



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	19-13
<b>Applicant:</b>	Nicholas John Purcell
<b>Assessment Manager:</b>	GMA Certification Group (GMA)
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council (SCRC)
<b>Site Address:</b>	56-76 Sunrise Road Eumundi and described as Lot 5 on SP208638 (the subject site)

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against a Decision Notice issued by GMA Certification Group at the direction of Sunshine Coast Regional Council as referral agency to refuse a Building Development Application for Class 10a structures (shipping containers) within the prescribed setback requirements to a road boundary at the subject site.

<b>Date of hearing:</b>	20 June 2013
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	John Panaretos– Chairperson John Dunn – General Referee
<b>Present:</b>	Mark Purcell – Applicant Paul Riley – Council representative

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **changes** the decision appealed against in the following respects:

1. The Committee **allows** the appeal in relation to 'Shed A' as identified on submitted Plan No. 20130315 Issue 1.0 dated March 2013, subject to the direction listed in Item 3. below; and
2. The Committee **confirms** the decision appealed against in relation to 'Shed B', as identified on submitted Plan No. 20130315 Issue 1.0 dated March 2013.
3. The Committee makes the following directions in respect of 'Shed A'.

The Applicant shall clad Shed A with an external copper cladding or any other applied sheeting-finish to the satisfaction of the Council, to minimise the visual impact of the completed Shed on the amenity of the area.

## Background

The subject site has an area of 1.424 hectares, is located in Planning Area No 25, Precinct 1 – Lake MacDonald Catchment Area (Water Resource Catchment Area) – of the Maroochy Plan 2000 and is not located on a State controlled road.

A building development application (the Application) was made for two ‘sheds’: Shed A consisting of a cluster of three shipping containers and Shed B a single, long shipping container, both to be positioned within the front setback prescribed by the applicable code of the Maroochy Plan. Development for a Detached Dwelling, including ancillary outbuildings, is subject to assessment against Code 4.1 (Code for the Development of Detached Houses and Display Homes). To the extent that it applies to the current appeal, the purpose of the code is as follows:

*(2) That the height, siting and design of Detached houses and Display homes in Rural Residential and Rural Precincts achieves an acceptable level of amenity for residents and maintains a visual character where buildings are set within and subservient to an open or forested landscape.*

Acceptable Measure A3.3 of the Code requires a minimum setback of 20 metres to a road frontage to achieve the above stated goal. The applicable Performance Criterion requires that the amenity of adjacent land and dwellings be maintained having regard to a range of aspects of development, relevantly including building massing and scale, character and appearance, as well as a desired character whereby buildings are minor elements within a dominantly natural or rural landscape.

The Application proposed:-

- a) A cluster of 3 x 6m long shipping containers setback approximately 14m: and
- b) A single 12m long shipping container setback approximately 7m from the Sunrise Road alignment.

The Council letter dated 2 May 2013 directed the Assessment Manager to refuse the Application because the proposal could not comply and could not be conditioned to comply with Performance Criteria P3 “...because the containers do not maintain the building character and appearance of the street, or building massing and scale as seen from neighbouring premises or, maintain an open visual landscape dominated by natural elements rather than built structures.”

The Maroochy Plan does not have an “Amenity and Aesthetics” policy on the siting and use of shipping containers.

## 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 21 May 2013;
2. GMA Certification Group – Development Application Decision Notice Reference No 20131120 dated 07 May 2013;
3. Hedwyn Garth document – Re: SCRC Relaxation Decision PR006:DMRAB13/0162 document dated 20 May 2013 – Summary, Contour and Detail Survey Plan and associated drawings;
4. GMA Certification Group – Referral Agency Assessment Application Report Ref No 2013/0167 dated 15 April 2013;

5. Sunshine Coast Regional Council – Concurrence Agency Response Ref No RAB13/0162 letter dated 02 May 2013;
6. SCRC Maroochy Plan – Code 4.1 “Code for the Development of Detached Houses and Display Homes, Element (1) Height and Siting of Buildings and Structures;
7. Sunshine Coast Regional Council – Maroochy - Planning Area No 25 Northern Coastal Plains Map;
8. Verbal submissions made by both the Applicant and the Council representative at the hearing;
9. *Sustainable Planning Act 2009* (SPA);
10. *Sustainable Planning Regulation* (SPR);
11. *Building Act 1975* (BA)

## **Findings of Fact**

The Committee makes the following findings of fact:

- Shed A was well established at the time of the appeal hearing, consisting of a cluster of three shipping containers positioned contiguously, with footings, external timber deck and stairs;
- Shed B, the single, large shipping container, was positioned almost parallel with the road alignment and was in preparation to be secured into position;
- Both sheds are positioned on level platforms lower than the road, formed by cutting into the slope of the land, and constructing retaining walls up to approximately 1m high.
- A 2m to 3m high temporary timber framed structure with camouflage netting and up to 10m long runs roughly perpendicular to the road alignment between the two sheds. No Development Application has been made with respect to this structure. This will be removed once the immature vegetation provides sufficient shielding of the structure from the roadway;
- Shed A has been painted externally with a two tone camouflage green pattern and the Applicant has indicated an intention to camouflage Shed B similarly, and a willingness to clad the structures with a copper external skin to upgrade their aesthetics;
- The proposed use of the shipping containers is Class 10a Sheds – Domestic storage and recreational structures ancillary to the detached house on the property;
- The Applicant provided the Committee with the owner’s vision for the future use of the property, but any future use of the structures other than Class 10a Sheds is subject to the Maroochy Plan requirements;
- Maroochy Plan, Element (1), Code 4.1 Acceptable Measure A3.3(a) road boundary setback requirement in Rural Precincts is 20.0m (where not fronting a State controlled road) – Sunrise Road is not a State controlled road;
- The proposed setbacks fall short of the relevant provisions of the Rural precinct;
- The site is 1.424 hectares without steep land or flooding constraints that could impact on the location of buildings on the property;
- The front alignment of the property has been planted with Tiger Grass to provide additional screening to the structures and further screening is proposed by installing a gate of opaque material across the driveway entry.

## **Reasons for the Decision**

The Committee determined that Shed A, in its current position, can be made subservient to natural landscape elements for the following reason:

- Shed A is somewhat obscured from public view by its cutting into the slope of the land and its setback of approximately 14m of existing screening vegetation. The structure will better harmonise with its surrounds with a copper external cladding, as suggested by the Applicant.

In respect of Shed B, the slope of the land and depth of the cutting is less effective in screening it from public view, particularly since it has a much smaller setback (7m) and longer façade (12m) to the road. The Committee is not convinced that additional planting or camouflage works can render the structure subservient to the landscape or consistent with the desired character of the precinct. Hence, the 20m setback is to be observed.

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**John Panaretos**  
**Building and Development Committee Chair**  
**Date: 18 July 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 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  
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