Council as the Concurrence Agency for written advice, within a prescribed time frame, before the Assessment Manager can issue a Decision Notice.
10. The QDC Part A2 (a) prescribes the Side and Rear Boundary Setback requirements for a part of a Building or Structure and (c) (iii) states a screen, fence or retaining wall or a combination of screens, fences or retainment walls that is not more than 2 m high is exempt from the side and rear setback requirement. The proposed development included a side boundary fence at 2.4 m high along the Northern boundary. This work is therefore assessable against the Performance Solution provisions for QDC A2. The Assessment Manager must refer this part of the building works to the Concurrence Agency for their advice.
11. The QDC Part MP1.4 Building Over or Near Infrastructure determines the requirements for Class 1 and 10 structures. Where the proposed development does not meet the Acceptable Solutions of the QDC part, it must be referred to the relevant service provider, Unitywater in this instance, as the Concurrence Agency for compliance assessment against the relevant Performance Outcomes. The Committee has not been provided with any evidence to indicate whether or not the proposal can or will comply with QDC Part MP1.4 and has not considered this aspect of the development.

Application Process

1. On 17 April 2017, the Applicant applied to the Assessment Manager to build the following:
 - A side boundary fence located along the northern boundary for a length of approximately 13 m and a height of 2.4 m above natural ground level;
 - An addition to the existing shed at the property located on the eastern side of the building for a length of 5 m and width of 2.5 m with a 200 mm setback from the rear eastern boundary. The extended part of the shed was also located over a Unitywater sewer main which runs parallel with the rear eastern boundary; and
 - An existing unapproved awning attached to the southern side of the existing shed for a length of 6 m and width of 2.02 m built up to the southern side boundary.

The additions to the shed increased the combined floor area of the garage from 54 m² to 79 m².

2. The shed additions did not comply with Acceptable Outcome A02.1(c) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

Where located on a lot in a residential zones, a garage, carport or shed:-

(c) has a total floor area that does not exceed 56 m².

3. The proposed fence did not comply with Acceptable Solution A2(c)(iii) of the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing on Lots 450m² and Over) (QDC MP1.2) which states the following:

A2 The side and rear boundary clearance for a part of the building or structure is –

(iii) a screen, fence or retaining wall or a combination of screens, fences or retaining walls is not more than 2m in height.

4. As such the Assessment Manager lodged a request for referral agency response for building work with Council on 28 April 2017;
5. On 15 May 2017, a Council representative emailed the Assessment Manager to advise the following:

Sheds over 56 m² are Code assessable and therefore are a PBA with IDAS Forms 1 and 6.

You are required to cancel the application and submit a PBA but before you can do that, the additions to this shed are considered non-compliant with the Planning Scheme DHC P02(a).

The existing shed had an application deemed non-compliant at 60 m². Also the fence height of 2.4 m will be considered as non-compliant with the QDCMP1.2(c) and possibly (b).

If you still decide to submit a PBA you may wish to enquire with Unity Water about approval to build the store room over the main.

6. On 25 May 2017 the Assessment Manager emailed the Council stating the following:

Thank you for your email. Further to our discussion yesterday, we maintain that the provision in the Planning Scheme related to the maximum floor area of outbuildings is a building assessment provision for siting (i.e. site coverage) and therefore, in accordance with section 32 & 33 of the Building Act, is considered an alternative provision to the QDC MP1.2. In accordance with section 45 & 46 of the Building Act and section 78A of the Sustainable Planning Act a building assessment provision (such as siting provisions relating to Class 1A & 10A buildings) cannot be made assessable under a Planning Scheme. Pursuant to Schedule 7 of the Sustainable Planning Regulation the Local Authority, as a Concurrence Agency for the Building Application, is required to provide advice to the Assessment Manager where the siting of a Class 1 or 10 structure does not comply with an acceptable solution or is not a quantifiable Standard.

Having regard to the aforementioned, we request Council proceed with their assessment of the application as a Concurrence Agency.

7. On 7 June 2017, a Council representative responded to the Assessment Managers email of 25 May 2017, advising the following:

The 56m² in the DHC Acceptable Outcome A02.1 (b) relates only to the maximum amount of floor area of a class 10 building and is not related to site coverage. The QDC site coverage is the combined area of all buildings on the site.

This 56m² is not an alternative provision to the QDC MP 1.2 A3 but a separate inclusion in the DHC.

Council has not adopted it as an alternative provision to the QDC and therefore has not incorporated into the DHC as an alternative provision. Therefore it is not a Concurrence Agency item.

The 56m² is therefore assessed against the DHC and therefore Code Assessable.

