



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	74 - 10
<b>Applicant:</b>	Jacqueline Hannah
<b>Assessment Manager:</b>	QPDB Pty Ltd
<b>Concurrence Agency:</b>	Toowoomba Regional Council (Council)
<b>Site Address:</b>	72 Spring Street, Toowoomba and described as Lot 4 on SP 150544 – the subject site.

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of QPDB Pty Ltd as the assessment manager to approve a development application in part with conditions, specifically the refusal of a conversion of a garage to a class 1a building. The refusal of this part of the application was based on advice from Council as the concurrence agency.

<b>Date of hearing:</b>	10:00am – Monday 15 November 2010
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Mr Leo Blumkie – Chair Mr John O'Dwyer – General referee
<b>Present:</b>	Mr Peter Hannah – Applicant's representative Mr Bob Orr – Toowoomba Regional Council Ms Vanessa McIntosh – Toowoomba Regional Council Mr Mark McKechnie – QPDB Pty Ltd Mr Grant Ford – QPDB Pty Ltd

### Decision:

The Committee, in accordance with section 564 of the SPA **changes** the decision of the assessment manager and approves the conversion of the existing class 10a building to a class 1a building subject to the following conditions:

- The windows in the western wall of the building are removed
- The western wall of the building within 1500mm of the boundary is made to comply with the fire separation provisions of Part 3.7.1.3 and 3.7.1.5 of volume 2 of the Building Code of Australia 2010 (BCA)
- The western wall of the building within 1500mm of the boundary is constructed of maintenance free material
- The building complies in all other respects with the BCA for a class 1a Building.

## Background

The site is a 2669m<sup>2</sup> L-shaped allotment located at 72 Spring Street, Toowoomba.

The site is developed with a two storey class 1 building, swimming pool, tennis court and a class 10a building sited 300mm to the outermost projection and 600mm to the wall from the western boundary.

The appeal documents indicate a 650mm setback to the wall from the western boundary. The previously approved site plan provided by Council indicates a setback of 600mm.

Both parties agreed, for the purpose of the appeal, that the setback be considered to be 600mm.

The Council representative confirmed that the existing development has Council approval.

The applicant made an application to the assessment manager to amongst other things, change a portion of the existing class 10a building to class 1a building.

The adjoining property owner to the western boundary provided a written statement, dated 19 August 2010 advising that "*I am quite happy for the building to be used as a habitable area*".

The change from class 10a to class 1a, in relation to siting requirements, did not satisfy the acceptable solutions of the Queensland Development Code (QDC).

Hence, on 4 August 2010 the proposal was referred to the concurrence agency (Council) for assessment under the Performance Criteria of the QDC.

The Council issued a concurrence agency response to the assessment manager on 11 August 2010 directing that the application be refused, stating the following reasons:

1. *The reason for Council's refusal is that the proposal is not in accordance with the acceptable solutions or the performance criteria of Part MP 1.2 of the Queensland Development Code, and*
2. *The existing boundary setback of 300mm for the Class 1a portion of the building from the Western neighbouring property boundary adversely impacts on the amenity and privacy of residents on the adjoining property, and*
3. *The location of the building, at 300mm from the outermost projection and 650mm from the wall to the property boundary, will comprise the reasonable visual amenity expectations of the adjoining residential neighbours, and*
4. *The external wall of the Class 1a portion of the building, located at 650mm from the Western property boundary, contravenes the fire separation provisions of Part 3.7.1.3 and 3.7.1.5 of volume 2 of the Building Code of Australia; and*
5. *The external wall of the Class 10a portion of the building does not meet the performance criteria or acceptable solutions of Part 6 of the Queensland Development Code, as it is not constructed of maintenance free material.*

An appeal was lodged with the Building and Development Committee Registry on 18 October 2010.

The Registrar advised Council and QPDB Pty Ltd on 20 October 2010 that an appeal had been lodged in relation to the refusal.

On 9 November 2010 the Building and Development Committee Chairperson advised Council, the assessment manager and applicant of the date, time and place for the hearing.

