



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>04-11</b>
<b>Applicant:</b>	Merle Potter
<b>Assessment Manager:</b>	Bundaberg Regional Council (Council)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	8 Manley Smith Drive, Walkers Point and described as Lot 9 on W8793 – the subject site

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against Council's decision to refuse a building development application for construction of a shed due to non-compliance with performance criteria of the Queensland Development Code (QDC) MP1.2.

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<b>Date of hearing:</b>	10:00am on Wednesday 13 April 2011 (teleconference) 10:30am on Wednesday 20 April 2011
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Ain Kuru – Chair
<b>Present:</b>	Merle Potter – Applicant Brad Geaney – Council representative Aaron Rayner – Council representative

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### **Decision**

The Committee, in accordance with section 564 of the SPA, **confirms** the Council's decision to refuse the application on the grounds that it does not meet the road setback requirements of the QDC and would have a detrimental impact on the amenity and aesthetics of the area.

### **Background**

The applicant proposes to construct a shed on the property to store a large boat and other items. The size of the proposed shed is 7m long by 7m wide and is approximately 3.74m high. The shed is proposed to be located 4.5m from the road boundary so as to avoid interfering with existing septic tank disposal trenches.

In accordance with the SPA, the application was referred to Council by the building certifier for concurrence agency advice, as the setback from the road boundary under the QDC was less than 6m. The Council subsequently refused the application on the grounds that the proposed shed:

- did not comply with the 6m setback required under the QDC;
- did not meet the performance criteria of the QDC; and
- was considered by Council to have an extremely adverse affect on the amenity and aesthetics of the area under Council's Amenity and Aesthetics Policy.

As no formal building application had been made or decision notice issued, Council questioned prior to the hearing whether the Committee had jurisdiction to hear the appeal. At a preliminary hearing held by teleconference, it was agreed the applicant would make a building application. The application, which was subsequently refused by Council's certifier, allowed the appeal to be heard.

## **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 31 January 2011.
2. Concurrence agency response for siting relaxation from Council dated 24 December 2010, (Ref: 305.2010.542.1).
3. Email to Committee Registry from Council dated 4 April 2011.
4. Decision notice issued by Council on 15 April 2011, (Ref: 30167097).
5. QDC MP 1.2.
6. The SPA.
7. The Sustainable Planning Regulation 2009 (SPR).
8. The *Building Act 1975* (BA).
9. The Building Regulation 2006 (BR).
10. Isis Shire Council Amenity and Aesthetics Policy (Isis Shire Council July 2005).
11. Verbal submission from the applicant stating that:
  - (a) there already is an existing shed in this location.
  - (b) the closest house faces another street and there is a garden shed in a similar location on that property.
  - (c) there is a nearby house less than 6m from the street (this was later found not to be the case).
12. Verbal submission from Council representatives stating that:
  - (a) the proposed shed is considerably larger and higher than the existing structure (which they also believe may not be lawful);
  - (b) the proposed shed will dominate the streetscape; and
  - (c) the proposed shed will interrupt impact on the neighbour's outlook to nearby bushland.

## **Findings of Fact**

The Committee makes the following findings of fact:

1. The proposed shed is assessable building work under the SPA and BA.

2. The proposed shed does not meet the acceptable solutions (ie the prescriptive standard of a 6 metre road boundary setback) for self-assessable development of the QDC MP 1.2 – Design And Siting Standard for Single Detached Housing – On lots 450m<sup>2</sup> and over as the minimum road boundary setback is less than 6m.
3. The proposed shed also triggers assessment under Council’s Amenity and Aesthetics Consideration for Class 1A and Class 10 A Buildings 11/95 Policy as it has an overall height greater than 3.6 m and is sited closer than 6 m to the road boundary.
4. The application cannot be assessed and approved by a building certifier (Building Services Bundaberg) without referral to Council for concurrence agency advice under Schedule 7 (Table 1, Items 17 and 19) of the SPR.
5. The Council subsequently assessed the application for its amenity and aesthetic impact as well as against the performance criteria of the QDC.
6. The relevant criteria for assessing the design and siting of the shed under the BR is the performance criteria of the QDC which is contained within P1 and states:  
*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.*
7. The relevant criteria for assessing whether a proposed building is likely to have an extremely adverse affect on the area is the amenity and aesthetic impact of the building if it is built.
8. The Council subsequently refused the application for the following reasons:
  - (a) The location of the proposed shed does not satisfy performance criteria P1 of QDC MP1.2 and Clause 4.12 of the former Isis Shire Council’s Amenity and Aesthetics Policy for Class 1A and Class 10 A Buildings.
  - (b) The proposed shed has a wall height of 2.8m (2.7m plus slab height above ground level). The overall height of the building will be approximately 3.74m.
  - (c) The building will have an impact on the amenity of residents on adjoining lots.
9. The applicant appealed the decision on the grounds that other buildings in the area are located 4m to 4.5m from the front boundary and that siting the shed back further would encroach on the on-site waste disposal area for the septic tank.
10. In responding to a request for copies of relevant documents from the Committee, the Council questioned whether the Committee had jurisdiction to hear the matter as no building application had been lodged.
11. The above matter was discussed at a teleconference with the applicant and Council representatives on 13 April 2011, where it was determined that no building application had in fact been lodged. It was subsequently agreed that it would be in the best interests of all parties if a building application was made and decided so that the Committee could proceed to hear the appeal.
12. The Certifier subsequently refused the building development application on 15 April 2011.
13. A hearing was conducted on site on 20 April 2011 with the applicant and Council representatives. At the hearing the applicant advised there had been a mix up with the design of the shed and that as a result, it would have a lesser roof slope and therefore its height would be less than 3.6m.

## **Reasons for the Decision**

### Queensland Development Code P1 (a) - bulk of the building

The proposed shed is 7m long by 7m wide and is less than 3.6 m high. The bulk of the proposed shed is typical of sheds common in residential areas. The shed roof is higher to enable the storage of a boat and this is also fairly typical of coastal fishing villages, including Walkers Point.

The applicant noted there already is an existing shed in this general location which is within the 6m setback, and an adjacent property also has a small garden shed in a similar location.

However The Committee accepts Council's findings that the proposed will have a much greater bulk due to its greater size and height than the existing shed, and that there are no other nearby sheds or buildings of similar size and bulk this close to the road. The Council also noted that they did not believe the existing shed had been lawfully approved.

### Queensland Development Code P1 (b) - Road boundary setbacks of neighbouring buildings

In addition to the existing shed on the subject site and neighbouring garden shed, the applicant noted that there were numerous buildings in the area which had been built close to the street boundary.

The Council advised that these were either illegal or had been approved many years ago.

Apart from the existing shed and neighbouring garden shed, there are no other buildings in the immediate vicinity that have a similar setback to the street. In addition, on inspection of the village there were many examples of particular buildings dominating the streetscape. In most cases it was found that large structures had been located well back from the street, and that houses had similar building setbacks.

### Queensland Development Code P1 (c) - Outlook and views of neighbouring residents

The applicant did not consider the proposed shed would have a detrimental impact on the outlook and views of neighbouring residents. The Council representatives advised that due to the location of adjoining residents, this was less of a concern than the impact on the streetscape.

The adjoining house to the west of the subject site will not be significantly impacted as it faces another street. However, the adjoining house to the east will have some impact on its there will be some impact on the outlook to the bushland. for the adjoining house on the east.

### Queensland Development Code P1 (d) - Nuisance and safety to the public

Council advised that it did not believe the proposed location would result in increased nuisance or result in reduced public safety.

### Amenity and Aesthetics

It was the Committee's view that the proposed shed would have an extremely adverse affect on the amenity and aesthetics of the area and streetscape, particularly as there were no other buildings of a similar size and design located this close to the street boundary in the vicinity (apart from the shed already on site), and that the proposed shed would be immediately visible when entering the town by car.

The Committee, after providing the parties with an opportunity to put their case forward, decided under section 564 of the SPA to confirm the decision appealed against.

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**Ain Kuru**  
**Building and Development Committee Chair**  
**Date: 25 May 2011**

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