



## Building and Development Dispute Resolution Committees—Decision

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### ***Sustainable Planning Act 2009***

**Appeal Number:** 47 - 11

**Applicant:** Stephen & Jacqueline Froggart

**Assessment Manager:** Complete Building Certification

**Concurrence Agency:** Brisbane City Council (Council)

**Site Address:** 2 Somerset Drive, Carseldine and described as Lot 39 on RP 184602 — the subject site.

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by Complete Building Certification to refuse a development application for a new class 1a dwelling on the subject site. The refusal was based on advice from the Brisbane City Council (Council) as the concurrence agency. Council reasonably believes the application has not demonstrated compliance with P1. Buildings and Structures of MP 1.2 of the Queensland Development Code.

**Date of hearing:** 10:00am – Monday 8 August 2011

**Place of hearing:** The subject site - Carseldine

**Committee:** Mr Leo Blumkie – Chairperson

**Present:** Mr Stephen Froggart - Applicant  
Mrs Jacqueline Froggart - Applicant  
Mr Peter Bird - Brisbane City Council representative  
Mr Leo Blumkie – Chairperson

## Decision:

The Committee, in accordance with section 564 of the SPA **changes** the decision of the Brisbane City Council (Concurrence Agency) and directs Council to approve the application for a siting variation for a Class 1a building to allow a 2100mm setback to the roofed open patio portion of the building subject to the following conditions:-

- The class 1a dwelling has a minimum setback of 4100mm to the enclosed wall line of the dwelling facing Lacey Road.
- The enclosed dwelling facing Lacey Road has a maximum roof overhang of 600mm, i.e. has a setback of 3500mm to the outermost projection (OMP)
- The roofed veranda (patio) at first floor level being 7500mm long is the only portion of the dwelling which encroaches into the 3000mm setback from Lacey Road.
- The roofed veranda (patio) has a maximum length of 7500mm (excluding 600mm overhang on each end and remains open on all 3 sides and has **a minimum setback of 2100mm from Lacey Road.**
- The building complies in all other respects with the BCA for a Class 1a Building including site cover and maximum height.

## Background

The site is a 635m<sup>2</sup> vacant corner allotment located at 2 Somerset Drive Carseldine.

The plans submitted with the appeal were not clear in a number of areas namely:-

- The documents show an alfresco area at ground floor level on the Northern Boundary.
- The sections show a roofed patio for the full length of the building facing Lacey Street.

The following matters were confirmed at the hearing:-

- The applicant wants to include a roofed alfresco area (roofed patio) at ground floor level facing the Northern boundary.
- The roofed patio facing Lacey Road at the upper level is 7500mm long in front of the family room and part of Bed Rm 2. This patio has no overhang facing Lacey Road and has a 2100mm setback from the street boundary.
- There is no other roofed patio facing Lacey Road at ground floor level.

The Council Decision letter refers to a setback of 1.5m to Lacey Road. This was confirmed by the Council representative as not being correct. The setback shown on the documents is 2100mm.

The proposal, in relation to siting requirements, does not satisfy the acceptable solutions of the Queensland Development Code (QDC).

Hence, the proposal was referred to the Concurrence Agency (Council) for assessment under the Performance Criteria of the QDC

The Council refused the assessment on the 27 May 2011 and advised Complete Building Certification accordingly stating the following :-

1. *P1. Buildings and Structures Performance Criteria P1 (a) (b) (c) (d) not facilitate an acceptable streetscape appropriate for bulk/road boundary setbacks, outlook and views of neighbouring residents, nuisance and safety to the public.*

2. *Advisory note to the applicant. The plan of development for stage one on this estate has a Building Envelopment for each allotment on this estate that allows for building works to be no closer than 3.00m to the road boundary.*

An appeal was lodged with the Building and Development Committee Registry on 10 June 2011.

The Registrar advised Council and Complete Building Certification on 6 July 2011 that an appeal had been lodged in relation to the refusal.

On 1 August 2011 the Building and Development Dispute Resolution Committee Chairperson advised Council, Complete Building Certification and the Applicant of the date, time and place for the hearing.

### **Material Considered**

The material considered in arriving at this decision comprises:-

1. Form 10 – Notice of Appeal, drawings, extracts and correspondence accompanying the appeal lodged with the Registrar on 10 June 2011.
2. Verbal submissions from the applicant at the hearing.
3. Verbal submissions from the Council representative at the hearing.
4. Correspondence from the Committee dated 8 August 2011 adjourning the hearing etc.
5. Detailed response from Council dated 19 August 2011 responding to matters raised in the adjournment correspondence.
6. Verbal phone discussion with Mr Froggart on 22 August 2011, regarding Council's response dated 19 August 2011 – during which no new issues were raised.
7. Phone discussion between the Chairperson and the Council representative clarifying a number of outstanding matters not referred to in the Council response.
8. QDC MP 1.2 Design and Siting Standard for single detached housing - on lots 450m2 and over.
9. *Building Act 1975.*
10. *Building Regulation 2006.*
11. SPA.
12. Building Code of Australia.

