



## Building and Development Dispute Resolution Committees—Decision

---

### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	03-12
<b>Applicant:</b>	Michael Mackie
<b>Assessment Manager:</b>	Burnett Country Certifiers
<b>Concurrence Agency:</b> (if applicable)	Bundaberg Regional Council
<b>Site Address:</b>	174 Tantitha Rd Gooburrum and described as Lot 59 RP200211 – 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 - shed.

---

<b>Date of hearing:</b>	10.30am, Wednesday 28 March, 2012
<b>Place of hearing:</b>	The 'subject site'
<b>Committee:</b>	John Panaretos - Chair
<b>Present:</b>	Michael Mackie – Applicant/ Owner Ray Lyons – McHugh Steel (Builders) Wal Kenney – Burnett Country Certifiers Richard Jenner – Bundaberg Regional Council Merinda Grayson – Bundaberg Regional Council

---

### Decision:

The Committee, in accordance with section 564(2) of the SPA, **sets aside** the decision appealed against and directs the Assessment Manager to **approve** the application in accordance with the submitted plans subject to the Assessment Manager's assessment against the BCA.

### Background

The site is a 2 Ha site zoned Hinterland Residential under the Burnett Shire Planning Scheme, a zone in which sheds ancillary to dwellings are 'self-assessable', subject to the Acceptable Solutions of the *Detached Dwelling, Domestic Storage and Building Code*. The proposal, for a Class 10a shed 144m<sup>2</sup> in area and 4.9m in height, exceeds the Acceptable Solutions contained in Table 8.4 of the Code (120m<sup>2</sup> GFA and 4m high). Thus, it is assessed against the relevant provisions of the QDC, MP1.2.

It was argued by BCC that the appeal constitutes an 'amenity and aesthetics' appeal, while Council opposed such a view. If it were an 'amenity and aesthetics' appeal, the committee would not be properly constituted as required by s502 of the SPA.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal, proposal plans and correspondence accompanying the appeal lodged with the Registrar on 23 January 2012.
2. Verbal submissions made by the applicant and the applicant's representatives at the hearing.
3. Verbal submissions made by Council representatives at the hearing.
4. Aerial photos referred to at the hearing.
5. Council's policy GP-3-104 Rev 2, *Amenity and Aesthetics Considerations for Development...* submitted with the Registrar by BCC on 28 March 2012.
6. *Sustainable Planning Act 2009*.
7. Burnett Shire Planning Scheme 2006.
8. QDC MP1.2.
9. N.B. A legal opinion drafted for Council and relating to other matters but, according to both Council and BCC, relevant to issues raised in the current appeal, was submitted by Council to the Committee. However, the Committee determined not to consider this document in concluding its decision.

## **Findings of Fact**

The Committee makes the following findings of fact:

- The appeal is not an 'amenity and aesthetics' appeal. Hence, the Committee has jurisdiction to decide the matter.
- The proposed shed is 144 m<sup>2</sup> in floor area. Combined with the existing shed on site, total floor area is 294 m<sup>2</sup>. However, since Mr Mackie proposes to park his work vehicle inside the shed a portion of the floor space does not constitute GFA.
- The site has a grade of less than 15%. The shed is proposed to be 4.9m in height, exceeding the planning scheme prescribed height by 0.9m. As a consequence, the height limit of 8.5m required by Acceptable Solution A4 of the QDC applies.
- The shed is set back 50m from the front alignment and Council does not dispute that it will have little, if any, presence in the streetscape.
- The proposed shed is positioned proximate to the northern side boundary. A variation to the prescribed side boundary setback is not sought.
- The existing sheds on site are positioned approximately 20m from the northern side boundary and well back from the front alignment.
- The adjoining allotment to the north is currently undeveloped by is similarly zoned Hinterland Residential Zone.

## Reasons for the Decision

- The appeal is not an amenity and aesthetics matter because Council has made no resolution, nor is there any reference in the planning scheme to the effect that buildings larger than 120 m<sup>2</sup> and 4m in height represent “an **extremely** adverse effect on the amenity, or likely amenity, of the locality”, or are “in **extreme** conflict with the character of the locality” as required by Schedule 7, Item 17 of the *Sustainable Planning Regulations 2009*. (N.B. bold type added to quotes) In fact, both the proposed floor area and height of the shed are significantly below those Acceptable Solutions prescribed by the QDC.
- Further, the Specific Outcome of the Code (SO.262) and Performance Criterion (P3) of the QDC relevant to the size of domestic sheds both refer, not to amenity and aesthetics matters, but to functional matters: car parking, provision of private open space, and in the case of P3, to service facilities.
- The functional considerations of SO.262 also apply to building height, while the relevant Performance Criterion of the QDC, P4, requires that buildings do not unduly ‘overshadow adjoining houses’ and ‘obstruct the outlook from adjoining lots’. However, Acceptable Solution A4 of the QDC allows a maximum building height of 8.5m on lots with grades up to 15%, and higher on steeper land.
- **GFA** - While the combined floor area of the sheds on site is significantly larger than the 120 m<sup>2</sup> limit provided by the Code, it is a minor fraction of the 50% site cover allowable under the QDC. Further, there was no suggestion by Council that the combined floor area of the sheds offended against the functional objectives of the Performance Criterion on a site of 20,000 m<sup>2</sup>.
- In addition, the planning scheme envisages sheds with a larger combined floor area than 120 m<sup>2</sup>, since vehicle parking is exempt from the definition of GFA.
- Finally, the existing sheds on site are positioned some distance from the northern side boundary, with ample large trees and other landscaping within the setback. The existing sheds have no impact on the streetscape, nor is the proposed shed likely to, as was acknowledged by the Council representative at the hearing.
- The proposed shed will be visible from the adjoining allotment, which is, as yet, undeveloped, but as it presents its short dimension (9m) to that allotment, any impact is minimised.
- **Height** – As the proposed shed is on the southern side of the adjoining allotment, there can be no impact from overshadowing.
- The proposed shed will be visible from the adjoining site to the north. However, the visual impact is significantly less than envisaged by the QDC. Combined, the sheds are unlikely to be obtrusive.
- In addition, should the adjoining site be reconfigured and developed for ‘hinterland residential’ in future, it is reasonable to expect that the development layout will respond to its context, further minimising any impact.

---

**John Panaretos**  
**Building and Development Committee Chair**  
**03 April 2012**

## **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 Local Government and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**