



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	30 - 12
Applicant:	Kevin and Lyn MacKenzie
Assessment Manager:	Caboolture Building Approvals (Assessment Manager)
Concurrence Agency: (if applicable)	Moreton Bay Regional Council (Council)
Site Address:	14 – 20 Healy Street, Caboolture and described as Lot 25 on RP 210151 – the subject site

Appeal

Appeal under section 526 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse an application for a carport and shed. The Assessment Manager was directed to refuse the application by Moreton Bay Regional Council as the Concurrence Agency pursuant to Schedule 7, Table 1 and Item 17 Amenity and Aesthetic Impact of Particular Building Work and Item 19 Design and Siting of the Sustainable Planning Regulation 2009 (SPR).

Date of hearing:	21 August 2012
Place of hearing:	The subject site.
Committee:	Ain Kuru – Chair Ray Rooney – Committee Member Leo Blumkie – Committee Member
Present:	Lyn MacKenzie and Kevin MacKenzie – Applicants Chris Trewin, Building and Plumbing Manager – Moreton Bay Regional Council Richard Konarski, Building Co-ordinator – Moreton Bay Regional Council

Decision:

The Building and Development Dispute Resolution Committee (Committee) in accordance with section 564 of the SPA confirms the decision of the Assessment Manager that the application be refused based on the advice of Council as Concurrence Agency.

Background

The Applicant made an application for a shed and carport to the Assessment Manager. The proposal included approval of an existing shed, as well as a proposed extension. The application was for building

work as defined under the SPA.

The existing shed and carport measures 12 m by 12.7 m by 4.2 m high, and is located at the north-west corner of the lot, approximately 6.4 m from the Healy Street road frontage. The proposed extension is 6.1 m by 12.7 m by 4.5 m high, and is to be located between the existing shed, and the road frontage boundary. The existing and proposed sheds comprise slab on ground construction with steel portal frame construction and galvanised steel sheeting to the walls and roof. The proposed extension will be 300 mm from the Healy Street road frontage.

In this location, Healy Street has not been made into a sealed road and is in a semi natural state containing a single driveway providing access to a property on the other side of the road. Otherwise the road is partly vegetated with a stand of bamboo and medium sized trees. The road also provides pedestrian access across mown grass to a fauna reserve known as Toovey Street Park which is located along Lagoon Creek.

In accordance with Schedule 7 of the SPR,, the Assessment Manager referred the application for the shed to Council as the Concurrence Agency pursuant to the following::

1. Table 1 Item 17 of the SPR, Council has an Amenity and Aesthetics policy which requires that any Class 10 building (i.e. a shed) in a residential zone having a total height greater than 3 m and floor area exceeding 72 m², must be assessed for its impact on the amenity and aesthetics of the neighbourhood; and
2. Table 1 Item 19 of the SPR, the setback from the road frontage does not comply with the Queensland Development Code MP 1.2 Design and Siting Standard for Single Detached Housing (QDC MP 1.2) as Acceptable Solution A1 (a) provides for a minimum road setback of 6 m.

On 14 June 2012 Council directed the Assessment Manager to refuse the application for the shed extension pursuant to the following:

1. Table 1 Item 17 of the SPR - the shed will have an extreme adverse effect on the amenity or likely amenity of the locality and is in extreme conflict with the character of the locality; and
2. Table 1 Item 19 of the SPR - there was adequate accessible room on the property to meet the minimum setback requirement of 6 m.

On 25 June 2012, the Assessment Manager subsequently refused the application.

On 3 July 2012, the Applicants lodged an appeal to the Committee against the refusal on the grounds that the criteria under which Council refused to give their concurrence were not valid points which a local authority can consider.

On 21 August 2012, a hearing was held on site. The Applicants advised that the proposed extension was to provide shelter for a large boat which was about 10 m long and 3 m wide with additional space being required for access around the boat. In support of the proposal, the Applicants further advised that:

- this was the only practical location on-site in which they could manoeuvre the boat into a shed;
- they have a signed letter from the residents of 17 Healy Street, which faces the proposed shed, stating they have no objections or concerns with the proposal;
- there is an existing shed nearby on Muller Street which is constructed close to the boundary;
- existing vegetation on the road will screen the proposed shed; and
- it is very unlikely that the road would be made as there are no new residential lots which require sealed access and there is alternative access to land on the other side of Lagoon Creek.

The Council representatives advised that the application for the extension was refused because:

- there are other possible locations for the shed on the property;
- the existing trees which would screen the shed are on Council property and could be removed; and

- that if this vegetation is removed, the proposed extension will be clearly visible and have a detrimental impact on the amenity of the streetscape.

