



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	59 - 12
<b>Applicant:</b>	Des and Lynn Docherty
<b>Assessment Manager:</b>	Professional Certification Group
<b>Concurrence Agency:</b>	Moreton Bay Regional Council (Council)
<b>Site Address:</b>	23 Zeus Drive, Burpengary and described as Lot 19 on RP161150 – the Parish Burpengary – subject site

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by the Assessment Manager to refuse a Development Application for new building works, namely for the construction of a new garage between the side boundary alignment and the existing dwelling. The refusal was based on the advice from the Concurrence Agency that the Application was non compliant “*within the limits of Council’s jurisdiction as a concurrence agency, against the provisions of the Caboolture district’s Amenity and Aesthetic Policy for Class 1(a) and 10(a) Buildings*” for the following reasons it would:

1. Have an extreme adverse effect on the amenity or likely amenity of the locality.
  2. Be in extreme conflict with the character of the locality.
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<b>Date of hearing:</b>	Tuesday, 18 December 2012
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Georgina Rogers – Chair Deanna Heinke – Committee Ray Rooney - Committee
<b>Present:</b>	Des Docherty – Applicant Lynn Docherty – Applicant Cian Mahony – Aus-steel Northside/North Brisbane Sheds – building representative Chris Trewin – Moreton Bay Regional Council representative

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee) in accordance with section 564 of the SPA **sets aside** the decision and approves the siting variation for the Class 10(a) proposed garage subject to the following conditions:

1. Setback from the eastern side boundary alignment to the outermost projection of the proposed garage to be minimum 400mm;

2. Maximum height of the building structure adjacent to the side boundary alignment to be 3.2m;
3. Setback to outermost projection of the proposed garage from the front road boundary alignment to be setback 1.0m from the existing and adjacent living room wall line, exclusive of the bay window, of the existing dwelling on site;
4. Maximum length of the proposed garage not to exceed 12.0m and/or the length of the existing dwelling on the adjoining eastern allotment;
5. No windows or openings are to be located along the eastern side wall of the proposed garage;
6. Existing landscaping located along the eastern side boundary at the front of the site is to be retained and is to be extended to the front of the proposed garage;
7. The materials to be used are to be colorbond and the colours used are to match the existing and dwelling and/or fencing on site.

## **Background**

A Building Development Application (Application) was made to the Assessment Manager. In accordance with Schedule 7 of the Sustainable Planning Regulation 2009 (SPR), the Assessment Manager referred the application for the proposed garage to the Concurrence Agency who upon receipt of the Application advised the Assessment Manager that the proposed design could not be approved. The Application was for building work as defined under the SPA.

The Applicants recently purchased the property in 2012 and made Application to the Assessment Manager for a new garage, 5.8m wide by 12.0m in length, to be located 400mm from the adjoining owner's side boundary alignment. The proposed height of the garage was shown as 3.9m at the external wall adjacent to the eastern side boundary alignment. The garage elevation shows a gable roof with a 10 degree pitch. The nominated height of the building at the ridge was shown as being 4.411m. The maximum overall height of 4.411m would be approximately 3.3m offset from the adjoining eastern side boundary alignment.

The location of the proposed garage is shown to be 6.0m back from the front road boundary alignment. The proposed garage is shown on the site plan as being located 950mm away from the existing dwelling to allow pedestrian access through the site. The plans show construction to be a slab on ground with steel frame construction and colorbond steel sheeting to the walls and roof.

The proposed garage is to be located between the existing dwelling on the site and the adjoining eastern side boundary alignment. The owners advised that the garage would be constructed using colours matching or similar to those used within the existing property, such as those used for the existing fencing and dwelling.

The Council advised the Assessment Manager that "*the proposal is not supported and therefore any building development application for the proposed building work is to be refused.*" The reasons for refusal were documented in two separate letters from the Council dated 21 November 2012 to the builder and were as follows:

Letter – on Moreton Bay Regional Council letterhead

- Have an extreme adverse effect on the amenity of likely amenity of the locality; and
- Be in extreme conflict with the character of the locality.

