



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal number:	11-10
Applicant:	PMD Property Pty Ltd
Assessment manager:	Sunshine Coast Regional Council (Country and Coastal Certifiers)
Concurrence agency: (if applicable)	Not applicable
Site address:	72 Caloundra Road Little Mountain Qld 4551 and described as Lot 12 on SP 122960 — the subject site

Appeal

Appeal under section 527(b) of the *Sustainable Planning Act 2009* (SPA) against the decision of Country and Coastal Certifiers to approve with conditions a development application for building work, namely the construction of a class 7a industrial building. Specifically, condition BA18 is subject to this appeal.

This appeal was heard concurrently with Appeal no. 10-10, as the appeals refer to the same property.

Date of hearing:	19 March 2010 commencing at 10.30am.
Place of hearing:	Level 7, 63 George Street Brisbane.
Committee:	Christopher Odgers – Chairperson Russell Bergman – Member Catherine Patterson – Member
Present:	Kari Stephens – Applicant’s representative Paul Davis – Applicant Michelle Davis – Applicant John Dunn – Sunshine Coast Regional Council (Country and Coastal Certifiers) Richard Jones – Sunshine Coast Regional Council (Country and Coastal Certifiers) John McLanders – Stramit Building Products Kerry Casin – Stramit Building Products Troy Bramley – Fyreguard Steven McKee – Queensland Fire and Rescue Service Chris White – Queensland Fire and Rescue Service Michael Corser – Queensland Fire and Rescue Service

Decision:

The Committee, in accordance with section 564 of the SPA, **confirms** the decision by the private certifier and dismisses the appeal.

Background

The subject site is currently developed and consists of a service station, UltraTune tenancy, and a caretaker's residence located over the service station.

The site frontage is to Caloundra Road. The rear of the property (south) aligns with land under the ownership of Bunnings Hardware Store. A written agreement exists between Bunnings and PMD Property to use the land on the Bunnings site for access to and from the subject site. A concrete crossover has been constructed for this purpose.

Sunshine Coast Regional Council (Country and Coaster Certifiers) has imposed condition BA18(i) which limits the proposed roller door within the proposed building extension for ventilation purposes and excludes the building extension and site from vehicular access from the rear of the subject site.

Condition BA18 states –

Growth Management Conditions

Please note the following conditions imposed on the building works by the Growth Management Unit of the Sunshine Coast Regional Council –

The roller door located within the western wall of the building must only be used for ventilation purposes and must not be used for vehicular access purposes of any kind.

(i) The area of the site between the building and the western alignment of the allotment must only be used for outdoor recreational purposes associated with the residential use of the land. This area must not be used for any other purpose without prior consultation with and the formal approval of Council.

The development of the site must proceed in accordance with all conditions of a development permit that exists over the site: File Ref 2005/50-00057.

PMD Properties have appealed condition BA18, in particular, against BA18(i), which limits the roller door type and use on the basis that condition BA18(i) will cause the roller door to be used exclusively by others (the tenant of the existing building that currently is UltraTune). As stated in the appeal submission - *this effectively stops my client from tenancing this building separately if the need should arise at some time in the future.*

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice' dated the 19 February, 2010, grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 19 February 2010
2. Letter from Dillon Folker Stephens dated the 19 February 2010, with attachments, providing details of the appeal
3. Email from Dillon Folker Stephens attaching facsimile advice from Bunnings (neighbouring property) dated 31 March 2010 relating to an access gate
4. SPA
5. The *Building Act 1975*.
6. The Building Code of Australia

Findings of Fact

The Committee makes the following findings of fact:

Section 84 of the *Building Act 1975* advises that a private certifier must not be inconsistent with particular earlier approvals.

A private certifier must not approve an application if the proposed building development relates to an earlier development approval. In this case, granting of an unconditional building approval would be inconsistent with Development Permit File Ref 2005/50-00057.

The growth management unit condition was included by the private certifier so that the conditional approval would not be inconsistent with the earlier MCU File Ref 2005/50-00057.

Reasons for the Decision

The private certifier has demonstrated consistency with the *Building Act 1975* s84 by limiting the use of the land and the building extension approval. The private certifier is also seen to be facilitative in not refusing the application but approving the application with conditions.

Christopher Odgers
Building and Development Committee Chair
Date: 28 April 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
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