



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	72-10
Appellant:	Lyn Smith
Assessment Manager:	Burnett Country Certifiers
Concurrence Agency: (if applicable)	Bundaberg Regional Council (Council)
Site Address:	390 Bourbong Street, Bundaberg and described as Lot 277 on RP 881865 - the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the assessment manager to refuse a building development application for construction of a combined garage and carport. The refusal was based on a concurrence agency response from Council refusing a request to vary the siting requirements to allow construction within the prescribed road boundary setback and side boundary clearance.

Date of hearing:	11:00am – Thursday 17 February 2011
Place of hearing:	The subject site
Committee:	Don Grehan – Chair
Present:	Lyn Smith – Appellant Wallace Kenney – Assessment manager Rick Drew – Assessment manager Chris Hutchins – Observer Stephen Curran – Council representative Bradley Geaney – Council representative

Decision:

The Committee, in accordance with section 564(2)(c) of the SPA, **sets aside** both the decision of the assessment manager and the concurrence agency advice from Council and, in accordance with section 564(1) of the SPA, makes the following directions as considered appropriate:

- The assessment manager is directed to re-assess the development application for building works in relation to the garage and carport.
- The re-assessment shall be on the basis that the concurrence agency has no objections to the siting of the carport part with a road setback of 200mm to its outer most projection from the

existing garden shed of 13.0m (10m combined carport and garage, 3m existing garden shed) 200mm from the northern property boundary as defined on the Site Plan DWG001 as annotated by the Committee and contained within Appendix A.

- (c) The assessment manager shall impose the following conditions on any subsequent development approval for building works in relation to the dwelling and garage:
1. Stormwater off the combined garage and carport roof areas is to be collected and discharged via an underground pipe to the street channel;
 2. The carport part is to remain an open structure, its side and front elevations shall not be fitted roller doors, slat screening or similar.
- (d) Notwithstanding (a), (b) and (c), prior to any subsequent approval of the development application for building works, the assessment manager and/or appellant is required to make an application to Council and gain all requisite approvals in relation to any proposal to relocate the existing driveway cross over within the road reserve or the provision of a second driveway crossover to serve the subject site.

Background

The assessment manager refused a development application for building works in relation to a proposed combined garage and carport on the subject site following receipt of a concurrence agency response from Council.

The request to Council was required as the siting of the proposed works would result in a carport being located within the 6m road setback, and the overall length of structures within 1.5 m of the side boundary exceeding 9.0m which is contrary to Acceptable Solutions A1(a)(i) and A2(d)(ii) of QDC MP1.2.

In determining its response, Council considered that the proposal did not satisfy Performance Criteria P1 and P2 of the Queensland Development Code, MP 1.2.

The appellant, dissatisfied with the refusal, lodged an appeal with the Building and Development Dispute Resolution Committees.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice and appellant's correspondence accompanying the appeal as lodged with the Registrar on 14 October 2010.
2. The concurrence agency response (Ref No. 305.2010.505.1) dated 14 September 2010.
3. The assessment manager's decision notice (Ref No. BUDP 838/10) dated 29 October 2010.
4. Verbal submissions from the appellant's representatives at the hearing.
5. Verbal submissions from Council's representatives at the hearing.
6. The SPA.
7. The Sustainable Planning Regulation 2009 (SPR).
8. The *Building Act 1975* (BA).
9. The Queensland Development Code, MP 1.2 - Design and Siting Standard for Single Detached Housing - On Lots 450m² and Over (QDC MP1.2).
10. Site plans submitted by both the appellant and Council following the hearing.