A site inspection of the property by the Committee found that:

- the subject site is a large residential lot having an area of 3,238 m². The lot has been developed for residential purposes including a house, swimming pool and landscaping;
- the subject site also has a road frontage to Miller Street;
- there is an existing shed on the site which has not been lawfully approved (the existing shed forming part of the proposed application);
- the existing shed comprises slab on ground construction with steel portal frame construction and galvanised steel sheeting to the walls and roof;
- in anticipation of an approval, the Applicant has poured the concrete slab for the extension;
- the location of the proposed extension to the shed would allow the Applicant to conveniently park the boat and not interfere with the amenity of the backyard;
- there was debate about whether an alternative location would be workable in respect of vehicle manoeuvrability;
- the site is well screened from the road by a bamboo hedge located on the road; and
- the road leads to a fauna reserve known as Toovey Street Park on Lagoon Creek.

At the hearing, the Committee asked the Applicant; to consider whether the proposed extension could be sited three metres from the boundary because it was the Committee's view that the portal frame construction of the existing shed would allow it to be reconfigured, The Applicant did not view this as a practical solution.

The Committee also asked the Council to provide further details about the nearby shed on Muller Street as well as the nearby fauna reserve on Lagoon Creek. In response Council advised on 5 September that:

1 Details of the decision made in respect of the shed on Miller Street

Council issued a relaxation approval for the shed in question at 11 Miller St. This 90 m² shed was approved with a setback of 0.200 m from the road boundary and with a maximum height of 4.500 m at the ridge. The proposed shed in Healy Street is 2.5 times the size of this one. The main reason for this approval being issued was the fact, even though this property is more than twice the size of Healy Street, virtually all of it is mapped as being flood prone, other than a small portion adjacent Miller Street.

2 Advice as to whether Moreton Bay Regional Council has a management plan for Lagoon Creek

A biodiversity management plan (BMP) is currently being drafted for Toovey Street Park (AKA Lagoon Creek). This area is mainly outside the area of the BMP so there is probably no conflict however a recreation trail is planned to run from that end of Healy Street into the park and will run past the proposed shed.

The Council also advised that a town planning application has been lodged by the Applicant due to the excessive floor area and that the proposed location of the shed was within an area mapped as a Nature Conservation Overlay under the Caboolture Shire Plan. Council advised this application is currently on-hold pending the outcome of this appeal.

Material Considered

The material considered in arriving at this decision comprises:

1. Site Plan - drawn on Construction Identification Survey prepared by Murray & Associates - unreferenced

2. Floor Plan – Phillip Vanderniet, Consulting Civil and Structural Engineer -MCK -6802 -01
3. Elevations – Phillip Vanderniet, Consulting Civil and Structural Engineer -MCK -6802 -02
4. Neighbour Statement – Garry Dan Parker and Jennifer Anne Parker - 3 July 2012
5. Concurrence Agency response (Amenity and Aesthetic Provisions) – Moreton Bay Regional Council -14 June 2012
6. Concurrence Agency response (Design and Siting Provisions) – Moreton Bay Regional Council - 14 June 2012
7. Decision Notice (Refusal) – Trevor McLean, Private Certifier No A3669 (25 June 2012)
8. Form 10 – Appeal Notice and grounds for appeal – Kevin and Lyn MacKenzie -3 July 2012
9. Caboolture Shire Plan – 12 December 2005
10. Council Policy No 202/02, Building Approval Procedures, Caboolture Shire Council – Amenity and Aesthetics (Class 1A & 10A Buildings) – 17 December 2002
11. Fact Sheet, Design & Siting and/or Amenity and Aesthetic Provisions, Moreton Bay Regional Council – undated
12. Queensland Development Code MP 1.2 Design and Siting Standard for Single Detached Housing (QDC MP 1.2) – on Lots over 450 m2 and over
13. Email providing further advice from Moreton Bay Regional Council – 5 September 2012
14. *Building Act 1975* (BA)
15. Building Regulation 2006 (BR)
16. *Sustainable Planning Act 2009* (SPA)
17. Sustainable Planning Regulation 2009 (SPR)

Findings of Fact

The Committee makes the following findings of fact:

1. The application was correctly referred to the Council as a Concurrence Agency in accordance with Schedule 7, Table 1, Items 17 and 19 of the SPR.
2. The proposed shed was assessed by Council in accordance with:
 - a. Item 17 of the SPR regarding its impact on the amenity and aesthetics of the area under Council Policy No 202/02; and
 - b. Item 19 of the SPR regarding whether the proposed shed complies with the Performance Criteria of QDC MP 1.2.
3. The criteria under Council Policy No 202/02 states:

4.1 *Class 10 Buildings*

In accordance with Section 50 of the Standard Building Regulation 1993, an application to erect a Class 10(a) building (private garage, carport, shed, or the like) on a property that is located in a Special Residential & Residential, A B, C or D zone and a Special Rural, Rural & Rural Residential zone will be refused in the following circumstances:

- a) *Where, in the opinion of Council, the proposed building when built, will have an extremely adverse effect on the amenity or likely amenity of the buildings neighbourhood; or*
- b) *Where, in the opinion of Council, the aesthetics of the proposed building when built, will be in extreme conflict with the character of the buildings neighbourhood.*

4. The definition of 'road' in QDC MP 1.2 states:

- (a) an area of land dedicated to public use as a road; or*
- (b) an area open to , or used by, the public and developed for, or has, as 1 of its main uses, the driving or riding of motor vehicles; and*
- (c) does not include a pedestrian or bicycle path.*

5. The Performance Criteria under QDC MP 1.2 states:

- P1 The location of a building or structure facilitates an acceptable streetscape, appropriate for –*
- (a) the bulk of the building or structure; and*
 - (b) the road boundary setbacks of neighbouring buildings or structures; and*
 - (c) the outlook and views of neighbouring residents; and*
 - (d) nuisance and safety to the public.*

Reasons for the Decision

Amenity and Aesthetics –location

The proposed extension to the shed will result in a 12.7 m long galvanised sheet wall, 4 m high built 300 mm from the Healy Street road frontage. The road is in a semi natural state and apart from a single driveway serving a property on the other side of the road, it leads to Toovey Street Park located along Lagoon Creek. It is uncertain whether a constructed road will be extended the full length of the subject site, as land on the other side of the creek is already accessible from Jensen Road and there are no other properties which require access.

However the road does provide pedestrian access to Toovey Street Park which has been recognised as having environmental value for birdlife. Therefore, with respect to Council's Amenity and Aesthetics Policy, the Committee believes the proposed extension to the shed will have an extremely adverse effect on the amenity of the neighbourhood, as the proposed shed will detract from the entry to this Park.

While the existing stand of bamboo would provide some screening, this bamboo is on the road and given the environmental values of the Park, it would be reasonable to expect it would eventually be removed. Given the small setback of 300mm the shed has from the boundary, it is not possible the Applicants can ameliorate the visual impact of the shed.

Amenity and Aesthetics –size of shed

Under Council's Policy the total area of the existing and new shed should not exceed 72 m² in this zone. However given the size of the lot, and that it has limited potential for re development due to flooding, an appropriate area would be 72 x 3 = 216 m² as this is roughly proportional to the area of the site, assuming one lot on the south side of the existing house could be sold. The proposed extension and existing shed is 230 m², which is only marginally larger. In this regard, the Committee does not believe the size (as opposed to the location) of the shed has an extremely adverse impact on the amenity of the neighbourhood.

Streetscape under QDC MP 1.2

The Committee also finds that the proposed building does not facilitate an acceptable streetscape under QDC MP 1.2 due to its bulk. The 12.7 m long by 4 m high wall will result in over 50 m² of metal sheeting being located on a road frontage. While this road frontage does not form part of a traditional suburban streetscape, it is nevertheless a public street which provides access to a public environmental park. In this regard it does not meet the Performance Criteria.

Under section 564(2)(e) of the SPA the Committee may, with the consent of the Applicant, vary the application provided the Committee is satisfied that:

1. the building, when erected, will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood; and
2. the aesthetics of the building, when erected, will not be in extreme conflict with the character of the building's neighbourhood.

The Committee was of the view that the following variations would meet the requirements of section 564(2)(e)

1. the proposed shed extension achieves a minimum 3m road boundary clearance to Healy Street;
2. the road boundary setback on the Healy Street frontage is adequately planted to screen the shed extension from the street which will require the portion of the existing concrete slab within 3 m of the Healy Street frontage to be removed. This would require the Applicant to submit a landscape plan for Council approval and to carry out planting and maintain or replace as required to permanently screen the shed; and
3. Council may elect to defer the above planting at their discretion until such time as the existing road planting of bamboo is removed or becomes ineffective as screening.

The Committee sought the written agreement of the Applicant to the proposed variations and provided the Applicant two weeks to respond. The Committee advised that should an agreement not be reached within this period the Committee will confirm the decision of the Assessment Manager.

The Applicants did not respond to the proposed variations, therefore the Committee confirms the decision of the Assessment Manager that the application be refused based on the advice of Council as Concurrence Agency.

Ain Kuru
Building and Development Committee Chair
Date: 16 October 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 Housing and Public Works
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