



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	64 - 11
Applicant:	Mr Peter Lane
Assessment Manager:	QPDB Pty Ltd
Concurrence Agency:	Toowoomba Regional Council (Council)
Site Address:	22 James Street, Crows Nest QLD 4355 Properly described as Lot 167 on RP15487

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the refusal issued by the Assessment Manager of a Building Development application for a shed. The refusal was based on a decision by the Concurrence Agency to impose a condition of approval requiring increased setbacks for the shed in accordance with an acceptable solution under the Dwelling House Code in the *Crows Nest Planning Scheme 2007*. The applicant could not comply with the imposed setbacks due to the size and dimensions of the shed.

Date of hearing:	11am Thursday, 20 October 2011
Place of hearing:	The subject site – 22 James Street, Crows Nest
Committee:	Stan Spyrou – Chair Jennifer Hutcheon – General referee
Present:	Peter Lane – Owner / Applicant Mark McKechnie – Assessment Manager (private building certifier) Richard Green – Toowoomba Regional Council (concurrence agency) Nikki Morrison Toowoomba Regional Council (concurrence agency)

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the *Sustainable Planning Act 2009*, **sets aside** the decision of QPDB Pty Ltd Pty Ltd in its refusal of a Development Application for siting of a shed; and replaces it with the following decision:-

The Committee, in accordance with section 564 of SPA, **directs** the Assessment Manager to **approve** the Development Application, subject to compliance with the conditions and advices included within the Decision Notice of 25 July 2011 (pages 3 to 9 inclusive) and the following additional condition:-

1. *The development must be carried out generally in accordance with the approved plan/s listed below, subject to and modified by the requirements listed below, and by other conditions of this approval:*

Plan No: 1

Description: Site Plan, as prepared by the applicant, dated 8 April 2011

Amendments: The shed is to be setback a minimum of:

- *2m from the property boundary to Grace Street.*
 - *0.5m from the north-western property boundary (adjoining Lot 144 RP15487 – substation site).*
 - *0.5m from the north-eastern property boundary (adjoining Lot 166 on RP15487 – 20 James Street).*
- a) *The site must be prepared and any earthworks carried out must be based on the lowest part of the site containing the shed, being the area adjacent to Grace Street, where drainage can be managed. Earthworks are to comply with Part 3.1.1 and Part 3.1.2 of the Building Code of Australia (BCA).*
 - b) *Maximum building height is restricted to 4.7m (including slab) above finished ground level where finished ground level is approximately 0.5m below the current level of the adjoining Grace Street verge, and where drainage is managed to ensure no adverse impact upon adjoining properties.*
 - c) *The 2m setback to the Grace Street property boundary must be landscaped with trees and shrubs to screen the shed at this point and contribute towards the streetscape. Trees and shrubs are to have a minimum height of 1.0 metres at planting, and be of a type/species to achieve visual screening of the shed within 5 years to a minimum mature height of 3 metres.*
 - d) *No street trees are removed during construction of the shed.*
 - e) *The shed must be painted in colours to match the existing dwelling on the site, or built of materials are of a similar colour.*
 - f) *Amended plans which comply with the amendments must be submitted for approval by the Assessment Manager prior to the issue of a Development Permit for plumbing and drainage works.*

Material Considered

The material considered in arriving at this decision comprises:

1. Decision Notice issued by QPDB Pty Ltd, dated 25 July 2011;
2. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal, including photographs and written submission, as lodged with the Registrar on 09 August 2011.
3. Concurrence Agency response, dated 18 May 2011;
4. Verbal submissions from the applicant, the Assessment Manager, and Concurrence Agency at the hearing on 20 October 2011;
5. Photographs submitted by the applicant via email with the Registrar on 21 October 2011;
6. Elevations submitted by the appellant via email dated 17 March 2012 and referenced Job#: 0155;
7. The *Crows Nest Planning Scheme 2007* (Planning Scheme);

8. The *Sustainable Planning Act 2009*;
9. Building Code of Australia (BCA).

Background

The Committee conducted an on-site hearing and the opportunity was taken to view the setback area for the shed to Grace Street, the Energex power sub-station to the north, and the existing property to the north-east (Lot 166 on RP15487).

The subject property shares property boundaries to a road reserve (Grace Street), an Energex power sub-station (Lot 144 on RP15487) to the north, and a residential property to the east (Lot 166 on RP15487). The site is relatively level, with a slight fall east-west from the adjoining property towards Grace Street. The Grace Street and verge are set approximately 0.5m above the level of the subject property. It should be noted that the Energex power sub-station is not screened.

