



## Building and Development Dispute Resolution Committees – Decision

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### *Sustainable Planning Act 2009*

**Appeal Number:** 63- 11  
**Applicant:** Dr Rashed Aziz  
**Assessment Manager:** Burnett Country Certifiers  
**Concurrence Agency:** Bundaberg Regional Council (Council)  
(if applicable)  
**Site Address:** 20 Linderberg Street, Kalkie and described as Lot 69 on SP212132 – (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 Burnett Country Certifiers as the Assessment Manager to refuse a Development Application for a Class 10a shed. The decision was based on Concurrence Agency advice from Council.

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**Date of hearing:** 12.30pm – Tuesday 13 September 2011  
**Place of hearing:** The subject site  
**Committee:** John Panaretos – Chairperson  
Stan Spyrou – General Referee  
**Present:** Dr Rashed Aziz – Applicant  
Wallace Kenney – Burnett Country Certifiers  
Rick Drew – Burnett Country Certifiers  
Bradley Geaney – Bundaberg Regional Council  
Stephen Curran – Bundaberg Regional Council

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### Decision:

The Committee, in accordance with section 564 of the SPA, **confirms** the decision appealed against and **dismisses** the appeal.

### Background

The subject site is a corner site with frontages to both Linderberg Street and Balaam Drive. The shed was constructed pursuant to an approval issued by the Assessment Manager on

10 September 2010, unaware that the site boundary was in fact a street alignment.

Consequently, the shed was built with a setback of approximately 0.5 metres to the Balaam Drive alignment instead of the required 6 metres.

Once Council alerted the Assessment Manager to the error, the process was restarted and Council issued its Concurrence Agency direction (refusal of siting variation) on 5 July 2011, followed by the Assessment Manager's Decision Notice (refusal) on 17 August 2011.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal, supporting material and correspondence accompanying the appeal lodged with the Registrar on 18 August 2011.
2. Decision Notice (Refusal) issued by Burnett Country Certifiers on 17 August 2011.
3. Concurrence Agency response dated 5 July 2011.
4. Decision Notice (Approval) issued by Burnett Country Certifiers on 10 September 2010.
5. Site Plan SP862-10 dated 9 September 2010.
6. Verbal submissions made by the applicant and the applicant's representatives at the hearing.
7. Verbal submission made by Council representatives at the hearing.
8. Queensland Development Code (QDC) Mandatory Part 1.2 Design and Siting Guidelines Standard for single detached housing – on lots 450 m<sup>2</sup> and over.

### **Findings of Fact**

The Committee makes the following findings of fact:

- The subject site is 800m<sup>2</sup> in area.
- The shed is rectangular, 7m x 5m, and 3.37m high to the roof ridge line.
- In contradiction with the submitted site plan, the shed presents its long side to the street alignment.
- The segment of Balaam Drive to which the subject site has frontage is a short cul-de-sac such that the bulb of the cul-de-sac widens out at the rear of the site and thus behind the shed.
- The shed is of steel construction and set back 0.5 metres from the street.
- The shed is partly hidden by a high wall to the street and the owner has offered to landscape the setback to the street.
- Dwellings in the vicinity of the site are consistently setback 6 metres from the street alignment.

### **Reasons for the Decision**

The bulk, height and appearance of the shed conflicts with the established character of

the streetscape and with the setbacks of neighbouring buildings and structures.

The shed is a significant visual presence in the street and the suggested landscaping is unlikely to reduce the visual bulk of the shed or lessen the conflicting presence.

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**John Panaretos**  
**Building and Development Committee Chair**  
**Date: 4 October 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 Local Government and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**