Letter – displaying no formal letterhead

### Assessment

- Side and/or rear boundary clearance
- Visual privacy

### Reasons

- Council considers the building or structure, when built will not allow adequate light and ventilation to habitable rooms of buildings on adjoining lots; and

- Would impact on the amenity and privacy of residents on adjoining lots.

The Assessment Manager refused the Application.

The Applicants lodged an appeal on 30 November 2012 to the Building and Development Registry on the following grounds:

- The owner wanted to locate the garage to keep it away from existing sewer lines and drainage pipes at the rear of the site.
- The garage would keep the summer western sun off adjoining owner's house.
- The garage would allow the winter sun into the adjoining owner's yard at the back of his house.
- The garage has been located as close as possible to the existing dwelling on their site.

On 18 December 2012, a hearing was held on the subject site. In support of the proposal, the Applicants further advised that:

- This was the only practical location on-site in which they could accommodate a shed, as there was a sewer located in the rear of the site and the proposed location was clear of the sewer.
- Furthermore the applicants wanted to erect a large rainwater tank at the rear of the proposed garage;
- The adjoining neighbours had provided a signed letter of support (evidence of this was later provided to the Committee on 18 January 2013);
- There are other examples of similar garages existing within the locality;
- 3.1m is the lowest possible height to allow for a caravan with an air conditioning unit on top and roller door space;
- The length of the caravan including the length of the towbar was advised to be approximately 7.5 metres. The width being 3.0m wide;
- The 12.0m length of the proposed garage would allow sufficient clearance for a person to manoeuvre around the caravan;
- The proposed garage is intended to accommodate the applicant's caravan, the applicant's son's car and general domestic storage.

The Council representative advised that the Application was refused as the size and location of the garage was outside "*Council Policy – Building Approval Procedures Amenity and Aesthetics (Class 1A and 10A Buildings)*".

The site is located in a quiet residential street in the suburb on Burpengary within the Moreton Bay Regional Council. The neighbourhood is residential in nature and consists of predominantly lowset, detached, brick veneer dwellings on well sized residential lots. There is evidence of some detached garages within the neighbourhood which may or may not have existing regulatory approval.

The site fronts Zeus Drive to the south and is a relatively flat. The dwelling appears to be set back from the road boundary alignment by 6.0m. To the eastern side of the site the dwelling is shown to be setback from the side boundary alignment by 7.15m. It is proposed to locate the new garage within this area with a setback from the eastern side boundary alignment of 400mm, from the existing dwelling on site of 950mm and from the front boundary alignment of 6.0m.

The site is approximately 777 square metres in size and has a frontage greater than 15.0m. From the site inspection the existing dwelling is single storey and has an existing double garage attached the dwelling. This is accessed by a constructed driveway. Rollover kerbing is standard within the neighbourhood, thereby allowing ready and easy access from the road to the proposed new garage.

There is on street carparking available which is currently well within the capacity of the residential neighbourhood requirements.

Discussions amongst the parties on site outlined a number of options which could address the siting, amenity and bulk of the proposed garage. These included, but not all were not limited to:

1. Reduction in height of the side boundary wall of the building adjacent to the neighbour from 3.9m to 3.2m;
2. Potential reduced height of the overall garage by using a panel door design rather than a roller door;
3. Roof pitch to match existing dwelling on site, but profile could change from gable shape;
4. Colour of the materials to be used to match those existing on site;
5. Setback from the road boundary alignment to be further than the existing dwelling wall line to reduce visual impact from streetscape;
6. Setback from the side boundary alignment to be minimum of 400mm if items 1-5 were adhered to;
7. Length of proposed garage could remain at 12m if the above items 1-4 were considered;
8. Retention of existing vegetation on eastern side boundary alignment and planting of additional vegetation in the 400mm setback area;
9. Exclusion of openings in eastern wall adjacent to adjoining neighbour;
10. Proximity to sewer line and relocation options;
11. Various building locations within the site and various front setback dimensions;
12. Reduction in the building length in whole or in part;
13. Streetscape and adjoining property implications of the proposal.

The discussions formed the basis for assessing the application, although no agreement was reached on site.

