



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	19 - 2012
Applicant:	Brendan Hancock
Assessment Manager:	Trevor McLean, Building Certifier
Concurrence Agency: (if applicable)	Moreton Bay Regional Council (Council)
Site Address:	21 Gretel Drive Beachmere and described as Lot 18 on RP 867916 — the subject site

Appeal

Appeal under Section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by Trevor McLean, Building Certifier, as the Assessment Manager to refuse a building Development Application. The refusal was based on advice from Moreton Bay Regional Council as the Concurrence Agency that the siting of the proposed works would be in conflict with, and not comply, with the Queensland Development Code performance criteria (MP 1.2; P1(a) and (c)).

Date of hearing:	Monday 9 July 2012 at 10:00am
Place of hearing:	The subject site
Committee:	Natalie Rayment – Chair
Present:	Brendan Hancock – Applicant Chris Trewin – Moreton Bay Regional Council

Decision:

The Building Development and Dispute Resolution Committee (Committee), in accordance with section 564(2)(c) of the SPA, **sets aside** the decision of the Assessment Manager dated 14 May 2012, to refuse the Development Application (Application) based on a Concurrence Agency refusal dated 20 April 2012, and **approves** the Application.

Please note that this approval is to be treated as a Preliminary Approval in accordance with section 241 of the SPA and that the issue of a Development Permit is a matter for the Private Certifier following the assessment of detailed working drawings in accordance with the *Building Act 1975*.

This approval follows the Interim Decision issued by the Committee on 3 August 2012 following the receipt of a sample decision notice from the Assessment Manager that, if final, would approve the proposed building works.

Background

The Application submitted to the Assessment Manager was for a shed with a road boundary setback. The Concurrence Agency directed the Assessment Manager to refuse the siting variation in the road boundary setback, on the grounds that:

“the location of the building or structure does not facilitate an acceptable streetscape appropriate for:

- a) The bulk of the building or structure; and*
- b) The outlook and views of the neighbouring residents.”*

The Assessment Manager refused the Application for the shed within the road boundary setback following a direction by the Concurrence Agency.

An adjourned decision was issued by the Committee on 3 August 2012 pending receipt of further information from the Assessment Manager which was duly received by the Committee on 4 February 2013, enabling the decision to be finalised.

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 9 May 2012.
2. Correspondence accompanying the appeal, including neighbours statements (from number 17, 2/19, 24, 25, 26, 27 and 28 Gretel Drive, Beachmere) and photographs of similar sheds in the surrounding area;
3. Drawings submitted with the appeal, including Site Plan and Elevations;
4. Verbal submissions from those parties in attendance at the hearing;
5. Former Caboolture Shire Council Policy on ‘Building Approval Procedures, Amenity & Aesthetics, (Class 1A & 10A Buildings)’ provided by Chris Trewin of Moreton Bay Regional Council at the hearing;
6. The *Sustainable Planning Act 2009* (SPA) ;
7. The Queensland Development Code (QDC) Part MP 1.2 “Design and Siting Standard for Single Detached Housing – On Lots 450m² and Over”; and
8. The sample Decision Notice provided by Caboolture Building Approvals.

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is 607 m² in area, comprising a detached house with an existing carport within the road boundary setback;
2. The site is irregular in shape, with no vehicular access to the rear yard;
3. A dwelling house is self-assessable against the Dwelling House Code under the Planning Scheme and there are no siting provisions relating to the road boundary setback for sheds in the Dwelling House Code;
4. The proposed shed is 52.5m² in floor area, 7.5 m wide and 4 m in height at the peak of the roof; and
5. 10 neighbours in the immediate vicinity of the subject site have given their written support

for the Application in the form of a signed “neighbours statement, (building work) design and siting provisions”.

Reasons for the Decision

In determining this appeal, the Committee believes that the Performance Criteria P1 of QDC MP 1.2 is relevant to this appeal, specifically sub-sections (a) and (c).

The specific criteria of P1 are that the location of the 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.

The reasons for refusal relate to sub-sections (a) and (c) only.

The Application achieves P1(a) in that the proposed building works facilitate an acceptable streetscape, appropriate for the bulk of the building as:

- The shed will be small in physical size when considered in context with the house, which is the dominant building on the subject site;
- The proportion of the frontage width proposed to be occupied by the shed is less than 25 percent, as the subject site has an extra wide frontage, significantly wider than neighbouring land parcels due to the irregular shape of the lot;
- While the existing carport is also within the front boundary clearance, it is open at the front and sides and so does not dominate the streetscape or appearance of the house or proposed shed; and
- The shed will therefore not dominate the house or the streetscape, when considered in the context of the site and streetscape.

The Application achieves P1(c) in that the proposed building works facilitate an acceptable streetscape, appropriate for the outlook and views of neighbouring residents as:

- 10 neighbouring residents, including the immediate neighbours fronting Gretel Drive, have given their written support for the proposal in the form of a signed “neighbours statement (building work) design and siting provisions”.

The Committee is also now satisfied that an approval can ultimately be issued by a Building Certifier approving the proposed building work.

Natalie Rayment
Building and Development Committee Chair
Date: 4 February 2013

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
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