



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	55- 11
Applicant:	Brenton Towers
Assessment Manager:	Burnett Country Certifiers
Concurrence Agency: (if applicable)	Bundaberg Regional Council
Site Address:	14 Balaam Drive Kalkie and described as Lot 31 on SP168978 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Burnett Country Certifiers (BCC), as Assessment Manager, at the direction of Bundaberg Regional Council (Council) as Concurrence Agency, to refuse a Development Application (DA) for a Class 10a structure - "Bali Hut", i.e. an open sided shade structure with thatched roof associated with a swimming pool on site.

Date of hearing:	3pm – Tuesday 13 September 2011
Place of hearing:	The subject site
Committee:	John Panaretos – Chair Stan Spyrou – General Referee
Present:	Brenton Towers – Applicant Wallace Kenney – Burnett Country Certifiers Rick Drew – Burnett Country Certifiers Bradley Geaney – Bundaberg Regional Council Stephen Curran – Bundaberg Regional Council

Decision:

1. The Committee, in accordance with section 564 of the SPA, **confirms** the decision appealed against and **dismisses** the appeal.
2. The Committee finds that the Enforcement Notice was issued without due process and is of no effect.

Background

The subject site is a corner site with frontages to Balaam Drive and Charlotte Court. The 'Bali Hut' is a rectangular, open sided, grass thatch roofed structure up to 3 metres high and approximately 10 – 15m² in area, backing onto the Charlotte Court frontage of the subject site, adjoining a swimming pool. A high front paling fence screens much of the structure from public view, the upper portion and roof are visible from the street. The grounds of appeal state that *"the Bali Hut was originally built by the previous owner and wasn't identified as not having a building approval."* However, this appeared to be contradicted at the hearing.

Council issued an Enforcement Notice requiring the structure's removal from the property within twenty (20) business days. According to evidence given, Council did not consult with the applicant's certifier, as required by SPA, prior to issuing of the notice. Council officers acknowledge there was no consultation with the certifier (after their discussions with the applicant appeared to be achieving no resolution of the matter), particularly as their request to enter the subject site for a visual inspection was refused.

The applicant proffered a range of arguments for approval, not the least of which are positioning which does not create a hazard, aesthetic use of natural materials, positive impact on streetscape and disadvantages of an alternative position on site. Council argued that the streetscape and wider area are characterized by compliant front setbacks with landscaped front gardens. The structure is in a locally prominent position, visible from public spaces on three sides (with the Charlotte Court road reserve widening out at the rear of the subject site).

The question of validity of the Enforcement Notice was integral to, and was considered to form part of, these proceedings.

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 27 June 2011.
2. Decision Notice (refusal) issued by BCC on 22 June 2011.
3. Concurrence Agency response issued by Bundaberg Regional Council on 27 May 2011.
4. Letter and accompanying photos from the applicant to Council requesting siting concession dated 20 May 2011.
5. Verbal submissions made by the applicant and applicant's representatives at the hearing.
6. Verbal submissions made by Council representatives at the hearing.
7. Enforcement Notice issued by Bundaberg Regional Council on 12 August 2011.
8. Email communication dated 23 September 2011 from Wallace Kenney, BCC.
9. Queensland Development Code MP 1.2 (QDC).
10. SPA

Findings of Fact

The Committee makes the following findings of fact:

- The structure was erected without authorization and the applicant has genuinely attempted to legitimise it through the application for a building permit.
- The site is a corner site of 908m² with two street frontages (Balaam Drive and Charlotte Court).
- The position of the structure provides no setback to the Charlotte Court frontage of the site.
- Council did not undertake consultation with the certifier before issuing the Enforcement Notice.

- The Enforcement Notice was issued on 12 August, at a time when the DA was subject to this appeal.

Reasons for the Decision

Neighbouring properties and the wider area are characterised by a streetscape of landscaped gardens and house facades, created by consistent front setbacks. The proposal conflicts with this established character. Although it is an open sided structure, it faces the swimming pool internal to the site, presenting its rear to the street. Additionally, while the QDC makes exceptions for gatehouses at the street alignment, the structure is two to three times the prescribed dimensions for such a structure and presents a blank face to the street when combined with the adjoining paling fence. The grass thatched roof, although subjectively attractive, is insufficient to render an acceptable streetscape. Finally, it was considered that the structure could be repositioned onto available space on site, without contravening QDC 1.2.

The issuing of the Enforcement Notice did not follow due process in that the 'assessing authority' (Bundaberg Regional Council) was obliged by section 590(4) of SPA to consult with the certifier prior to such action. The required consultation was not undertaken. By way of observation, Council's issuing of an Enforcement Notice was considered unnecessary in this case, where there was no evidence tendered of danger to the public or likelihood that the effectiveness of future enforcement action would be compromised. The appropriate process under section 588 of SPA is the issuing initially of a Show Cause Notice.

John Panaretos
Building and Development Committee Chair
Date: 17 October 2011

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
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