Findings of Fact

The Committee makes the following findings of fact:

- The appellant proposes to construct a combined garage and carport between the existing dwelling and the northern property boundary on the subject site.
- Section 30 of the BA clarifies the relevant laws and other documents for the assessment of building work including QDC MP 1.2 .
- The Bundaberg City Plan, as applicable to the subject site, does not adopt alternate planning scheme provisions in relation to boundary clearance and, as the area of the subject site exceeds 450m², QDC MP1.2 is the applicable building assessment provision in this regard.
- The proposed siting of the combined garage and carport on the subject site would result in a road setback of 200mm to the carport and result in an overall length of structures within 1.5 m of the northern side boundary of 13m (combined garage and carport 10m and existing garden shed 3m) which is contrary to Acceptable Solution A1(a)(i) and A2(d)(ii) of QDC MP1.2.
- Where development is proposed contrary to the Acceptable Solutions, QDC MP1.2 clarifies that the local government is the referral agency (concurrence) for the assessment of the relevant aspects against the Performance Criteria as per item 19 of Schedule 7 of the SPR. In this instance, the applicable Performance Criteria are P1 and P2 of QDC MP1.2.
- Assessment against Performance Criteria P1 of QDC MP1.2 requires the concurrence agency to consider that 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.
- Assessment against Performance Criteria P2 of QDC MP1.2 requires the concurrence agency to consider that the 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.
- A request from the appellant to Council seeking a response in relation to the proposed siting was received by the Council on 9 September 2010.
- On 14 September 2010 Council issued a concurrence agency response to the appellant refusing the proposal and siting the following considerations in arriving at their decision:
 - (a) The bulk of the building will not facilitate an acceptable streetscape;
 - (b) There are no other buildings of similar size or configuration in the immediate vicinity that share a similar road setback;
 - (c) The building will impact on the amenity of residents on the adjoining lot as the building is located in close proximity to this dwelling;
 - (d) The total length of building close to the side boundary represents a significant percentage of the boundary length; and
 - (e) There are other design options available to meet the requirements of the acceptable solutions of A1 and A2 of MP 1.2 of the Queensland Development Code.
- An existing garden shed is located between the dwelling on the subject site and the northern property boundary. The location of this garden shed prevents an alternate siting of the proposed combined

garage and carport in this vicinity.

- There is insufficient clearance between the existing dwelling and the southern property boundary to facilitate siting of the proposed structures in that area.
- A lowset chamfer board dwelling is located on a corner allotment (Cnr Bourbong and Palmer Streets) adjacent to, and to the north of, the subject site. This dwelling is potentially affected by the proposed development and the following were noted at the time of the hearing:
 - (a) The dwelling appears to have been constructed circa 1960;
 - (b) The setbacks from the dividing boundary to the outermost project of the dwelling appear to be less than 1.5m,
 - (c) There are no window openings in the external wall of the dwelling adjacent to the proposed location of the garage;
 - (d) The characteristics of the elevation of the dwelling facing the dividing boundary suggests that it is the rear of the dwelling and further investigation suggests that the primary aspect of the dwelling is to the Palmer Street frontage.

