



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	33-11
Appellant:	Mr Mark Brown
Assessment Manager:	Suncoast Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	1054 Yandina – Coolum Rd Maroochy River described as Lot 2 on SP 201601 – the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Suncoast Building Approvals as Assessment Manager to refuse a Building Development Application (DA) for the construction of a Class 1a building based on a Concurrence Agency response from Council which declined a request to establish a floor level in an identified flood prone area, below what is prescribed as an Acceptable Measure by a Planning Scheme Code.

Date of hearing:	10.00am – Friday 22 July 2011
Place of hearing:	The subject site
Committee:	Mr Don Grehan – Chair Mr Patrick Atkinson – General Referee
Present:	Mr Mark Brown – Appellant Mr Michael Rolton – Appellant's representative Mr Jack Greensill – Assessment Manager's representative Mr Alan Thompson – Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 508 of the SPA, **dismisses the appeal** on the grounds that it has no jurisdiction to make a decision as the matter being appealed arises from an application that has not been afforded the correct level of assessment under IDAS.

Background

The Assessment Manager refused a DA for building works in relation to a proposed dwelling on the subject site following receipt of Concurrence Agency advice from the Sunshine Coast Regional Council.

The subject site is identified as being "Flood Prone Land" and the request to Council was initiated given that the floor level of the entry foyer of the proposed dwelling is less than that prescribed in Acceptable Measure A1.1 of Element 9 of the Code for the Development of Detached Houses and Display Homes of the Maroochy Plan 2000.

The Council in rejecting the proposal, considered that Performance Criteria P1 of Element 9 had not been satisfied and that acceptable levels of flood immunity for people and buildings had not been provided.

The Appellant, dissatisfied with the refusal, sought to appeal the Decision.

Material Considered

The material considered in arriving at this decision comprises:

- Form 10 – Appeal Notice' and Appellant's correspondence accompanying the appeal lodged with the Registrar on 15 April 2011.
- Suncoast Building Approvals Decision Notice (Refusal), Ref No. SBA 11-0402, dated 11 April 2011.
- Council's Concurrence Agency Response, Ref No. RAP11/0019, dated 7 April 2011.
- Verbal submissions from the Appellant and their representative at the hearing.
- Verbal submissions from Council's representative at the hearing.
- Written submissions presented by Council's representatives at the hearing.
- Architectural Drawings 1 to 12, Project No. 2010-030C dated 9 August 2011 by MRA Design submitted at the request of the Committee after the hearing.
- Written advice regarding compliance of plumbing fixtures below flood level from Plumbing Services, Sunshine Coast Regional Council dated 9 August 2011 submitted at the request of the Committee after the hearing.
- The SPA.
- The Sustainable Planning Regulation 2009 (SPR).
- The *Building Act 1975* (BA).
- The Maroochy Plan 2000.

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is situated adjacent to the Maroochy River and is vacant except for an existing Class 10a building.
- The appellant proposes to construct a new two storey detached house on the subject site and Part A3 of the Building Codes of Australia confirms that the detached house will be a Class 1a(i) building.
- The subject site is located within the amalgamated Council area consisting of the former Noosa Shire, Maroochy Shire and Caloundra City Councils in 2008.
- The Sunshine Coast Regional Council has not yet finalised a unified planning instrument and, in the interim, development is regulated by the applicable planning schemes of the former local government entities. Accordingly, in relation to the subject site, the Maroochy Plan 2000 is the applicable planning

instrument.

- In accordance with Part 3 of the SPA, the Maroochy Plan 2000 considers the proposed construction of the detached house to constitute a Material Change of Use (MCU) given that it represents the start of a new use of the premises.
- In the context of the proposal, Volume 1, Part 4, Table 4.1 Table of Development Assessment for Rural Precincts of the Maroochy Plan 2000 clarifies that the development represents a self assessable MCU subject to compliance with the Acceptable Measures of the Code for the Development of Detached Houses and Display Homes (Elements 1-9 and 11-19).
- In accordance with the Maroochy Plan 2000, the subject site is zoned Rural (Sustainable Cane Land).
- The subject site is covered by the Flood Prone Land Overlay having been identified as being located within the Flood Prone and Drainage Constraint Areas, Special Management Area shown on Regulatory Map 1.5 of the Maroochy Plan 2000.
- In relation to residential development, the Sunshine Coast Regional Council has, in accordance with section 32(b) of the BA, made a provision under the Maroochy Plan 2000 in relation to land liable to flooding namely Element 9 of the Code for the Development of Detached Houses and Display Homes.
- In relation to land identified as being "Flood Prone Land", Element 9 of the Code for the Development of Detached Houses and Display Homes requires that Performance Criteria P1 to be satisfied namely:

Floor levels of Detached houses and Display homes are provided at a height above flood levels at which the safety of people on the site is maintained and potential damage to property on the site is minimised.

