



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	57 - 12
Applicant:	Peter & Yvette Bolkowski
Assessment Manager:	Hycert Building Services (Stephen Grott)
Concurrence Agency: (if applicable)	Toowoomba Regional Council (Council)
Site Address:	8 Kelly Street, Harlaxton and described as Lot 75 on RP 78721 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application for the additions to a dwelling and change of classification for the structure from Class 10a to Class 1a. The Assessment Manager was directed to refuse the Application by the Concurrence Agency.

Date of hearing:	Friday 18 January 2013 at 10am
Place of hearing:	The subject site
Committee:	Geoff Mitchell– Chair
Present:	Peter & Yvette Bolkowski – Applicant Joy Shaw – Occupant Stephen Grott, Hycert Building Services – Assessment Manager Ross Ford – Council representative Anna Baker – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee) in accordance with section 564 (2)(c) of the SPA **sets aside** the decision appealed against and replaces the decision with the following:

The Application for the additions to a dwelling and Change of Classification from Class 10a to Class 1a is approved with conditions. The conditions that form part of this approval are attached as Schedule 1 to this decision.

Background

The subject site is a rectangular shaped allotment of 562m² which contains a dwelling and the building subject to the appeal.

The building subject to the appeal was approved as a Class 10a shed some time ago (approx. 2003)

In November 2011 Council became aware that the subject building was being used for habitable purposes and commenced action to bring the building into conformity.

The Applicant made Application to Council in February 2012 for a Building Development Approval to convert the detached shed to habitable area.

Initially it was considered that the new use required a Material Change of Use under the Toowoomba Regional Council Planning Scheme and Council advised the applicants on 20 Feb 2012 that further Development Approvals were required.

Council returned the Building Development Application to the Applicants in June 2012.

In August 2012 Council issued a Show Cause Notice on the Applicant requiring them to obtain a Building Development approval for the works. An amendment to the Planning Scheme of Council has changed the level of assessment for use to "self-assessable".

The Applicant satisfied the Show Cause Notice by making a Building Development Application to the Assessment Manager in September 2012.

Whilst the siting of the Class 10a shed complies with the provisions of the Queensland Development Code Part MP 1.2 - Design and Siting Standard for Single Detached Housing – on Lots over 450m² and over. (QDC MP 1.2), the proposed use does not comply with the acceptable solutions of the QDC for a Class 1a Dwelling.

The Assessment Manager referred the Application to Council as Concurrence Agency as required by Schedule 7 Sustainable Planning Regulation 2009 (SPR)

On 23 October 2012 Council directed the Assessment Manager to refuse the Application based on the following reasons:

- 1. The reason for Council's refusal is that the proposal is not in accordance with the acceptable solutions of the performance criteria of Part 1 of the Queensland Development Code, and*
- 2. The location of a Class 1a habitable residential building 600mm from the side and rear property boundaries will adversely impact on the amenity and privacy of residents on adjoining lots, and*
- 3. Adequate daylight and ventilation is not provided to habitable rooms as openings are not permitted in the southern and eastern walls because of the fire separation required under Section 3.7.1 of the National Construction Code Series Volume 2, and*
- 4. There is adequate space on the property to achieve the prescribed building line setbacks for a Class 1a building under the acceptable solutions of Part MP 1.2 of the Queensland Development Code.*

On 24 October 2012 the Assessment Manager refused the Application in accordance with the Council's request.

An appeal was lodged with the Building and Dispute Committee registry on 21 November 2012.

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 Committee Registrar on 21 November 2012
2. Verbal submissions from the Applicant at the hearing

3. Verbal submissions from the Council representatives at the hearing
4. Verbal submission from the Assessment Manager at the hearing
5. Written submission after the hearing as requested by the Committee from the Assessment Manager
6. Written submission after the hearing as requested by the Committee from the Council
7. Queensland Development Code MP1.2 – Design and Siting Standard for Single Detached Housing – on Lots over 450m² and over (QDC MP 1.2)
8. *Building Act 1975* (BA)
9. Building Regulation 2006 (BR)
10. The *Sustainable Planning Act 2009* (SPA)
11. The Sustainable Planning Regulation 2009 (SPR)
12. Building Code of Australia – Volume 2 (BCA)

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is a rectangular shaped allotment of 562m² which contains a dwelling and the building subject to the appeal.
- The building subject to the appeal was approved as a Class 10a shed some time ago (approx. 2003). The building is sited approximately 600mm from the southern and eastern boundaries.
- There have been alterations made to the building since its approval including the provision of internal partitions and linings.
- On 18 November 2011 Council requested the Applicant to make Application for a Development Approval for Building Work for the alterations to the building.
- On 20 February 2012 Council responded to the Application submitted by the Applicants advising that a Planning Approval was required.
- On 28 June 2012 Council returned the Application to the Applicants as no Planning Approval had been submitted.
- On 11 July 2012 Council issued a Show Cause Notice to the Applicants.
- On 27 July 2012 Council responded to the Applicants with respect to an extension of time to deal with the notice.
- At the hearing, the Council representative advised that the conditions of the notice had been satisfied.
- On 12 September 2012 the Applicant made Application to the Assessment Manager for a Development Approval for Building Work.
- The Assessment Manager referred the Application to Council as Concurrence Agency.
- On 23 October 2012 Council directed the Assessment Manager to refuse the Application.
- In 24 October 2012 the Assessment Manager refused the Application in accordance with the Councils request.
- An appeal was lodged with the Building and Development Committee registry on 21 November 2012 within the 20 day appeal period.
- The subject building is currently being used as a habitable portion of a dwelling.

