



## Building and Development Dispute Resolution Committees - Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	23 - 17
<b>Applicant:</b>	Glen Taylor
<b>Assessment Manager:</b>	Rum City Certifiers
<b>Concurrence Agency:</b> (if applicable)	Bundaberg Regional Council (Council)
<b>Site Address:</b>	14 Aqualine Court, Bargara Qld 4670, Lot 255 RP145860 (The subject site)

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### Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse a Building Development Application for a new Class 10a Awning. Bundaberg Regional Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building as it did not meet and could not be conditioned to meet the performance requirements of the Queensland Development Code (QDC) Mandatory Part (MP) 1.2 Performance Criteria P1 (a), (b), (c) and (d).

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<b>Date and time of hearing:</b>	21 July 2017 at 12.30pm
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Mr. John Bright - Chair Mr. Andrew Parker - Member Mr. Russell Schuler - Member
<b>Present:</b>	Mr Glen Taylor - Applicant & Property Owner Mr Darrell Hardy - Applicant Representative Ms Dawn Taylor - Applicant Representative Mr Richard Jenner - Council Representative Mr Andrew Bentley - Council Representative

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### Decision

The Building and Development Dispute Resolution Committee (Committee) in accordance with section 564 of the SPA **confirms** the decision of the Assessment Manager to refuse the Class 10a Awning Structure.

## Background

The subject site is a 681sqm corner allotment at 14 Aqualine Ct Bargara, with truncated frontages of 30 metres (approx.) to Wilfred Street and 20 metres (approx.) to Aqualine Court. The site and adjoining allotments are zoned 'low density residential'. Existing minimum setbacks from street frontages (6.0 metres to Wilfred Street/ 4.5 metres to Aqualine Court) are compliant with provisions of the Bundaberg Regional Council Planning Scheme 2015 and the QDC MP1.2.

The owner of the property wished to construct a freestanding, unenclosed, prefabricated metal kit building located adjacent to the existing inground swimming pool. As the proposed road boundary setback to the Wilfred Street frontage did not comply with Acceptable Solution A1 (d) of the QDC MP1.2, the owner sought pre-lodgement Concurrence Agency advice from Council.

Concerned with the proposal, the Council contacted the Applicant to discuss various alternative siting/building setout options, but a mutually acceptable outcome could not be agreed between parties. As a result, the Council finally deliberated on a design that consisted of a structure with dimensions of 5.0L x 3.8W x 2.3H, with a setback to Wilfred Street site frontage of 900mm.

The Council issued a Concurrence Agency Response on 13 May 2017 instructing the Assessment Manager to refuse the application as it did not meet and could not be conditioned to meet the requirements of the QDC MP1.2 Performance Criteria P1 (a), (b), (c) and (d).

A Decision Notice refusal was issued by the Assessment Manager on 1 June 2017. An Application for appeal (Form 10) was lodged by the Applicant on 2 June 2017.

## Material Considered

Material considered in reaching this decision are as follows -

1. Applicant/Owner's advices lodged with the Committee's Registrar on 21 July 2017 (subsequent to hearing) confirming dimensions of proposed awning structure
2. Applicant/Owner's Form 10 and associated documents lodged with the Committee's Registrar on 2 June 2017
3. Assessment Manager's Decision notice refusal dated 1 June 2017
4. Applicant/Owner's email to Council (undated but assumed to be on or about 13 May 2017)
5. Council's Pre-lodgement Concurrence Agency Response, dated 13 May 2017 advising refusal on the basis of non-compliance with Queensland Development Code (QDC) MP1.2 P1 Performance Criteria (a), (b), (c) and (d)
6. Amended Drawings A1 (Site Plan) and A2 (Shelter Plan), dated 12 May 2017
7. Council's email to Applicant/Owner, dated 10 May 2017 (confirming receipt of revised drawings)
8. Applicant/Owner's email to Council, dated 10 May 2017 (forwarding revised drawings)
9. Council's email to Applicant/Owner, dated 9 May 2017 (to clarify final proposal for determination)
10. Bundaberg Regional Council Planning Scheme 2015
11. Queensland Development Code MP1.2
12. *Sustainable Planning Act 2009*
13. *Building Act 1975*
14. Verbal submissions at the on-site appeal hearing by the attending parties

## Findings of Fact

The Committee makes the following findings of fact:

