

**APPEAL**  
*Integrated Planning Act 1997***BUILDING AND DEVELOPMENT TRIBUNAL - DECISION****Assessment Manager:** GMA Certification Group**Concurrence Agency:** Caboolture Shire Council**Site Address:** *withheld*—"the subject site"**Applicant:** *withheld***Nature of Appeal**

Appeal under Part 2, Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of GMA Certification Group, based on a concurrence agency response from Caboolture Shire Council, to refuse an application for a siting concession for a partially constructed dwelling constructed on the "subject site". The applicant requested a reduced road boundary setback from 6.0m to 5.2m.

**Date and Place of Hearing:** 10.00 am Friday 11<sup>th</sup> January 2008 at "the subject site"**Tribunal:** Debbie Johnson – Chairperson  
John Panaretos – General Referee**Present:** Applicant  
Tanya Smith – Private Certifier, GMA Certification Group  
Stephen Bowden – Private Certifier, GMA Certification Group  
Chris Harris – Building Surveyor, Caboolture Shire Council**Decision**

In accordance with section 4.2.34 of the *Integrated Planning Act 1997*, the Tribunal **confirms** the decision of GMA Certification Group dated 26<sup>th</sup> November 2007, based on a concurrence agency response from Caboolture Shire Council that refused the siting variation for a detached dwelling to be within the road boundary setback.

## **Background**

On the 29<sup>th</sup> May 2007, the applicant lodged a development application for building works for a dwelling with GMA Certification Group. The proposed building line setback for the dwelling was 5.2m although 6m is the minimum requirement for this site. GMA Certification Group, as Private Certifiers, were therefore required to refer the application to Caboolture Shire Council as a concurrence agency to approve the reduced setback request before they could issue a Development Permit for Building Works.

However, due to unfortunate circumstances, this referral to Caboolture Shire Council was initially overlooked and the applicant proceeded to construct the dwelling on the basis that council had approved the plumbing and drainage application on 11<sup>th</sup> July 2007, notwithstanding the reduced front setback. The applicant was also aware that part of the housing estate was subject to a development plan allowing reduced front setbacks, albeit on small allotments.

The omission was discovered on 1<sup>st</sup> September 2007, when the applicant contacted GMA Certification Group requesting their attendance on-site to undertake a frame inspection. The referral to Caboolture Shire Council was subsequently made on 9<sup>th</sup> October 2007. Council issued a Concurrence Agency Response refusing the application by written notice, dated 22<sup>nd</sup> October 2007. Consequently, GMA Certification Group issued a Development Application Decision Notice of Refusal to the applicant on 26<sup>th</sup> November 2007.

## **Material Considered**

- 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals on 12<sup>th</sup> December 2007;
- Caboolture Shire Council's Concurrence Agency Response dated 22<sup>nd</sup> October 2007;
- The GMA Certification Group's Decision Notice dated 26<sup>th</sup> November 2007;
- Property details, including mapping as available through PD Online, Caboolture Shire Council web site;
- The applicant's grounds for appeal against Caboolture Shire Council's reasons for refusal submitted with the application to the Tribunal and the reasons for proceeding with construction as forwarded to the tribunal, dated 12<sup>th</sup> December 2007;
- Working drawings designed by JDC Designs & Planning identified as Dwgs No. M3-26 1 to 7 Issue B, all dated 28<sup>th</sup> May 2007.
- Caboolture Shire Council's representative provided a verbal submission to the Tribunal detailing council's concerns relating to the application and the reasons for refusal;
- Verbal submissions made at the hearing by the applicant;
- Verbal submissions made at the hearing by representatives of GMA Certification Group;
- Relevant sections of the Caboolture Shire Council Town Planning Scheme, particularly Division 9, Dwelling House Code;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Building Regulation 2006*; and
- QDC MP1.2.

## **Findings of Fact**

The 'subject site' is 645sq/m, a rectangle with a 20m frontage to *withheld* and a depth of 32.266m.

The site is zoned Residential A as are all adjoining allotments. The rear boundary abuts an access strip to a house lot and the area is generally flat.

Withheld is a short cul-de-sac giving frontage to eight allotments including the corner lots.

The building in question is partially constructed, being fully framed and roofed. Although the tribunal was unable to accurately measure the setbacks to the building whilst on site, the applicant indicated that a licensed surveyor had been engaged to do the initial building setouts. Therefore, in accordance with the proposed Site Plan, the current minimum street setback should be 5.2m and this measurement would be as taken to the building's eave line at the Entry Porch, being the *outermost projection* as defined in QDC MP1.2. Similarly, the roof overhang to the garage should be 5.4m. Both sections of the roofline are the subject of the application for the siting concession.

*“Outermost projection” means the outer most projection of any part of a building or structure including, in the case of a roof, the outside face of the fascia, or the roof structure where there is no fascia, or attached sunhoods or the like, but does not include retractable blinds, fixed screens, rainwater fittings, or ornamental attachments.*

Division 9 of the Caboolture Shire Planning Scheme, the Dwelling House Code, overrides the provisions of QDC MP1.2. Acceptable Solution S5.1 of that code requires a setback of 6m from the road alignment to buildings on site, including garages. The objectives of the acceptable solution are detailed in Specific Outcome S05. It is designed to:

- (a) *achieve a high standard of amenity for residents of the site; and*
- (b) *maintain existing desirable streetscape patterns in established areas or create desirable streetscape patterns in emerging areas.*

A relevant definition applicable to this structure is contained in the planning scheme:

**“Building Line or Setback”** *The distance from any allotment boundary to any part of a building.*

### **Reasons for the Decision**

The Dwelling House Code of council's planning scheme provides for an acceptable solution of a 6m setback from the front alignment. This overrides, and is a firmer requirement than, the relevant provision in QDC MP1.2 of the Queensland Development Code. The reason for this is explained in the *Note* to Specific Outcome S05:

*The dominant feature of desirable streetscape patterns is consistency of building setbacks from public roads.*

Other houses facing *withheld* as their primary street frontage are compliant with the setback requirement, establishing a consistent streetscape pattern throughout. An exception to one house in the street would prejudice the consistency of the established streetscape. Finally, there are no constraints of lot size, shape or topography that warrant the alternative solution proposed.

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**Debbie Johnson**  
**Building and Development Tribunal Chairperson**  
**Date: 21 January 2008**

## **Appeal Rights**

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

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