



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal number:	26-10
Appellants:	Michael & Heather Lawton
Assessment manager:	Fraser Coast Regional Council (Council)
Concurrence agency:	n/a
Site address:	23 Livistonia Drive, Poona, and described as Lot 141 on RP 904022, — the subject site

Appeal

Appeal under section 527(1)(b) of the *Sustainable Planning Act 2009* (SPA) against the decision, dated 30 March 2010, of Council to include condition 5 stating that the “construction of the outbuilding (shed) is not to commence prior to obtaining Building Works approval for a detached house on the site”.

Date of hearing:	10.30 am — Thursday, 10 June 2010
Place of hearing:	Clarke Ewan Suite 5, Level 1, The Esplanade, Maroochydore
Tribunal:	Georgina J Rogers – Chair
Present:	Michael & Heather Lawnton – Owners/applicants John Hill – Suncoast Building Approvals - observer Michael Ellery, Executive Manager, Development Assessment – Council representative Melissa Seymour-Dearness – Council representative

Decision:

The Committee, in accordance with section 564 of SPA **sets aside** the decision appealed against, namely condition 5 which limits the construction of the Class 10a structure (shed) until an application has been made for building works for a detached house on the site.

The Committee directs the assessment manager to re-assess the preliminary development application for building works to exclude condition 5.

Background

An off-site hearing was attended by the appellants, an observer and Council representatives. From the verbal submissions and documentation provided which included neighbourhood and aerial photographic evidence, the Committee observed that the neighbourhood consisted of very low density construction

comprising mainly sheds with few detached houses. Based on the evidence the assumption was made that the traffic volumes would have little impact or significance on the proposed development.

The site is irregular in shape and fronts Livistonia Drive to the east. Livistonia Drive appears to be one street removed from the waterfront residential lots.

The site is greater than 2000m² in size, and is closer to 3,500m².

The site is unsewered.

The site is within the Rural Residential Zoning of the Poona area (Maryborough City Plan – March 2000, amended 15 January 2007).

The following additional correspondence and documentation was reviewed and taken into consideration:-

- 18 March 2010 – Tax Invoice – Fraser Coast Regional Council. Building works – not MCU – minor building works.
- 11 March 2010 – Owner statement of the reasons for the shed and amenity and aesthetics description. Plans attached.
- 9 March 2010 – Statutory declaration from owners advising they had no intention of living in the proposed shed.
- Maryborough City Plan – compliance statement for a Class 10a private garage.
- IDAS Form 6 – Building works application for preliminary approval
- IDAS Form 1 – Application details
- Additional information – provided by applicant including documentation of similar approval developments within the neighbourhood.
- Additional information – provided by Local Authority including Maryborough City Plan and discussion emails.

As a result of the assessment manager's conditioning of the decision notice, the appellant chose to appeal condition 5 of the decision to the Building and Development Dispute Resolution Committees, by notice of appeal, received 27 April 2010.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – 'Notice of appeal' and grounds for appeal received 27 April 2010.
2. Development application decision notice from Council with conditions dated 30 March 2010. Site plan, plans and elevations of the proposed shed.
3. Verbal submissions from the applicant and reasons for requesting the shed to be constructed for site maintenance equipment, without the requirement for building works approval for a detached house on the site
4. Verbal submissions from the development assessment manager, including reasons why the proposed building structure (shed) should be linked to Condition 5.
5. Development decisions from similar developments for sheds within the immediate vicinity.
6. SPA.
7. The *Building Act 1975* (BA).
8. The *Building Regulation 2006*.
9. The Queensland Development Code (QDC).

10. The Building Code of Australia (BCA)
11. Maryborough City Plan – extracts as amended.
12. Google Maps aerial and street view.
13. Plans and photographic documentation

Findings of Fact

The Committee makes the following findings of fact:

It was determined that the appellants applied for a preliminary approval for building work for a new residential garage defined as a Class 10a structure under the BCA, being a non-habitable building such as a shed or garage. For the purposes of this decision the application is referred to as a Class 10a structure, namely a shed.

1. It was determined the construction of the shed could be undertaken without an additional building application for a detached house on site as the applicant does not intend to reside in the shed, but to use it for storage of equipment used for maintaining the site.
2. The applicant is committed to not residing on site in the proposed shed.
3. From the evidence available it would appear that there are a number of sites on Livistonia Drive which do not have both a detached house and shed on the site, but only a shed.
4. The site is greater than 2000m².
5. The site does not have access to sewerage.
6. Council expressed concern that the shed could be habited and that for health reasons there was no access to sewerage and water.
7. An application for building works for a detached house on the site would require an application for, and installation of an effluent disposal system to be put in place. The appellants advised this was expensive and onerous as it was above the intent of their usage of the shed at this point in time.
8. The existing plans clearly indicate the location of the detached future house location and effluent disposal reserve.
9. There is no clear intent within the existing planning scheme to require a building application to be made for a detached house prior to the construction of the shed on a rural residential site within this area.
10. It is understood draft amendments are being made to the existing planning scheme to include this requirement.

Reasons for the Decision

1. The shed does not impact on the neighbourhood as its intent is for the storage of maintenance equipment for the site, not for habitation. It has been shown on the site plan to be located to the rear of the site. An amenity and aesthetics description indicates the intent of the applicant to build it of a standard, materials and manner which is consistent with the area and planning scheme requirements.
2. The existing planning scheme does not appear to address the issue of when a shed can or can't be constructed and whether it is a requirement that a building works application is required to be made for a detached house prior to construction being permitted. As such to include Condition 5 as it stands can be viewed as unnecessary and onerous.
3. It appears there are a number of sheds of similar size and location already in existence within the immediate neighbourhood and that these have received building approval.
4. Based on the above facts it is considered that the appeal is upheld. The decision held in this application is separate to any other applications which may be made over the property at this time or

in the future.

5. In assessing the criteria in relation to the building structure (shed) as being separate and distinct from an additional detached house on the site, the Committee found that there were grounds to allow for the proposed structure to be constructed without requiring a building application to be made for a detached house on the site.

Georgina Rogers
Building and Development Committee Chair
Date: 19 July 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
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