Reasons for the Decision

From the reasons for refusal contained in Council's correspondence of 23 October 2012 and from the discussions at the hearing, Council's principle concern is compliance with Performance requirement P2 of QDC, which reads;

P2 - Buildings and structures

- (a) provide adequate daylight and ventilation to habitable rooms; and*
- (b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots*
- (c) do not adversely impact on the amenity and privacy of residents on adjoining lots.*

In response to QDC P2 (a) Council considered that:

"Adequate daylight and ventilation is not provided to habitable rooms as openings are not permitted in the southern and eastern walls because of the fire separation required under Section 3.7.1 of the National Construction Code Series Volume 2,"

The conversion of the building to Class 1a use will require the Building Certifier to consider the requirements of the BCA. In relation to light and ventilation this is Clause 3.8.4.2 which reads;

3.8.4.2 Natural lighting

Natural lighting must be provided in a Class 1 building to all habitable rooms, in accordance with the following:

(a) Natural lighting must be provided by—

(i) windows, excluding roof lights that—

(A) have an aggregate light transmitting area measured exclusive of framing members, glazing bars or other obstructions of not less than 10% of the floor area of the room; and

(B) are open to the sky or face a court or other space open to the sky or an open verandah, carport or the like; or

(ii) roof lights that—

(A) have an aggregate light transmitting area measured exclusive of framing members, glazing bars or other obstructions of not less than 3% of the floor area of the room; and

(B) are open to the sky; or

(iii) a proportional combination of windows and roof lights required by (i) and (ii).

and Clause 3.8.5.2 which reads;

3.8.5.2 Ventilation requirements

Ventilation must be provided to a habitable room, sanitary compartment, bathroom, shower room, laundry and any other room occupied by a person for any purpose by any of the following means:

(a) Permanent openings, windows, doors or other devices which can be opened—

(i) with an aggregate opening or openable size not less than 5% of the floor area of the room required to be ventilated; and

(ii) open to—

(A) a suitably sized court, or space open to the sky; or

(B) an open verandah, carport, or the like; or

(C) an adjoining room in accordance with (b).

(b) Natural ventilation to a room may come through a window, opening, ventilating door or other device from an adjoining room (including an enclosed verandah) if—

(i) the room to be ventilated or the adjoining room is not a sanitary compartment; and

(ii) the window, opening, door or other device has a ventilating area of not less than 5% of the floor area of the room to be ventilated; and

(iii) the adjoining room has a window, opening, door or other device with a ventilating area of not less than 5% of the combined floor areas of both rooms; and

(iv) the ventilating areas specified may be reduced as appropriate if direct natural ventilation is provided from another source.

The Assessment Manager has provided the Committee with the intended methods to achieve compliance with these BCA requirements namely;

“Light and Ventilation has been assessed and is found to be compliant.

We have a floor area of 54sq Mtrs.

5% floor area for ventilation = 2.7sq mtrs (we have 3.24 provided)

10% lighting = 5.4sq mtrs (we have 6.4 provided)

The Committee has not conducted its own calculations but considers the information provided shows that the building will comply with the requirements of the BCA. In satisfying the BCA the Committee considers that this will also satisfy the requirements of QDC P2 (a).

In response to QDC P2 (b) the Committee considers that as the building in its original state complies with the acceptable solutions of the code, the alterations proposed have no additional impact on the light and ventilation to habitable rooms on adjoining lots.

In response to QDC P2 (c) Council considered that:

“The location of a Class 1a habitable residential building 600mm from the side and rear property boundaries will adversely impact on the amenity and privacy of residents on adjoining lots.”

The conversion of the building to Class 1a use will require the Building Certifier to consider the requirements of the BCA in particular clause 3.7.1.3; which reads;

3.7.1.3 External walls of Class 1 buildings

An external wall of a Class 1 building, and any openings in that wall, must comply with 3.7.1.5 if the wall is less than—

- (a) 900 mm from an allotment boundary other than the boundary adjoining a road alignment or other public space; or*
- (b) 1.8 m from another building on the same allotment other than an appurtenant Class 10 building or a detached part of the same Class 1 building.*

and clause 3.7.1.5 which reads;

3.7.1.5 Construction of external walls

(a) External walls (including gables) required to be fire-resisting (referred to in 3.7.1.3 or 3.7.1.6) must extend to the underside of a non-combustible roof covering or non-combustible eaves lining (See Figure 3.7.1.3) and must—

- (i) have an FRL of not less than 60/60/60 when tested from the outside; or*
- (ii) be of masonry-veneer construction in which the external masonry veneer is not less than 90 mm thick; or*
- (iii) be of masonry construction not less than 90 mm thick.*

(b) Openings in external walls required to be fire-resisting (referred to in 3.7.1.3 or 3.7.1.6) must be protected by—

- (i) non-openable fire windows or other construction with an FRL of not less than –/60/–;*

The Assessment Manager has provided the Committee with the intended methods to achieve compliance with the BCA requirements namely;

“Fire Rating will be achieved by applying a fire rated board to the underside of the colour bond to achieve fire ratings in accordance with the NCC including removal of rear window.”