### Subject Site

1. The subject site (14 Aqualine Court, Bargara) is a 681sqm allotment located on the SW corner of the Wilfred St/Aqualine Ct 'T' intersection. Site zoning, under the Bundaberg Regional Council Planning Scheme 2015, is Low Density Residential.
2. The allotment is rectangular (slightly irregular) in shape with truncated corner frontages to Wilfred St and Aqualine Ct of 30 metres (approx.) and 20 metres (approx.) respectively
3. Wilfred Street is a residential 'feeder' road connecting between Woongarra Scenic Drive and Moodies Road. Aqualine Court is a 'no through road' serving local residential traffic only.
4. Existing driveway access to the subject site is off Wilfred St and is located adjacent to the site's western side boundary
5. The existing dwelling is a 2 storey brick structure with its 'long' axis generally aligned with Wilfred St. A 3<sup>rd</sup> storey covered viewing patio is located at the Aqualine Ct end of the building.
6. Minimum setbacks to the existing dwelling from Wilfred St and Aqualine Ct are 6 metres (approx.) and 4.5 metres (approx.) respectively
7. An existing inground swimming pool is located adjacent to the driveway between the dwelling and the Wilfred St frontage. This is visually screened from the street by 1.8 metre high boundary fencing constructed with brick pillars/metal panel infills.
8. The proposed siting of the subject awning structure is to be adjacent to the Wilfred St frontage on the eastern side of the existing swimming pool enclosure
9. The existing streetscapes in Wilfred St, Aqualine Ct and the immediate surrounding areas comprise residential dwellings setback 4.5 metres (minimum) from road boundaries and with a mix of both open landscaped and fenced frontages. Front fences are typically approx. 1.8 metres in height.

### Application Process

1. The Applicant sought to have a freestanding, roofed, unenclosed, prefabricated kit style shade awning erected adjacent to an existing inground swimming pool and sought advice from Rum City Certifiers for the project.
2. Because the proposed awning structure (Class 10a) was to be located on or close to the site's Wilfred St frontage, the Certifier recommended that the Applicant obtain Pre-lodgement Concurrence Agency Response from Council.
3. On 23 March 2017 the Applicant lodged a request to Bundaberg Regional Council for Concurrence Agency Assessment with respect to design and siting of the proposed awning structure. The proposal was for a 5.0L x 4.5W x 2.55H structure (5.0 metre elevation to street) to be sited on the Wilfred St boundary approx. 9.0 metres from its truncated corner with the Aqualine Ct frontage.
4. Concerned with the proposal, Council contacted the Applicant, and a process of negotiation for alternative siting ensued between both, but a mutually acceptable outcome could not be agreed.
5. Following discussions between the parties on 9 May 2017, Council contacted the Applicant (by email) seeking clarification as to whether the request should be determined as submitted or if further revisions were intended (e.g. setback from front boundary).
6. On 10 May 2017, the Applicant/Owner submitted (by email) revised setout drawing(s) for Council's consideration. The Committee was advised that the revised design proposed a modified 5.0L x 3.8W x 2.3H flat roofed structure (5.0 metre elevation to street) setback 900mm from the Wilfred St boundary and approx 9.0 metres from its truncated corner with the Aqualine Ct frontage.

7. On 13 May 2017, Council provided its Concurrence Agency Response (addressed to the Applicant, dated 12 May 2017) advising refusal of the application in accordance with section 287(2)(b) of the *Sustainable Planning Act 2009*. The reason for refusal was that it had been assessed as failing to meet QDC MP1.2 P1 Performance Requirements (a), (b), (c) and (d), for reasons as follows -
- A. *As the height of the dwelling is three storey already, any increase in the development build area, not attached, or part of the existing construction, would be seen as a major addition to the bulk of the building impacting adversely on the streetscape.*
  - B. *While this is a well established subdivision, there are no other examples of similar major setback reductions identified on surrounding properties. The area is mainly made up with single storey detached dwellings with the less frequent two storey development dotted through the locality. It is also noted that there appears to be no indication of any skillion or flat roofed structures on any neighbouring properties, let alone located within the QDC's 6.0m setback, acceptable solution. This being the case it is determined that the development is not fitting with the existing streetscape and character of the area.*
  - C. *While the proposed setback may not have any effect on neighbouring views, it is determined that it would have a detrimental effect on neighbouring outlooks, being inconsistent with the built form of the existing streetscape.*
  - D. *There would be no envisaged reduction in safety to the public and any perceived nuisance would be mainly generated by the change in visual amenity.*
  - E. *There is available land area within the property to locate a structure of the type and scale proposed (generally) with increased road setbacks, such that the 900mm reduced setback cannot be justified in this instance.*
  - F. *The proposed 900mm building setback is insufficient to provide a vegetation buffer to screen the structure at maturity.*
  - G. *Due to the siting and design of the structure conditions cannot be reasonably imposed to reduce impacts to the streetscape and character of the area.*
- (Note - Council's reasons for refusal redesignated as 'capitals' to avoid confusing with QDC MP1.2 P1 Performance Criteria designations)
8. The Council response of 13 May 2017 referenced the associated drawings, as -
- Plan N° A1 - Site Plan, dated 12 May 2017
  - Plan N° A2 - Shelter Plans, dated 12 May 2017
- These indicate a 5.0L x 4.5W x 2.3H structure (5.0 metre elevation to street) with Nil setback to Wilfred St. However, at the hearing, both Applicant and Council representatives agreed that they were intended to indicate a 5.0L x 3.8W x 2.3H (20sqm) roofed structure (5.0 metre elevation to street) setback 900mm from the Wilfred St boundary and approx 9.0 metres from the truncated corner with the Aqualine Ct frontage. (Refer Item 12)
9. On (or about) 13 May 2017, the Applicant contacted Council (by undated email) advising points of disagreement with its Concurrence Agency reasons for refusal.
10. On 1 June 2017, the Assessment Manager issued the Applicant and Council with the Decision notice refusal, noting that -
- 'The assessment manager was directed to refuse the application by Bundaberg Regional Council. The refusal is solely because of the direction of this concurrence agency'*.
11. On 2 June 2017, the Applicant/Owner lodged the Application to appeal - Form 10 to the Committee's Registrar in response to the Decision Notice refusal.
12. At the on-site hearing, both the Applicant and Council agreed that the development proposal referenced by refusal was for a 5.0L x 3.8W x 2.3H (20sqm) roofed structure (5.0 metre elevation to street) setback 900mm from the Wilfred St boundary and approx 9.0 metres from the truncated corner with the Aqualine Ct frontage. Notwithstanding, the Applicant advised that given refusal of this compromise, he wished the Committee to consider his original proposal for a 5.0L x 4.5W x 2.55H (23sqm) freestanding, unenclosed, roofed structure.