The information in my previous email still stands.

8. On 23 August 2017 the Assessment Manager refused the Application on the following grounds:

*The application for carrying out Building Work is **Deemed Refused**. Pursuant to Schedule 15 of the Sustainable Planning Regulation, this refusal has been solely issued due to the Referral Agency (Sunshine Coast Regional Council) not responding with the statutory assessment period. Should this decision be changed by an appeal the attached conditions will apply to this development. These conditions are clearly identified to indicate whether the assessment manager or concurrence agency impose them.*

9. On 14 September 2017, the Appellants lodged a Form 10 – Application for appeal with the Registrar, Building and Development Dispute Resolution Committees.

Main Issues Raised By the Parties to the Appeal

Council

Code Assessment – Council contended that the floor area of the existing shed combined with the proposed Class 10a additions constituted a shed with a total floor area on the site greater than 56 m².

As such the proposed development did not comply with Acceptable Outcome A02.1(c) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 and therefore required a Code Assessment.

They contended that the requirement in A02.1(c) relates only to the maximum amount of floor area of a class 10 building on the site. In contrast Acceptable Outcome A3 of the QDC MP2.1 relates to the maximum area covered by all buildings and structures roofed with impervious materials on the site. Council submitted that A02.1(c) was not an alternative provision to the requirements of the QDC MP1.2.

Therefore, (so the Council contended) the building development application involves assessable development, in which Council is not a concurrency agency and as per Section 83 (General restrictions on granting building development approval) of the *Building Act 1975* (BA), the Assessment Manager cannot issue a Development Approval for Building Work until under the Planning Act, all necessary development permits are effective for the development.

The Council acknowledged that they had not assessed the concurrency agency referral for the Class 10b boundary fence against the Performance Criteria P2 of the QDC MP1.2. They stated that they had requested the Assessment Manager in writing on two occasions to change the concurrency agency referral to a combined Code Assessment in order to save the Applicant the cost of two separate assessment fees.

Applicant

The Applicants contended the Planning Scheme related to the maximum floor area of outbuildings is a building assessment provision for siting (i.e. site coverage) and therefore, in accordance with section 32 & 33 of the Building Act, is considered an alternative provision to the QDC MP1.2.

In accordance with section 45 & 46 of the *Building Act 1975* and section 78A of the *Sustainable Planning Act 2009* a building assessment provision (such as siting provisions relating to Class 1A & 10A buildings) cannot be made assessable under a Planning Scheme.

Pursuant to Schedule 7 of the *Sustainable Planning Regulation 2009* the Local Authority, as a Concurrency Agency for the Building Application, is required to provide advice to the Assessment Manager where the siting of a Class 1 or 10 building or structure does not comply with an acceptable solution or is not a quantifiable Standard.

Reasons for the Decision

The Committee agrees with the Council position that the proposed shed additions do not comply with Acceptable Outcome A02.1(c) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, as the allotment is within a residential zone and the total combined floor area of existing and proposed additions to the shed exceed 56m².

The committee agrees with Council that the Acceptable Outcome A02.1(c) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, is not an alternative provision to the QDC MP 1.2, as such it cannot be assessed as a concurrency agency advice.

The development requires a separate Preliminary Approval for Building Work (Code Assessment) pursuant to the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, to be assessed by Council before the current building application can be decided.

The Committee also notes that the Council has not assessed the concurrency agency referral for the Class 10b boundary fence against the Performance Criteria P2 of the QDC MP1.2.

The Committee notes that the Council had written to the Assessment Manager on two separate occasions requesting the concurrency agency referral be changed to a combined Code Assessment in order to save the Applicant the cost of two separate assessment fees.

The Committee was not provided with any written response from the Assessment Manager to the Council email of 7 June 2017, in which the Assessment Manager was again requested to change the concurrency agency referral to a combined Code Assessment.

The Committee acknowledges that the concurrency agency referral for the Class 10b boundary fence against the Performance Criteria P2 of the QDC MP1.2 was properly made and that the time period for the assessment had lapsed.

The Committee accepts the reason the Council did not complete the assessment of the referral, as they were attempting to save the Applicant the cost of paying two separate assessment fees.

The Committee also accepts that the Council needs the opportunity to assess the referral and if following this Decision the Applicant instructs the Council to complete the assessment the assessment is to be completed within the statutory time period.

The Committee further notes that prior to the issuing of a Development Approval for Building Work the applications may require referral to Unitywater if the development does not comply with the QDC MP1.4 (Building over or near relevant infrastructure).

Debbie Johnson

Committee Chair
Date: 6 June 2018

Appeal Rights

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

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