



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	23- 14
<b>Applicant:</b>	Ms Cheryl Dean
<b>Assessment Manager:</b>	Clayton Baker – Baker Building Certification
<b>Concurrence Agency:</b> (if applicable)	Cairns Regional Council (Council)
<b>Site Address:</b>	3 Spender Close, Gordonvale and described as Lot 273 on SP101280 - the subject site

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### Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Building Application for a 2 storey addition, constructed within the road and side boundary setback area. The decision followed advice from Cairns Regional Council as Concurrence Agency who directed the Assessment Manager to refuse the reduced boundary setback because it did not comply with the Queensland Development Code MP 1.2 (QDC MP 1.2).

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<b>Date and time of hearing:</b>	10.00am Wednesday 13 <sup>th</sup> August 2014
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Mr Gordon Heelan - Chair
<b>Present:</b>	Cheryl Dean - Applicant Mr Clayton Baker - Baker Building Certification Mr John Evans - Council representative Mr Ben Newman - Council representative

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### Decision:

The Building and Development Dispute Resolution Committee (the Committee) in accordance with section 564 of the SPA, **sets aside** the decision of the Assessment Manager made at the direction of the Concurrence Agency and in accordance with section 564(1) of the SPA, makes the following direction:

- a) The Assessment Manger is directed to re-assess the Development Application for building works in relation to the proposed extensions to the dwelling.
- b) The reassessment shall be on the basis that the Concurrence Agency has no-objections to the siting of the building with setbacks of 4.0 metres from its north/western outer most projection to the front property boundary and 1.1 metres from its north/western outer most projection to the side property boundary as shown on plan S1 of 4, drawn by pd designs and dated May 2014.
- c) The Assessment Manager shall impose the following conditions on any subsequent Development Approval for building works in relation to the proposed 2 storey addition (Media Room):

- 1) Any balcony located within 6.0 metres of the property boundary adjoining Spender Close must not be enclosed or covered by walls, windows, louvres, screens, blinds, shades, shutters, battens, trellises, lattice or the like.

## Background

A Building Development Application (Application) was refused by the Assessment Manager for alterations and additions to the existing home located at the subject address. The Application showed that the location for the proposed media room positioned above the existing single storey double bay garage did not meet the setback provisions contained in the Queensland Development Code MP 1.2 (QDC MP 1.2) Acceptable Solution A1 & A2.

A1 requires that the front setback to the fascia of the dwelling addition be 6.0 metres from the front boundary. A2 requires that the side setback to the fascia of the dwelling addition be 1.5 metres from the side boundary. The Applicant proposed the media room positioned above the existing garage at 4.0 metres from the front boundary and 1.0 metres from the side boundary. The existing 1 storey garage has been granted a relaxation with these setbacks. The Applicant's proposal is to construct a media room above the existing garage.

The non-compliant setback was submitted to the Council as Concurrence Agency requesting approval for a siting variation for the setback distance. When considering the Application, Council requested the proposal be amended to comply with the performance requirements of the QDC. A reply was submitted to Council for their consideration addressing the performance requirements as requested. Following this process, Council directed refusal of the Application stating non-compliance with the QDC performance criteria in their letter dated 18<sup>th</sup> June 2014.

A summary of the Council refusal provided the following reasons for:

- a) *'the bulk of the proposed two storey media room and deck addition encroaching within the 6 metre front boundary setback will create an impression of bulkiness within the front of the allotment'*
- b) *will appear to interfere with the outlook and views currently being enjoyed by the residents,*
- c) *will create an impression of sheer height and unsightly bulk*

The QDC MP1.2 sets out performance criteria P1 for front boundary and P2 for side boundary clearance as outlined below:

*P1 The location of a 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.*

*P2 Buildings and structures*

- (a) Provide adequate daylight and ventilation to habitable rooms, and*
- (b) Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.*
- (c) Do not adversely impact on the amenity and privacy of residents on adjoining lots.*

The Assessment Manager refused the Application in his Decision Notice dated 14 July 2014 and a Form 10 – Notice of Appeal was lodged with the Committee Registrar on 16 July 2014.