13. In his verbal submission at the hearing, the Applicant restated disagreement with certain aspects of the Assessment Agency's reasons for refusal, being generally as previously outlined in the undated email.
14. In verbal submissions at the hearing, Council's representatives advised that there was no precedent for a Class 10a structure to be sited within the Wilfred St 6 metre boundary setback. Notwithstanding, they had been prepared to consider an alternative proposal for the awning if re-sited adjacent to the existing dwelling and less intrusive into the Wilfred St setback. However, when a mutually acceptable compromise could not be agreed, it was considered disingenuous to condition an approval to an outcome unacceptable to the Applicant/Owner. Accordingly, an Assessment Agency Response refusing the development was issued.
15. On 21 July 2017, (subsequent to the hearing) the Committee's Registrar received from the Applicant drawings of the proposed awning structure showing overall dimensions of 5.0L x 4.5W x 2.55H with 200mm deep edge beams (2N°) and 90 x 90mm corner posts (4N°).

### Reasons for the Decision

The Committee **confirms** the decision of the Assessment Manager to **refuse** the Class 10a awning structure as directed by Bundaberg Regional Council as Concurrence Agency.

The Committee is of the opinion that the proposed development does not represent an acceptable outcome with respect to QDC MP1.2 P1 Performance Criteria (b) and (c), for the following reasons:

P1(b) requires the proposal to facilitate - *'an acceptable streetscape, appropriate for the road boundary setbacks for neighbouring buildings or structures'*

The existing streetscape consists of residential dwellings with a mixture of open fronted allotments and up to 1.8m high front and side boundary fences/walls with soft landscaping, with all buildings generally set back between 4.5m and 6m from the road boundaries. No other example was evident throughout the neighbouring area of a similar structure being sited within 4.5 metres setback of a road frontage. Regardless of whether the awning structure dimensions were to be 5.0L x 4.5W x 2.55H or 5.0L x 3.8W x 2.3H, any proposed siting within 4.5 metres of the Wilfred St frontage is considered to be inappropriate to facilitate an acceptable streetscape.

P1(c) requires the proposal to facilitate - *'an acceptable streetscape, appropriate for the outlook and views of neighbouring residents'*

The outlook of neighbouring residents, both up and down the street, but especially for those lots situated on the opposite side of Wilfred St, would be adversely impacted by the proposed location of the awning structure and its intended proximity to the property front boundary. Accordingly, the proposed developments is considered to be inappropriate to facilitate an acceptable streetscape.

The Committee, however, has formed the opinion that the proposed development does satisfy QDC MP1.2 P1 Performance Criteria (a) and (d), for the following reasons:

P1(a) requires the proposal to facilitate - *'an acceptable streetscape, appropriate for the bulk of the building or structure'*

The existing dwelling, being partially three (3) storeys in height, had greater visual bulk than neighbouring buildings, which were a mix of single/double storey construction.

Given the visual dominance of this existing compliant arrangement, the proposed unenclosed, freestanding, single storey awning structure was unlikely to adversely increase the visual bulk of buildings on the site.

P1(d) requires the proposal to facilitate - *'an acceptable streetscape, appropriate for nuisance and safety to the public'*

The Council in their Concurrence Agency assessment noted - *'no envisaged reduction in safety to the public and any perceived nuisance would be mainly generated by the change in visual amenity'*. The Committee is in agreement with this assessment and accordingly this part of the Performance Outcome is considered to be satisfied.

**John Bright**  
**Building and Development Disputes Resolution Committee Chair**  
**Date: 11 August 2017**