### **Findings of Fact**

The Committee makes the following findings of fact:-

- The allotment is 635m<sup>2</sup> in area.
- The allotment is a vacant corner block fronting Lacey Road and Somerset Drive.
- The site is within an estate which has an approved building envelope as referred to in correspondence from the Brisbane City council dated 31 August 2006.
- The Building envelope plan allows setbacks as follows – *“3 metres from a street frontage, within the estate, and 1.5metres from a side or rear boundary including rear boundaries fronting Lacey Road.”*
- Each site on the building envelope plan is shaded to indicate the required setback

- All sites which have an internal estate street access only and have a rear boundary facing Lacey Road are required to have a 1.5 metre setback to Lacey Road.
- The subject site is shaded to show a required setback of 3 metre to Lacey Road.
- The building envelope plan makes no further reference to setbacks as to whether a development is high or low set.
- The building envelope plan has a note which states “Other siting standards applicable to detached dwellings in parts 11 and 12 of the Queensland Development Code will apply”.
- Also included on the building envelope are 2 corner sites fronting Highbridge Circuit and Lacey Road.
- Even though the notation on the envelope plan requires a setback of 3 metres to street frontages (ie Lacey Road) these 2 corner blocks are shaded to require a 3 metre setback to Highbridge Circuit and a **1.5 metre setback to Lacey Road**.
- According to Council records, these two corner blocks have been developed with a setback of less than 3 metres to Lacey Road (namely 2.1 metres and 2.080 metres) and it would appear that no variation was granted for a reduced setback.
- MP 1.2 of the QDC is the applicable code for siting of single detached housing on lots over 450m<sup>2</sup>.

### **Reasons for the Decision**

The Council has refused the application based on Performance Criteria P1 (a) (b) (c) (d).

#### *P1 Acceptable streetscape*

##### *(a) The bulk of the building*

It is the opinion of the Committee that the Building Envelope documents would allow the owners of all the blocks with internal access to have built a 2 storey dwelling with a 1.5 metre setback to Lacey Road.

Should the owners of these blocks have taken advantage of this relaxation and built 2 storey dwellings, it would certainly have created bulk to the streetscape of Lacey Road.

The 2 corner blocks on Lacey Road and Highbridge Circuit (i.e. the next street North of Somerset Road) have 2 storey developments with a setback of 2.1 metres and 2.08 metres.

These two developments identify an anomaly between the wording and the shaded area for these 2 particular blocks. The wording states, “3 metres to a street” and the shaded area indicates a 1.5 metre setback to Lacey Road.

The shaded area would appear to be the correct interpretation as Council appears to have allowed a setback of less than 3 metres without the need for a variation of the setback. The Council representative has made no reference to these buildings being illegal.

The bulk of the proposal, for the subject site, has a setback of 4.1 metres to the wall of the enclosed dwelling from Lacey Road with a 600mm overhang. Hence, the bulk of the proposal (when even including the overhang), has a 3.5 metres setback from Lacey Road (i.e. compliant)

The requested relaxation is to allow a 2 metre deep x 7.5 metre wide open roofed patio at first floor level supported on Brick columns. There is no overhang to this patio facing Lacey Road.

This open design for the deck does not create bulk to Lacey Road. In the opinion of the Committee, it does not create as much bulk as the approved 2 storey corner blocks on Highbridge Circuit and Lacey Road which are both less than 2.1 metres from Lacey Road.

The proposal does not restrict the area available for landscaping as 4.1 metres (i.e. distance to the enclosed dwelling) is available for landscaping, more than the majority of the existing developments facing Lacey Road.

(b) *The road boundary setback of neighbouring buildings.*

The majority of developments facing Lacey Road have a setback of less than 2 metres, some down to the minimum of 1.5 metres. The adjoining development facing Lacey Road is less than 2.1 metres. The proposal needs to comply with the site cover and when this is achieved, it will in the opinion of the Committee, be in character with existing single and 2 storey developments in the estate.

(c) *The outlook and views of neighbouring residents.*

As mentioned above, the bulk of the proposal is 4100mm setback from Lacey Road. The Committee does not agree that, with the addition of the roofed open patio, it “detracts from the amenity of the adjoining property” nor “dominates outward views from the adjoining property”. The enclosed portion of the dwelling is within the required setbacks and may “appear excessive, large and dominant” but it is the owner/applicants choice to build a house of this size.

The open deck being approximately central in the length of the site and has very little impact on the views/outlook of the neighbouring residence. It has no impact on the adjoining neighbour in Somerset Drive.

(d) *Nuisance and safety to the public.*

It is agreed the proposal has no impact on nuisance and safety grounds. It is also acknowledged that vehicular traffic sight lines are not effected by allowing the reduced setback for the patio.

## **Conclusion**

The Committee believes that with the conditions included in the decision, the proposal, after also considering the relaxations granted by the building envelope for the estate, satisfies the performance criteria for setbacks as set out in the QDC MP 1.2

The proposal should satisfy all other requirements required by Qld building Law.

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**Leo Blumkie**  
**Building and Development Committee Chair**  
**Date: 25 August 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**