The surrounding area comprises of similarly sized allotments containing detached dwellings, as well as outbuildings such as sheds. The dwelling opposite the subject property faces Grace Street, and is setback approximately 3 - 4m from the Grace Street frontage. A number of outbuildings are located on 20 James Street, adjoining the subject property, and are visible from Grace Street.

The subject property has an area of 1,214m², and contains one detached dwelling located approximately 5.5m from the James Street frontage of the property, as well as a small workshop or shed located approximately 0.5m from Grace Street. The dimensions of the site are approximately 20m (to James Street) by 60m (to Grace Street). The detached dwelling has an area of approximately 194.8m², while the workshop has an area of approximately 27.03m², comprising a total of 18.2% of the site area. It has been assumed for the purposes of this appeal that all existing buildings on the site are lawful.

The application which is the subject of this appeal involves a Building Application for a shed located at the northern boundary of the site. The shed is proposed to be 18m long, 7.5m wide, and 4.6m high (excluding slab), covering 132m² of area. A maximum of 90m² of area and height of 3.6m is stipulated as an acceptable solution under the Dwelling House Code of the Planning Scheme for a shed ('outbuilding') and as such was subject to referral to Council as Concurrence Agency.

The proposed shed is intended to be setback 1.25m from Grace Street, 0.5m from the northern boundary to the substation, and 1.25m from the boundary adjoining the property at 20 James Street. A 6m setback from Grace Street and 1.5m from other boundaries is stipulated as an Acceptable Solution under the Dwelling House Code of the Planning Scheme, and hence was subject to referral to Toowoomba Regional Council as a concurrence agency.

Council provided a Concurrence Agency response requiring the Assessment Manager to impose a number of conditions. The following condition is the subject of the appeal:

"A. 1. The development must be carried out generally in accordance with the Approved Plan/s listed below, subject to and modified by the requirements listed below, and by other conditions of this approval:

Plan No: 1

Description: Site Plan As prepared by the applicant dated 8 April 2011

Amendments: The shed is to be setback 6m from the property boundary of Grace Street and 1.5m from the north west property boundary (adjoining Lot 144 RP15487)."

The applicant asserted the following reasons for his decision to appeal the condition of approval, both within the written submission and during the hearing:

- The shed colours and design are in keeping with the character of the surrounding properties.
- There is significant need for an enclosed large shed to house three (3) vehicles, a caravan, a workshop, storage and recreational area in the same complex.
- The building height of 7.5m was chosen to create room to manoeuvre inside the shed when there are vehicles inside and when accessing the trunk and engine bays.
- The existing workshop is used for storage and there is not enough room to perform tasks inside.
- The adjacent property owner to the north-west has indicated that he does not mind having a reduced side setback to his boundary.
- The siting and design of the shed is primarily to visually block the Energex power sub-station to the north, which is considered an eyesore.

During the hearing, Council noted the following points:

- The proposed shed does not comply with relevant acceptable solution ASG(i) under the Dwelling House Code of the Planning Scheme, which requires a maximum floor area of 90m² and a side wall height of 3.6m for outbuildings;
- The garage has an area of 132m² and a height ranging from 3.5m to 4.6m at the peak, with a median height of 3.8m;
- The building size was accepted, and not a point of contention;
- The reduced setback to Grace Street combined with the scale of the shed was the main concern;
- The visual outcome of the shed to Grace Street is the key issue;
- The acceptable solution requires a 6m setback to the property boundary of Grace Street and 1.5m from the north-west property boundary (adjoining Lot 144 on RP15487).
- The proposed development does not comply with the qualitative statement, being the specific outcome in this instance;
- The specific outcome was assessed against the following characteristics of the neighbourhood:
 - Sheds are generally in accordance with the specified provisions of the planning scheme;
 - Sheds are designed and located to ensure undesirable impacts on the neighbourhood are minimised;
 - That the neighbourhood is an aesthetically pleasant, private and practical place of residence;
 - Buildings will not detract from the overall building character and appearance in the locality;
 - Neighbourhood shed sizes and location are consistent across the neighbourhood;
- A condition was imposed to ensure compliance with the Specific Outcomes;
- The condition is supported by the Planning Scheme intent for setbacks, including the:
 - Use definitions for an outbuilding.
 - Dwelling House Code.
- The intrusion into the setback has a number of effects that can be detrimental to the neighbourhood amenity;
- The shed design, layout and location would be acceptable if not located on a corner lot;
- The shed should be cut back to four bays rather than five, and should not have been ordered until approval was given;
- A 4m setback to Grace Street with landscaping would be the minimum acceptable to Council;
- A re-orientation of the shed to face Grace Street, and locating it along the property boundary adjoining 20 James Street would also be acceptable.