The Committee considers that the removal of the window and the increase in density of the external walling will satisfy the requirements of QDC P2 (c).

The Council additionally raised;

“There is adequate space on the property to achieve the prescribed building line setbacks for a Class 1a building under the acceptable solutions of Part MP 1.2 of the Queensland Development Code”

The requirement to consider alternate locations within the QDC relates to the siting of Carports with the front 6m of the property alignment.

The Committee considers that the building in its previous form is a lawfully constructed building and it would be unreasonable to require the structure to be relocated.

The Committee received a copy of the draft conditions from the Assessment Manager and these were forwarded to the Council for comment.

Council requested some additional conditions, namely:

- 1 *“No extension passed the 1 year without approval from TRC’s Building and Development*
- 2 *Compliance (note that reminder notice must be sent a no later than 3 months prior to lapsing);*
and
- 3 *Stormwater disposal to a lawful point of discharge; and Damp proofing; and*
- 4 *Waterproofing certificates for wet areas.”*

In relation to Item 1 the Committee appreciates the desire of Council to see an expeditious end to the matter, however the Committee considers that adequate provisions are contained in s383 of SPA without the need to alter the proposed condition submitted by the assessment manager

In relation to Item 2, the Committee is of the view that proposed Condition 9 is adequate.

In relation to Items 3 & 4, the Committee considers these are building assessment provisions and at the discretion of the Assessment Manager.

Geoff Mitchell
Building and Development Committee Chair
Date: 18 February 2013

SCHEDULE 1 - CONDITIONS

1. Building work must be started within six (6) months of the giving of this approval and completed within one (1) years after the giving of the approval. A reminder will be issued prior to the completion of the 1 year period. If building work is not completed prior to lapse time, and an application for extension has not been received, the application will lapse and require resubmission.
2. It is the responsibility of the Owner/Applicant to ensure there are no encroachments, or any easements which may affect this property.
3. Compliance with amendments as noted in red on approved drawings.
4. Ventilation to habitable room to comply with NCC Part3.8.5 as per plans.
5. Natural Lighting to be provided as per NCC Part3.8.4. as per plans.
6. The Building Certifier prior to work commencing on that relevant part must approve any alteration or modification of the approved drawings/specification.
7. Fire rating to walls within 900mm of side boundary to comply with NCC requirements.
8. Window within 900mm of boundary alignment to be removed.
9. Surface water must be collected and disposed of to approved and suitable outfalls or stormwater drainage system to avoid the likelihood of damage or nuisance to any other property, avoid water entry into a building and avoid building damage by water. Disposal points to be located/constructed to prevent surface erosion and minimise the potential for soil instability of the site and neighbouring sites.
10. Termite Barriers;
 - (a) Approved termite barrier system/s are to be provided to protect the primary building elements in accordance with AS3660.1- 2000 and Part 3.1.3 of the Building Code of Australia.
 - (b) DTS Method Proposed and Approved: Plasmite Physical barrier to penetrations. Visual Slab Edge protection to perimeter or as recommended by licensed Pest Controller in accordance with NCC.
11. All glazing in the building shall be installed in accordance with Part 3.6 of the Building Code of Australia.
12. Smoke alarms to be installed in accordance with Part 3.7.2 of the Building Code of Australia. Alarms to comply with AS3786 and be connected to consumer mains power (where supplied to the building) in accordance with AS3000.
13. Provide energy efficiency measures to comply with the requirements of the Queensland Development Code MP4.1.

CERTIFICATES

The following Inspection Certificate/Aspect Certificate/QBSA Licensee Aspect Certificate signed by a suitably qualified and competent person (Note 1) must, within five business days of the installation/inspection being carried out, be lodged with the Building Certifier if requested by the Certifier.

Aspect of Certification	Certificate From	Certificate Required	Stage Certificate Required
Glazing Compliance	Supplier	Form 15 Certificate	Prior to Final Inspection
Smoke Alarm/s Installation	Electrician	Form 16 Certificate	Prior to Final Inspection
Energy Efficient Insulation Compliance	Supplier	Form 16 Certificate	Prior to Final Inspection
Water Efficient Fittings Compliance	Supplier	Form 16 Certificate	Prior to Final Inspection

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 Housing and Public Works
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 3237 0403 Facsimile (07) 3237 1248