



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	68- 11
Applicant:	John Griffin
Assessment Manager:	Toowoomba Regional Council (Council)
Concurrence Agency: (if applicable)	Not Applicable
Site Address:	144 Mt Rascal Road, Mt Rascal and described as Lots 3 & 5 RP169135 — the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the decision of Council to issue an Enforcement Notice alleging a demountable structure has been placed on the subject site without a Development Approval for Building Work.

Date of hearing:	2:00pm – Thursday 20 October 2011
Place of hearing:	Department of Local Government & Planning, 128 Margaret Street, Toowoomba
Committee:	Stan Spyrou – Chair Jennifer Hutcheon – General Referee
Present:	John Griffin – Applicant Ross Ford - Council Anne-Marie Henry - Council

Decision:

The Building and Development and Dispute Resolution Committee (Committee), in accordance with section 564 of SPA, **confirms** the decision appealed against and dismisses the appeal.

Background

The subject site is zoned rural and has an approved use of “farm forestry” pursuant to the *Cambooya Shire Council Planning Scheme 2009* (CSCPS). The site fronts Mt Rascal Road, Mt Rascal and is identified as “Good Quality Agricultural Land” pursuant to the CSCPS.

The alleged unauthorised structure consists of a prefabricated structure of approximately 28 square

metre floor area comprising a bedroom, living area, dining area, kitchen and bathroom/laundry facilities and is intended for habitable use. The structure incorporates fully installed plumbing and electrical fittings for connection to electrical, water supply and waste-water services. The current location of the structure is within the minimum 15 metre property alignment setbacks required by the CSCPS "Provisions Applicable to Houses in Rural land Use Areas".

Council issued an Enforcement Notice requiring the structure's removal from the property within twenty (20) business days or a Development Approval for building work be obtained for the structure.

Council advised the Committee the structure remains on site and a Development Approval for building work has not been obtained.

Council provided detailed evidence supporting its position that the Applicant had been given ample opportunity to comply with the actions required by the Enforcement Notice. The Applicant proffered a range of arguments for the structure to remain in its current location on site and in the current plumbing fitting configuration with particular reference to the existing electric storage-type hot water system.

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 15 August 2011.
2. Letter presented to the hearing by the applicant titled "Case why the enforcement notice was premature" and accompanying manufacturer's details for the demountable structure.
3. Verbal submissions made by the applicant at the hearing.
4. Verbal submissions made by Council representatives at the hearing.
5. Development Permit – Material Change of Use – Code reference MCUC/2008/8022 dated 16 September 2009 issued by Council.
6. Enforcement Notice issued by Council on 29 July 2011.
7. Correspondence from Council dated 24 October 2011 accompanied by extracts from the *Cambooya Shire Council Planning Scheme 2009 (CSCPS)*
8. Appendix B to Plumbing Application with Councils document reference 4180327 titled "Plumbing Compliance with AS3500".
9. Register of events submitted to the Committee by Council.
10. Sustainable Planning Act 2009.
11. Building Code of Australia (BCA).

Findings of Fact

The Committee makes the following findings of fact:

- The structure was erected without authorisation.
- The actions required by the Enforcement Notice have not been carried out.
- The structure is intended for habitable purposes.
- The structure does not comply with Acceptable Solution A1.6 of the Rural Development Code in that the gross floor area of the structure is approximately 28m² being less than the minimum 80m²

required by A1.6.

- The site is designated as Good Quality Agricultural Land by the CSCPS.
- The structure does not comply with Acceptable Solution A4.2 in that it is located within the minimum 15m setback from property boundaries.
- The Enforcement Notice has been lawfully issued.

Reasons for the Decision

The structure is intended for habitable use and is capable of meeting the requirements of the BCA and Queensland Development Code for a habitable dwelling notwithstanding it has a gross floor area of 28m² being less than the minimum 80m² required the CSCPS. The structure is also capable of being relocated to be at least 15m clear of the property boundaries. The structure is capable of adequately performing as a habitable structure provided it is lawfully connected to power, water and wastewater services. It is possible to grant a concession for the existing hot water system to remain as is until such time as it fails and requires replacement at which time a permitted system is to be installed.

Subject to the application of general requirements necessary for obtaining a Development Approval for Building Work from an accredited building certifier, it is possible to obtain such approval and thereby satisfy the requirements of the Enforcement Notice issued by Council.

Council's issuing of an Enforcement Notice did follow due process and was considered necessary in this case.

Stan Spyrou
Building and Development Committee Chair
Date: 11 January 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
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