Findings of Fact

The Committee makes the following findings of fact:

1. The site is a large block with an area of approximately 1,214 m² and is relatively level;
2. The Development Application proposed a shed aligned with the rear boundary of the subject site, with the side of the shed facing a secondary frontage;
3. The dimensions of the shed are approximately 18m x 7.5m x 3.6m high (4.6m at the ridge peak), and cannot be altered;
4. The shed is constructed of materials selected to be the same or similar to the colours of the existing dwelling house on the subject site;
5. The shed is subject to the Dwelling House Code under the Planning Scheme;
6. The proposed shed does not comply with relevant acceptable solution ASG(i) of the Dwelling House Code of the Planning Scheme, which requires a maximum floor area of 90m² and a side wall height of 3.6m for outbuildings. The non-compliance in this instance is acceptable to all parties;
7. The proposed shed does not comply with relevant acceptable solution ASG(ii) and ASG(iii) of the Dwelling House Code, which requires a minimum setback of 6m to Grace Street and 1.5m to other boundaries;
8. A minimum setback of 0.5m to the northern (rear) and eastern (side) boundary would be acceptable to all parties, allow for access for maintenance purposes, and comply with relevant building standards;
9. Based on the dimensions of the proposed shed, a maximum setback of 2m could be provided to Grace Street;
10. A reduced setback to the secondary frontage of Grace Street was acceptable to all parties, however the scale of the reduced setback to Grace Street is in dispute, with Council of the opinion that a setback of less than 4m would result in an undesirable impact upon the neighbourhood;
11. There is evidence of other outbuildings in the area of a similar scale, although none appear to be located within 6m of a road frontage;
12. The impacts upon the streetscape of the proposed shed are not considered to be detrimental and can be mitigated through landscaping and minimal earthworks to reduce the appearance of height of the proposed shed.

Reasons for the Decision

The proposed shed does not comply with the relevant acceptable solutions AS g (ii) and AS g (iii) of the Dwelling House Code of the Planning Scheme. Where a development does not comply with an acceptable solution, reference is then made to the specific outcome, where in this instance is that:

“Outbuildings are designed and located to ensure undesirable impacts upon the neighbourhood are minimised.”

The question then arises as to whether the reduced setback in this instance may result in ‘undesirable’ impacts. Locating the shed with a minimum 2m setback to Grace Street is not considered to result in undesirable impacts upon the neighbourhood due to the following reasons:

- The area is characterised by numerous outbuildings on large residential allotments.
- The proposed location is the most logical location on the site for a shed.
- The shed is oriented to have its shorter side facade facing Grace Street, with a 7.5m length to the 60m frontage.
- Grace Street is the secondary frontage of the dwelling, and reduced setbacks are typically applied to secondary frontages where streetscape impacts can be reasonably mitigated and managed.

- The building height ranges from 3.5m to 4.6m at the roof peak, with a median height of 3.8m.
- The site is located approximately 0.5m below the level of Grace Street at the rear boundary, with the benefit of reducing the overall appearance of the height of the shed.
- The location of the shed is partially screened by mature street trees located along the verge of Grace Street.
- The colour scheme of the proposed shed matches the house.
- The shed will screen the substation from the dwelling house as well as from pedestrians on a small section of Grace Street;
- Landscaping is to be provided at the side boundary (Grace Street) to a minimum ultimate height of 3 metres to soften any potential visual impacts.
- The proposal, when developed in accordance with the conditions as above, will not detract from the overall building character and appearance of the locality.

It is the opinion of the Committee that a suggested solution to re-orientate the shed would have a greater visual impact upon Grace Street than a reduced side setback.

In addition, with reference to the overall outcomes for the Dwelling House Code of the Planning Scheme, the following is considered relevant to the subject appeal:

“(a) An aesthetically pleasant, private and practical place of residence”

The proposed shed location and orientation is considered to be the most appropriate to deliver a practical site layout for use by the resident(s). Any perceived visual impacts upon the secondary frontage of Grace Street can be suitably mitigated through imposition of appropriate conditions.

Considering the planning scheme as a whole, the Committee has formed the opinion the condition imposed by Council as Concurrence Agency can be changed to achieve specific outcome SO (g) of the applicable Dwelling House Code under the Planning Scheme.

Stan Spyrou
Building and Development Committee Chairperson
Date: 28 March 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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