## 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 16<sup>th</sup> July 2014.
2. Council information request letter dated 28 May 2014
3. The Assessment Manager Response letter dated 29<sup>th</sup> May 2014
4. Council advice letter dated 18<sup>th</sup> June 2014
5. The Assessment Manager Decision Notice dated 14 July 2014
6. The *Sustainable Planning Act 2009* (SPA)
7. The *Building Act 1975* (BA)
8. The Sustainable Planning Regulation 2009 (SPR)
9. Queensland Development Code MP1.2 (QDC MP1.2)
10. Verbal submissions at the hearing including the Committee viewing the proposed additions from the adjoining property.
11. Submission by the Applicant of the adjoining neighbours' endorsement of the proposed plans received after the hearing.

### **Findings of Fact**

The Committee makes the following findings of fact:

- A Building Development Application was refused by the Assessment Manager for alterations and additions to the existing home located at the subject address.
- As Concurrence Agency, Council directed refusal of the Application citing the location of the media room located above the existing garage did not meet the setback provisions contained in the QDC MP1.2.
- The QDC MP1.2 sets out the required setbacks for front and side clearance for the construction of buildings and applies to new buildings, alterations and additions to existing buildings.
- During the hearing, Council advised that had the adjoining property owners provided a letter endorsing the proposed plans Council may have looked at the Application favourably.
- Council argues they were considering the impact of the Application on the adjoining neighbour closest to the proposed media room. However, Council had not contacted the neighbour for their comment regarding the proposed building work. The neighbour, after the appeal hearing, provided a letter endorsing the proposed project.

### **Reasons for the Decision**

**The performance provisions under the QDC MP 1.2 P1 contain subclauses (a) (b) (c) & (d).**

- Clause (a) considers the bulk of the building within the 6m setback. Council has provided a dispensation for the original single storey garage building approval. The bulk of the building within the 6m setback is not substantial when you look at the entire front of the lot.
  - The property is constrained by the slope across the land with the rear (south) of the property higher than the front (north) and the western side higher than the eastern side. The allotment is a wedged shape with the front being narrower than the rear.
  - The north/western corner of the building projects into the setback however the corner itself has not been considered to be the bulk of the building.

- Clause (b) looks at the road boundary setbacks of neighbouring buildings. Council has provided a dispensation for the original dwelling and garage building approval.
- Clause (c) considers the outlook and views of neighbouring residents. The neighbour has provided a letter and endorsed the plans providing acceptance of the proposed building work.
- Clause (d) is about nuisance and safety to public. The proposed media room is being constructed above the existing garage. The media room has not been considered to be a nuisance or unsafe to the public.

**The performance provisions under the QDC MP 1.2 - P2 contain subclauses (a)(b) &(c).**

- Clause (a) requires adequate ventilation to habitable rooms. This clause has been satisfied.
- Clause (b) considers adequate light and ventilation to habitable rooms of buildings on adjoining lots. The neighbouring property is higher than the subject site due to the slope of the land. The dwelling on the adjoining property will not be affected by the proposed media room.
- Clause (c) deals with adverse impact on the amenity and privacy of buildings on adjoining lots. The media room has been designed to have the openings facing north and to the east. The media room does not have an opening facing the neighbours' property.

The Committee finds that the reduced setback only applies to corner of the proposed media room to be constructed above the existing garage. The media room will not increase the foot print of the building rather the building's corner elevation when viewed by the neighbour.

The Committee is satisfied that the proposed setbacks facilitate an acceptable street scape appropriate to the road boundary setbacks given that the siting is not dissimilar to the setbacks granted by Council for the existing single storey garage.

The Committee is satisfied that the Conditions directed to be included in the Decision Notice for any subsequent Development Approval for Building Works and which attach to the land and bind the owner, the owner's successors in title and any occupier of the land, are sufficient to safeguard the outlook and views of neighbouring resident.

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**Gordon Heelan**  
**Building and Development Committee Chair**  
**Date: 2 September 2014**

## **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 Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**