



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	26 - 13
Applicant:	Gregory Van-Emden
Assessment Manager:	Brisbane Building Approval Centre
Concurrence Agency: (if applicable)	Brisbane City Council (Council)
Site Address:	27 Strathaird Street, Darra and described as Lot 2 on RP 86253 (Subject Site)

Appeal

Appeal under section 527(1)(a) of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a development application (Application) for the design and siting of two (2) solar trackers on the subject site. The decision followed a Concurrence Agency response by the Council directing refusal of the Application due to noncompliance with the *Queensland Development Code* (QDC) in relation to the design and siting of the solar trackers.

Date of hearing:	10 October 2013 at 10am
Place of hearing:	The Subject Site
Committee:	Gillian Adams – Chair Samantha Hall – Member
Present:	Greg Van-Emden – Applicant Peter Van-Emden – Applicant Peter Torresan – Assessment Manager Murray Craig – Solarhart (Supplier) Matthew Wrighton – Council representative Duncan Kirk – Council Representative

Decision:

The Building Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision by the Assessment Manager to refuse the Application.

Background

The subject site is a residential lot with a single storey residence, located within a residential area. The subject site is located near the centre of Strathaird Street, and is surrounded by other residences.

Sometime before 13 March 2013, two (2) solar trackers were installed in the backyard of the subject site towards the rear of the property.

The Applicant did not have a development permit for the construction of the two solar trackers.

The solar trackers are located in the rear yard of the residence and were measured from each centre support pole during the site visit as follows (survey plans for the actual locations were not available):

- Solar Tracker 1 is located: 3.2m from the northern property boundary and 3.2m from the eastern property boundary;
- Solar Tracker 2 is located: 3.4m from the southern property boundary and 7.2m from the eastern property boundary.

Each solar tracker has a tracking device that sits off the long side of the solar panel, making an overall length of the solar panel up to 5.9m, which is relevant for Solar Tracker 2.

As the solar panels track the sun they move every couple of minutes via a hydraulic mechanism.

On 21 March 2013, the Assessment Manager was engaged by the Applicant to assess the Application.

On or about 16 May 2013, a Concurrence Agency Application was lodged by the Assessment Manager with the Council, which contained the following:

- a Neighbour's Statement from 29 Strathaird Street dated 7 May 2013, which indicated nil concerns with the solar trackers;
- a Neighbour's Statement from 25 Strathaird Street dated 9 May 2013, which noted the following concerns with the solar trackers:
 - height of structure;
 - visual impact;
 - noise of hydraulics;
 - distance to fence;
 - concern regarding storms and movement of structures.

By letter dated 11 July 2013, the Council directed the Assessment Manager to refuse the Application in accordance with section 285 of the SPA for the reason that the Application did not comply with Performance Criteria P2(c) of Part MP 1.2 of the Queensland Development Code (QDC MP 1.2) for the following reasons:

- the structures that move and reflect are causing loss of amenity to the effected (sic) neighbours;
- the (as built) solar trackers are with-in the side boundary set-backs.

By Decision Notice dated 29 July 2013, the Assessment Manager refused the Application as directed by the Council stating:

"Building Application has been refused for the following reason: the siting variation for solar tracker is not approved by Brisbane City Council and does not comply with the QDC 1.2".

On 19 August 2013, the Council issued a Show Cause Notice under section 588 of the SPA to the Applicant in relation to the two solar trackers and a large shed on the Subject Site.

On 22 August 2013, an Appeal was filed with the Building and Development Dispute Resolution Committee against the Decision Notice to refuse the Application.

Material Considered

The material considered in arriving at this decision comprises:

- 'Form 10 – Appeal Notice', grounds for appeal, solar panel specification sheet and correspondence accompanying the appeal lodged with the Committee Registrar on 22 August 2013;
- 'Form 6 – Development Application Decision Notice' of the Assessment Manager dated 29 July 2013;
- Referral Agency Response of the Council dated 11 July 2013;
- Concurrence Agency Application completed by the Assessment Manager dated 16 May 2013, including Neighbours' Statements from 25 and 27 Strathaird Street;
- Structural certification letter of O'Meara Wood & Associates Pty Ltd dated 19 June 2012;
- Verbal submissions by the Applicants, the Assessment Manager, the Supplier, and the Council representatives at the hearing;
- The Committee's on site inspection of the subject site and surrounds;
- Property details as available through Council's website;
- Hand-drawn site plan;
- The (QDC) MP 1.2;
- The SPA;
- The *Building Act 1975* (Building Act);
- The *National Construction Code – Building Code of Australia* (BCA);
- Photographs taken during the site inspection.

Findings of Fact

The Committee makes the following findings of fact:

Subject Site:

- The Subject Site has a lot size of over 450m².
- The Subject Site has a frontage of approximately 15m or slightly less.

Surrounding locality:

- The surrounding locality consists of single detached dwellings.
- Sheds in the rear of surrounding properties are not uncommon.
- There are no other solar trackers or similar structures in the surrounding properties.