- As a means of satisfying Performance Criteria P1, Element 9 of the Code for the Development of Detached Houses and Display Homes provides Acceptable Measure A1.1 that states:

In any Flood Prone or Drainage Constraint Area as shown on Regulatory Map No 1.5, the floor levels of all buildings are:

(a) the greater of:

- (i) 2.5m AHD (to provide protection from storm surge events); or*
- (ii) 400mm above the 100 year ARI flood level; or*
- (iii) 600mm above the highest recorded flood level;*

- As confirmed by the Sunshine Coast Council Flood Search Certificate, Ref. CER10/3065 dated 2 December 2010, the minimum floor level required to achieve compliance with Acceptable Measure A1.1 of Element 9 is 4.52m AHD which is equivalent to 600mm above the highest recorded flood level.
- With reference to Drawing No's. 4 of 12 and 5 of 12 , Project No. 2010-030C dated 9 August 2011 by MRA Design the finished floor heights of the proposed dwelling are as follows:

Ground Floor level, 2.800m AHD; and
First Floor level is 5.750m AHD.
- There the proposed Ground Floor level is contrary to Acceptable Measure A1.1 of Element 9. The Ground Floor level consists of an enclosed entry foyer comprising a passenger lift, stairs and powder room.

- Section 83 of the BA imposes general restrictions on the Private Certifier from granting a Building DA

including :

- (a) if a Concurrence Agency has jurisdiction for a part of the building assessment work, until that part has been assessed by the Concurrence Agency, under the building assessment provisions; and
- (b) if the building development application includes development other than building work, until under SPA, all necessary development permits are effective for the other development.
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- With consideration to section 83 of the BA and the non compliance with Acceptable Measure A1.1, the Assessment Manager submitted a request to the Council to assess the proposal against Performance Criteria P1 of Element 9 of the Code for the Development of Detached Houses and Display Homes on the basis Council had jurisdiction. Council then refused the application as Concurrence Agency.
- Volume 4, Part 1.2 (4) (b)(i) of the Maroochy Plan 2000 clarifies that where self assessable development does not comply with an applicable acceptable measure of a Planning Scheme Code the level of assessment is taken to be code assessable. Notwithstanding, in specified instances, Schedule 4, Table 2, Item 2 of the SPR prescribes that, where certain Class 1a buildings do not comply with an applicable acceptable measure of a Planning Scheme Code they may be exempt from code assessment in favour of referral to the Local Authority as a Concurrence Agency by virtue of Schedule 7, Table 1, Item 26 of the SPR.
- In accordance with Schedule 4, Table 2, Item 2 of the SPR and in the context of the proposed development, the predictors that permit the level of assessment to be referred to the Local Authority as a Concurrence Agency in lieu of a Code Assessment are:
 1. The use of the premises must be for a residential purpose in a residential zone;
 2. The proposed development must not be self-assessable development under the planning scheme;
 3. No overlays relevant to the development, other than only an overlay about bush fire hazards, must apply to the premises: and
 4. The premises must be less than 2000m².
- In the making, accepting, assessing and deciding a request for Concurrence Agency Response, an error has occurred in the level of assessment afforded to the measures proposed as an alternative to Acceptable Measures A1.1 in satisfying Performance Criteria P1 of Element 9 of the Code for the Development of Detached Houses and Display Homes.
- In relation to the construction methods and materials proposed for the Ground Floor level, the "Finished Schedule Lower Floor - All Areas Below RL 4520" as documented on Architectural Drawing No. 4 of 12, Project No. 2010-030C dated 9 August 2011 by MRA Design confirm that all materials and fixtures are either water resistant or otherwise located above the requisite minimum floor level. Similarly, the structural adequacy of this level to resist flood actions has been confirmed by a Registered Professional Engineer of Queensland
- The advice from Plumbing Services, Sunshine Coast Regional Council dated 9 August 2011 confirms that the proposed location of the Powder Room fixtures (Hand basin and W.C) below the flood level contravenes the *Plumbing and Drainage Act 2002*.
- There is nothing prohibiting the Appellant re-submitting the proposal to establish a reduced floor level on the subject site to the Council as a Code Assessment (Building Works Made Assessable by the Planning Scheme).

Reasons for the Decision

- The proposed development does not meet the predictors that permit referral to the Local Authority as a Concurrence Agency in lieu of a Code Assessment given that:
 1. The subject site is not described in the Maroochy Plan as being in a residential zone,

2. A Flood Prone Overlay, which is relevant to the development applies to the subject site; and
 3. The subject site exceeds 2000m².
- The functions of Concurrence Agency and an Assessment Manager are separate processes under the SPA and under IDAS. Comparatively, the application processes, assessment periods and appeal rights associated with, and arising from, a Code Assessment are substantially different to those associated with a Concurrence Agency Referral.
 - The error in the level of assessment, while unintentional, is an error that invalidates the decision being appealed against, as such the Committee has no jurisdiction.

Don Grehan
Building and Development Committee Chair
Date: 18 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
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248



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