



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	17-2012
Applicant:	Adam Day
Assessment Manager:	Rockhampton Regional Council
Concurrence Agency: (if applicable)	N/A
Site Address:	39 Morgan St Wandal and described as Lot 1 on RP 6023.46 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009 (SPA)* against the Decision Notice issued by the Rockhampton Regional Council, the Assessment Manager as directed by the same council as the Concurrence Agency, to refuse a development application for a new class10a shed on the subject site. The refusal was based on the application not complying with Section P1 of the Queensland Development Code Part MP 1.2 (a) & (b) for the following reasons:

- The shed was closer to the road than allowed in section A1 (a) 6m and;
 - The shed is shown in the application as located inside the 9m truncated corner therefore does not conform with Section A1 (b).
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Date of hearing:	30 May 2012 – 9.00am
Place of hearing:	The subject site – 39 Morgan St Wandal
Committee:	Trevor McCubbin – Chairperson
Present:	Applicant Kacie Bispeshov– Representative/agent for the Applicant Lars Bispeshov – assisting the representative. Bradley Crook – Rockhampton Regional Council Brett Robson – Rockhampton Regional Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with Section 564 of the SPA **changes** the decision of the Rockhampton Regional Council and **approves** the application subject to the following agreed conditions:

- The shed is to be rotated 90 degree anticlockwise and located 3m inside and parallel to the boundary facing Dibdin Street.

- The shed is to be positioned between the area making up the 9m truncated corner (As per Section A1(b) of MP 1.2) at the intersection of Pershing and Dibdin Streets and the adjoining property in Dibdin Street.
- The decision does not include any reference to the applicant's requirements for a 2m high fence. This wasn't part of the original Development Application although included in the site plan, added after the Council's refusal but prior to the application being appealed.

Background

The applicant lodged a Development Application with the Rockhampton Regional Council on or about the 13 December 2011 for a 4 bay garage and shed. The size of the shed is 12M x 6m in size and comprises a two bay garage and a two bay storage shed. The proposal was as per the drawings provided by the Council in their submission dated 7 March 2012.

The property is bounded by three streets with the house placed on half the block and facing Morgan Street.

The applicant required the shed be positioned 1.5m from the Pershing Street boundary and into the 9m truncated corner at the intersection of Dibdin and Pershing Streets.

The Council refused the application on the basis that the siting requirements did not comply with the requirements of the Queensland Development Code Part 1 MP 1.2 (a) & (b). The applicant was advised of their decision on 9 February 2012.

An application dated 16 February 2012 for an appeal was placed with the Council for forwarding to the Committee Registrar. It was not forwarded therefore was out of time for an appeal when received. The Council admitted to the oversight and agreed to an extension of time so the appeal could be heard.

The applicant was not in attendance at the hearing. The Applicant's partner appeared on his behalf. The partner was advised that she was required to have the applicant's authority to represent him at the hearing or the hearing would need to be adjourned. The representative assured the Committee she was the person undertaking the paperwork and had the full authority of the applicant. The Council's representatives accepted this and the Committee decided to proceed. The proviso was that if the applicant disagreed with the Committee's decision allowing Kacie Bispeshov to represent him, he was to contact the Chairperson of the Committee within 24 hours. If no negative response was received 24 hours it would be deemed that the applicant had accepted the decision to proceed.

All parties agreed to the terms of the direction of the Committee.

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 or about the 18 April 2012.
2. Decision Notice issued by the Council issued on the 9 February 2012.
3. Verbal submissions by the Applicant's representative at the hearing.
4. Verbal Submission presented by the Council at the hearing.
5. *Building Act 1975*
6. Building Regulation 2006
7. *Sustainable Planning Act 2009*
8. QDC MP 1.2 Design and Siting Standard for single detached housing – on lots 450m² and over.

Findings of Fact

The Committee makes the following findings of fact:

- The site is in a well established area on an existing residential block with a home built approximately 60 years ago.
- The land area is approximately 800m² with the existing home positioned on half the block facing Morgan Street.
- The site has a three street boundary.
- The application is for a 4 bay shed of 72m² with two garages and two bays for storage.
- The Applicant proposed that the shed be positioned behind the home with the 12m front of the building facing and 1.5m from the street boundary in Pershing Street.
- The proposal encroached into the 9m truncated corner at the intersection of Pershing and Dibdin Street, the rear boundary road of the property.
- The area was one of the original residential areas in Rockhampton. The original small lanes had been widened and therefore front alignments in many cases had been reduced and subsequently approvals had been given for 3m boundary clearances. A garage separate to and behind the home across Pershing Street is an example of this.

Reasons for the Decision

The Applicant proposed that the shed be situated facing Pershing Street and have a setback of 1.5m from both street frontages. They were given the option of moving the shed back to be in alignment with the home. This would have removed the problem with the building encroaching into the 9m truncated corner section. The applicant was advised of the reason for the requirement in MP1.2 (b) and that no Court would make a decision to the contrary. This was rejected by the applicant. The second option was to position the building to face the Dibdin Street frontage with minimum clearance from the neighbouring boundary and a 3m setback.

The Council agreed to a reduction in the rear setback to 3m. The Council agreed to this relaxation as it was in accordance with previous approvals in the area. The shed, when placed with one end against the adjoining residential property on Dibdin Street, so that it is outside the 9m truncation removes the possible safety risk to the public.

The Committee therefore believe the conditions in the decision satisfy the Performance Criteria of MP 1.2 of the QDC.

Trevor McCubbin
Building and Development Committee Chair
Date: 12 June 2012

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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Department of Housing and Public Works
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