Solar trackers:

- The dimensions of the solar trackers are as follows:
 - centre support pole: 3.5m in height;

- solar panels centred on top of centre support pole: 3.5m by 5.4m.
- Measured from their centre poles, the solar trackers are located as follows:
 - Solar Tracker 1: 3.2m from the northern property boundary and 3.2m from the eastern property boundary;
 - Solar Tracker 2: 3.4m from the southern property boundary and 7.2m from the eastern property boundary.
- Each solar tracker has a tracking device that sits off the outside edge of the long side of the solar panel, making an overall length of the solar panel up to 5.9m, which is relevant for Solar Tracker 2.
- With the tracking device located on the edge of the panels, the overall distance from the centre support pole to the edge of the tracking device is in the order of 3.4m.
- The solar panel on each solar tracker moves on two axes and changes alignment to better suit the angle of the sun approximately every five minutes.
- The maximum potential height of each solar tracker, including the solar panels, is 6m when the panels are tilted to their maximum.
- The solar panels on each solar tracker are made of anti-reflective glass.
- The solar trackers on this property form a solar farm and produce power greater than the accepted residential use of 5 kilowatts based on Queensland Government Solar Feed-In Tariff Changes.
- The solar trackers constitute “structures” under the QDC as:
 - The QDC defines a “structure” as having the same meaning as in the Building Act.
 - The Building Act defines a “structure” as including a wall or fence and anything fixed to or projecting from a building, wall, fence or other structure.
 - Under the BCA, “Class 10b” includes a structure being a fence, mast, antenna, retaining or free-standing wall, swimming pool, or the like.

Siting:

- The QDC MP1.2 determines the design and siting standards for single detached housing on lots 450m² and over.
- Acceptable Solution A2(a)(ii) of QDC MP1.2, provides that the side and rear boundary clearance for a part of a building or structure is 2m where the height of that part of the building or structure is greater than 4.5m but not more than 7.5m.
- Acceptable Solution A2(b)(1) of QDC MP1.2, provides however, that where the site is a narrow lot with a 15m or less frontage (such as the Subject Site), the minimum side and rear setbacks for structures not more than 7.5m in height are in accordance with Table A2. Table A2 provides that where the road frontage is between 14.501m and 15.000m, the side and rear boundary clearances for structures 4.5m to 7.5m in height are 1.9m.
- The centre support poles of the solar trackers are both within the appropriate setbacks from the side and rear boundaries and therefore comply with Acceptable Solution A2(b)(i) of QDC MP1.2. However, the actual solar panels and tracking device, which move constantly throughout the day, encroach within the required side boundary clearances.
- The solar trackers therefore do not comply with Acceptable Solution A2(b)(i) of QDC MP1.2.
- However, Acceptable Solution A2(c) of QDC MP1.2 provides a discretion to exempt a structure from compliance with Acceptable Solution A2(b) in certain circumstances.

- The following exemptions are likely to apply in this case:
 - A2(c)(i), as the structures are not decks, patios, pergolas, verandahs, gazebos or the like;
 - A2(c)(ii), as the structures are not used for entertainment, recreational purposes or the like.
- In considering whether an exemption should be applied in this case, regard must be had to the matters listed in Performance Criteria P2.

Consideration of siting exemption:

- Performance Criteria P2, provides:

“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.”
- The solar trackers comply with Performance Criteria P2(a) and (b) of QDC MP1.2, as they do not pose any impacts upon any buildings on adjoining lots with respect to daylight and ventilation.
- In respect of Performance Criteria P2(c) of QDC MP1.2, there are two limbs. The solar trackers comply with the second limb, in that they do not adversely impact on the privacy of residents on adjoining lots.
- In respect of the first limb of Performance Criteria P2(c) of QDC MP1.2, the solar trackers do adversely impact on the amenity of residents on adjoining lots for the following reasons:
 - the solar panels on the solar trackers move roughly every 5 minutes and create a whirring noise as they move, which would be audible in the backyards of the adjoining lots but unlikely to be heard within the houses;
 - the solar trackers do create an adverse visual impact for the adjoining residents in terms of height and appearance and they are not consistent with the residential amenity of the adjoining lots. In particular, the size and close proximity of the trackers to the residential boundaries to the north and the south, make the solar trackers visually imposing on the adjacent lots.
- A submission was made by an adjoining resident that the solar trackers produce glare which adds to the impacts on amenity, however, the panels on top of the solar trackers consist of anti-reflective glass and therefore do not adversely impact on the amenity of residents by causing glare or reflection.

Reasons for the Decision

The solar trackers should be removed or relocated to meet the appropriate setbacks from the common property boundaries to the north and the south for the following reasons:

- The solar trackers do not comply with Acceptable Solutions A2(a)(ii) or A2(b)(i);
- While there exists a discretion to grant an exemption under A2(c)(i) and A2(c)(ii) to reduce the setback, due to the adverse impacts of the solar trackers on the amenity of residents on adjoining lots, the discretion should not be exercised in this case.
- Due to their adverse impacts on the amenity of residents on adjoining lots, the solar trackers, therefore, also do not comply with Performance Criteria P2 of QDC MP1.2, in particular P2(c).

Gillian Adams
Building and Development Committee Chair
Date: 28 November 2013

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 to the Planning and Environment Court 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
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