## Material Considered

The material considered in arriving at this decision comprises:-

1. Form 10 – Application for appeal/declaration, drawings, extracts, photographs and correspondence accompanying the appeal lodged with the Registrar on 18 October 2010.
2. The decision notice issued by the assessment manager on 7 October 2010.
3. The concurrence agency response from Council dated 11 August 2010.
4. Verbal submissions from the applicant at the hearing.
5. Verbal submissions from the assessment manager at the hearing.
6. Verbal submissions from the Council representatives at the hearing.
7. Correspondence from the western adjoining owner dated 19 August 2010.
8. Email from QPDB Pty Ltd dated 16 November 2010 regarding sound ratings.
9. QDC MP 1.2 Design and Siting Standard for single detached housing - on lots 450m<sup>2</sup> and over.
10. *Building Act 1975*.
11. *Building Regulation 2006*.
12. The SPA.
13. The BCA

## Findings of Fact

The Committee makes the following findings of fact:-

- The allotment is 2669m<sup>2</sup> in area.
- The site is developed with a two-storey class 1 building, swimming pool, tennis court and class 10a building.
- The class 10a building is sited 300mm to the outermost projection and 600mm to the wall from the western boundary.
- The height of the building, within 1500mm of the setback to the western boundary is less than 4500mm.
- The western wall of the class 10a building has 2 existing windows.
- The western wall is not constructed of maintenance free materials.
- The western wall does not satisfy the fire separation provisions of Part 3.7.1.3 and 3.7.1.5 of volume 2 of the BCA.
- The western adjoining neighbour supports the proposal.
- 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

### A *Acceptable streetscape*

Council is of the opinion that the proposal does not satisfy Performance Criteria (P2) clauses (a), (b) and (c) of the QDC, namely that it should:

- (a) provide adequate daylight and ventilation to habitable rooms;

- (b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots;
- (c) not adversely impact on the amenity and privacy of residents on adjoining lots.

In relation to (a):

The applicant confirmed that windows will be provided in walls (other than the western wall) of the building to satisfy natural light and natural ventilation requirements of Parts 3.8 and 3.12 of the BCA. The Council representatives agreed this would satisfy their concern.

In response to (b):

The Council representative agreed that the change to the classification made no difference to the provision of adequate light and ventilation to habitable rooms on adjoining lots.

The existing building satisfies the acceptable solution of the QDC. There is no change to the length or height of the building even the roof remains the same. Hence, there is no change to daylight and ventilation available to habitable rooms on adjoining lots.

In response to (c):

Under Performance Criteria (P2) (c) of the QDC MP1.2 the applicant under acceptable solutions could “as of right”:

- locate a class 1a building 1500mm from the western boundary and have windows facing the boundary, or
- locate the toilet/shower cubicle 1500mm from the western boundary and have windows facing the boundary.

This would have a far greater impact on the amenity and privacy of residents on the adjoining western allotment, particularly when the proposal has no windows in the wall facing the western boundary.

The adjoining neighbour has also stated in writing “*I am quite happy for the building to be used as a habitable area*”.

The Committee is of the opinion that the change from a class 10a building to class 1a building, with the conditions imposed, will not adversely impact on the amenity and privacy of residents on adjoining lots.

As the dimensions (length, width and height) of the building are unchanged and it is approximately the same distance from the western boundary, it is logical that the visual expectations of the residential neighbours will be unchanged.

#### *B Fire separation*

The applicant has agreed to comply with the fire separation provisions of Part 3.7.1.3 and 3.7.1.5 of volume 2 of the BCA.

Council representatives agreed this change satisfied their concern.

#### *C Maintenance free material*

The applicant agreed to use maintenance free material for the western wall.

Council representatives agreed this change satisfied their concern.

*D Sound rating*

The applicant offered at the hearing to provide a sound rating to the western wall of the Building.

Subsequent to the hearing, the assessment manager forwarded an email to the Registry on 16 November 2010.

This was forwarded to the Council and Committee on 16 November 2010.

The assessment manager submitted in the email that providing a sound rating would have limited benefit as the areas adjacent to the western boundary wall were the double garage (unchanged) and the wash room. The remainder of the western wall was beyond the 1500mm setback line.

The Council representative confirmed in a phone call to the Chairperson on 17 November 2010 that they have no objection to the sound rating not being included.

The Committee decided a sound rating to the western wall was not required.

The Committee believes that with the conditions included in the decision the proposal satisfies the performance criteria as set out in the QDC MP 1.2 and also the requirements in the BCA for a Class 1a building.

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**Leo Blumkie**  
**Building and Development Committee Chair**  
**Date: 29 November 2010**

## **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**