



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	61- 11
<b>Applicant:</b>	Jarrod Marshall
<b>Assessment Manager:</b>	Bundaberg Regional Council (Council)
<b>Site Address:</b>	15 Byron Street Burnett Heads and described as Lot 102 on RP7200 – the (subject site)

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### Appeal

Appeal under section 519 of the *Sustainable Planning Act 2009* (SPA) against a decision of the Bundaberg Regional Council as Assessment Manager, to refuse a Development Application for a Code Assessable Material Change of Use (MCU) - domestic storage.

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<b>Date of hearing:</b>	11am – Wednesday 14 September 2011
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	John Panaretos – Chair Stan Spyrou – General Referee
<b>Present:</b>	Jarrod Marshall – Applicant Kane Preston – Applicant’s Observer Richard Jenner – Bundaberg Regional Council Scott Irwin – Bundaberg Regional Council

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### Decision:

The Building and Development Committee (Committee), in accordance with section 564 of the SPA, **sets aside** the decision appealed against and **directs** the Assessment Manager to **approve** the application for a MCU for Domestic Storage, subject to general compliance with plans submitted to the Registrar on 20 September 2011, including a rear setback of 0.5 metre, but modified by adherence to a 1.5 metre setback to the northern side boundary, and any other conditions deemed reasonable and relevant to this application.

### Background

The applicant applied for a *Domestic Storage* building on a vacant site, generally surrounded by sites occupied by houses, many of which are accompanied by domestic sheds. Under the Burnett Shire Planning Scheme, *domestic storage* sheds (defined as storage sheds which are not associated with a detached dwelling on the same lot) are subject to Code Assessment where they propose alternatives to the

Acceptable Solutions in the *Detached Dwelling, Domestic Storage and Building Works Code*. In this case, the original proposal was for an 81m<sup>2</sup> shed, 21<sup>2</sup> larger in gross floor area than the 60m<sup>2</sup> allowable in the relevant Acceptable Solution.

Council refused the application on the following ground:

*“... the gross floor area of the proposed structure significantly exceed the dimensions specified in Table 8.4 of the provisions of the Domestic Storage Code of the Planning Scheme and is further exacerbated by the shed having walls 4.2 metres in height which together could adversely impact upon the residential amenity of the area.”*

Since lodging the appeal, the applicant has modified the plans to assuage Council’s concerns. The Gross Floor Area (GFA) was reduced to 73.5m<sup>2</sup>. The maximum height of the shed was reduced from the original 5.54 m to 5.221 m. The shed’s position and form have also been changed from L-shaped with pitched roofs of variable height in the south-west (rear) corner of the site, to a simple rectangle with skillion roof in the north-west (rear) corner of the site.

The applicant has submitted supporting information to the Committee demonstrating his intent to start construction of a house on site ‘before Christmas’. The supporting information includes:

- Copy of contract with draftsman
- Copy of receipt for effluent treatment design
- Copy of receipt for soil tests
- Sketch drawings of the house
- Floor plan of the house.

Application to construct a house at the front of the site could have the effect, not only of partially screening the shed from the street, but also of changing the use applied for. Nevertheless, the appeal remains for the use of Domestic Storage. The repositioning of the shed introduces alternative proposed setbacks to those prescribed in the Acceptable Solutions of the Queensland Development Code Mandatory Part 1.2 (QDC), and consequently the *Detached Dwelling, Domestic Storage and Building Works Code* of the planning scheme, as follows:

	Acceptable Solution	Proposed
Rear Boundary	2.0 m (wall height max. 5.221m)	0.5m
Side Boundary (north)	1.5 m (wall height max. 4.3m)	1m

Thus, in addition to the merits of this proposal, the Committee is required to consider whether the changes can be considered ‘minor change’ for the purposes of the SPA and secondly whether a determination should be made on the variation to the QDC setbacks, since these were not the subject of the original application.

Council was given an opportunity to comment on the amended proposal but could not reach a consensus on its merits, acknowledging both positive and negative effects of the changes and making the following general comments:

- *Gable roof design would reduce overall building height significantly;*
- *Reluctance to reduce side or rear boundary setback below that directed by the QDC.*

Finally, it should be noted that the applicant reduced the frontage width of the shed from 10m to 7m and supported the changes with letters from both owners of neighbouring sites to the north and west (sites that would be affected by setback reductions).

## Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal, amended plans and correspondence accompanying the appeal lodged with the Registrar on 26 July 2011.
2. Modified plans lodged with the Appeal Notice.
3. Agenda and minutes of the Council Planning and Development Committee Meeting of 7 July 2011.
4. Decision Notice (refusal) issued by Council on 13 July 2011.
5. Development application and plans lodged with Council on 17 June 2011.
6. Verbal submissions made by the applicant at the hearing.
7. Verbal submissions made by Council representatives at the hearing.
8. Letter and further modified plans from the applicant, received by the Registrar on 20 September 2011.
9. Summary of Council deliberations based on the applicant's modified plans received by the Registrar on 30 September 2011.
10. Burnett Shire Planning Scheme.
11. QDC MP 1.2

## Findings of Fact

The Committee makes the following findings of fact:

- The site is 810m<sup>2</sup> in area, is subject to the Burnett Shire Planning Scheme and is located in the *Urban Residential Zone*.
- *Domestic Storage* is a defined use in the scheme and is Code Assessable where an alternative solution to the Acceptable Solution relating to GFA of the *Detached Dwelling, Domestic Storage and Building Works Code* is proposed.
- Table 8.4 of the Code sets the Acceptable Solution for combined GFA of all domestic storage or sheds on site at 60m<sup>2</sup>; by comparison the final proposal is for 73.5m<sup>2</sup>.
- The proposed changes can be considered "minor change" pursuant to s.350 of the SPA as the changes do not result in:
  - A change to the type of application sought;
  - Additional Referral Agencies to be notified;
  - Any part of the application to require Impact Assessment.
- The changes do not result in a "substantially different development", as defined by the criteria listed in *Statutory Guideline 06/09 Substantially Different Development*.
- The Committee can make a determination on setback variations as these are alternative solutions to the relevant code of the planning scheme. The Code's Specific Outcomes relate to amenity and character of the locality, rather than specific impacts on neighbours and residents of the subject site, the criteria listed in the QDC. Hence, the Committee considered both the Specific Outcomes of the planning scheme code and the Performance Criteria of the QDC in assessing the setback variations.

- The application is for the use of the land, i.e. for *domestic storage*, and Preliminary Approval for building works. Hence, it is independent of the house application. Therefore, the shed must be assessed as a stand alone building.

## Reasons for the Decision

With respect to *domestic storage*, the purpose of *Detached Dwelling, Domestic Storage and Building Works Code* is expanded in the relevant Specific Outcome, SO.264, i.e. domestic storage is visually unobtrusive, retains residential character, is compatible with...”development in the locality and contributes to attractive streetscapes...”. The applicant has modified the shed’s roof pitch to match that of the proposed house. However, the proposal must be assessed as a stand alone building in the streetscape as there is no compulsion for the house to be constructed. Nevertheless, the proposal generally satisfies the assessment criteria in that:

- Other large sheds exist in the locality, but the area is characterised by 1 and 2 storey timber and brick houses. A large metal shed has potential to compromise the residential character of the area.
- In this case, the façade of the shed is set back almost 30 metres from the street alignment so will not impose itself in the streetscape.
- This large setback also mitigates the proposed height, which although close to the eaves height of a typical two storey house in the locality, is well below the Acceptable Solution in the Code for a Self Assessable storage shed, and thus is considered in scale with its context
- Rear Setback – The proposed rear setback of 0.5 metres is considered acceptable as it mirrors that of the recently completed shed, slightly smaller but with a longer wall to the rear boundary, on the allotment at the rear. A 1.8 metre portion of the rear wall will be visible from the rear allotment. The bulk of the proposed shed will therefore be screened from view, and will not significantly impact on amenity of the rear neighbours.
- Side Setback – The shed proposes a 10.5 metre long wall at a setback of 1 metre from the northern side boundary of the site. Despite the neighbour’s letter of support, no justification for the alternative solution has been offered. Regardless, the issues of character and amenity must be considered. Compliance with the prescribed 1.5 metre setback would reduce the visual impact on neighbours, both side and rear, and should the house eventually be constructed on site, the shed’s height will be screened to a greater extent from the streetscape. Hence, the Committee refuses the alternative solution to the side setback.
- Its position does not compromise the functionality of the site, the applicant’s house site plan demonstrating that a garage, rainwater tank, open space and septic waste disposal can all be accommodated comfortably on site.

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**John Panaretos**  
**Building and Development Committee Chair**  
**Date: 17 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  
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