Reasons for the Decision

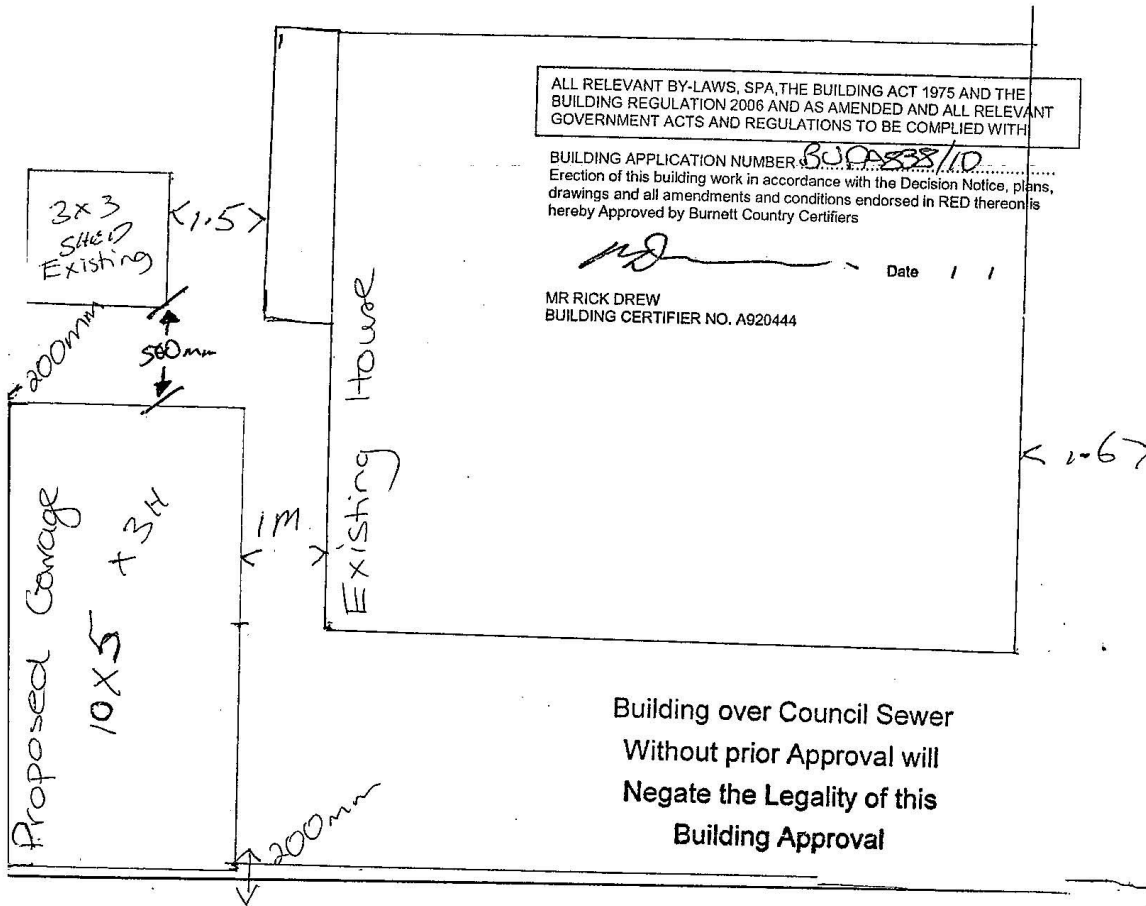
- The Committee, having considered Performance Criteria P1 of QDC MP1.2, the plans submitted, the site and the adjacent development, is satisfied that the proposed 200mm road setback to the carport part does not unduly affect an acceptable streetscape given that:
 - (a) The proposed carport part is of a size and scale generally associated with such structures.
 - (b) Save for the combined nature of the structure, the siting of the proposed carport could have been assessed as being consistent with Acceptable Solution A1(c) of MP 1.2 without reference to the road boundary setbacks of neighbouring buildings or structures.
 - (c) The proposed location of the carport does not impact on the primary aspect of the adjoining property; and
 - (d) The requirement for the assessment and approval of driveway access associated with the development will adequately address potential nuisance or risk the safety of the public associated with the location of the structure.
- The Committee, having considered Performance Criteria P2 of QDC MP1.2, the plans submitted, the site and the adjacent development, is satisfied that the length of structures within the prescribed side boundary clearances does not unduly affect:
 - (a) The provision of adequate daylight and ventilation to habitable rooms of the dwelling on the subject site as the proposed structures would be lower than the existing windows ;
 - (b) The provision of adequate light and ventilation to habitable rooms of buildings on adjoining lots as there are no such openings adjacent to the proposed structure.
 - (c) The amenity and privacy of residents on the adjoining allotment given:
 - 1. There are no window openings in the existing dwelling adjacent to the proposed structure;
 - 2. The area directly adjacent to the proposed structure appears to be a pathway of a non-specific use;
 - 3. The primary aspect of existing dwelling on the adjoining allotment is to the northern (Palmer St) frontage; and
 - 4. The non-habitable nature of the proposed development.

Don Grehan
Building and Development Committee Chair
Date: 28 March 2011

Appendix A.

DWG TITLE - SITE PLAN
 DWG No. - SP-838-10
 OWNER - Lyn Smith
 ADDRESS - 390 Bourbong St
 DATE - 27/08/10
 AUTHOR - Bruce Lane

BUDA838110



FOOT PATH

BOURBONG ST
 390

DWG 001

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