### **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 27 November 2012.
2. Assessment Manager Decision Notice dated 27 November 2012.
3. Plans lodged and dated as received by the Building Codes Queensland as 30 November 2012.
4. Council decision dated 21 November 2012.
5. Verbal evidence provided by applicant.
6. Verbal evidence provided by building representative.
7. Verbal evidence provided by Council representatives.
8. Evidence of adjoining owners consent (follow up information provided)
9. Council Policy "Building Approval Procedures Amenity and Aesthetics (Class 1A and 10A Buildings)" (follow up information provided).
10. Queensland Development Code MP 1.2 Design and Siting Standard for single detached housing - on lots 450m<sup>2</sup> and over (QDC MP 1.2).
11. *Building Act 1975* (BA).
12. Building Regulation 2006.
13. *Sustainable Planning Act 2009* (SPA).
14. Building Code of Australia (BCA).
15. Sustainable Planning Regulation 2009 (SPR).

## Findings of Fact

The Committee makes the following findings of fact:

1. The Application was correctly referred to the Council as a Concurrence Agency in accordance with Schedule 7, Table 1, Items 17 and 19 of the SPR.
2. The proposed garage was assessed by Council in accordance with:
  - a. Item 17 of the SPR regarding its impact on the amenity and aesthetics of the area under Council Policy No 202/02; and
  - b. Item 19 of the SPR regarding whether the proposed garage complies with the Performance Criteria of QDC MP1.2.

3. The criteria under Council Policy No 202/02 states:

### *4.1 Class 10 Buildings*

*In accordance with Section 50 of the Standard Building Regulation 1993, an application to erect a Class 10(a) building (private garage, carport, shed, or the like) on a property that is located in a Special Residential & Residential, A, B, C or D zone and a Special Rural, Rural & Rural Residential zone will be refused in the following circumstances:*

- a) Where, in the opinion of Council, the proposed building when built, will have an extremely adverse effect on the amenity or likely amenity of the buildings neighbourhood; or*
- b) Where, in the opinion of Council, the aesthetics of the proposed building when built will be in extreme conflict with the character of the buildings neighbourhood.*

4. The Performance Criteria under QDC MP 1.2 states:

*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.*

## Reasons for the Decision

1. **QDC MP1.2 (Design and siting standard for single detached housing – on lots 450m2 and over)**

MP1.2 of the QDC sets out Performance Criteria (P1) in relation to siting requirements which a Council must consider and be satisfied that the Application meets the intent of each criterion. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria:-

***P1 – The location of a building or structure facilitates an acceptable streetscape, appropriate for-***

### ***(a) The bulk of the building or structure***

From the plans provided and on-site inspection, the proposed garage design could be modified and thereby minimise the bulk of the building. This would be achieved by:

- reducing the height of the proposed garage wall to 3.2m on the eastern alignment,
- adjusting the roof pitch of the proposed garage to match the existing dwelling,
- setback to outermost projection of the proposed garage from the front road boundary alignment could be setback 1.0m from the adjacent living room wall line, exclusive of the bay window, of the existing dwelling on site;
- maintaining existing landscaping (i.e. Cane Palms) and incorporating additional landscaping to the side of the proposed garage and front yard; and
- matching the colours to the existing dwelling and fencing on site.

The proposed garage would then not significantly increase the bulk of the existing dwelling and would facilitate an acceptable streetscape.

**(b) Road boundary setbacks of neighbouring buildings or structures**

The amended location (as described above) of the proposed garage will be consistent with current developmental setbacks within the surrounding neighbourhood.

**(c) The outlook and views of neighbouring residents**

The outlook and views of the neighbouring residents will not be significantly affected by the proposed garage as the area where it is proposed to be located is fenced by a solid 1.8m high boundary fence. It is acceptable for a building for a height of 3.2m to be constructed on the boundary alignment for a distance of 9.0m. The proposed garage is to be offset by 400mm which reduces the impact and allows for maintenance along the adjoining boundary.

The outlook of the neighbouring residents located opposite the subject site will not be significantly affected providing the Applicants adhere to the amendments described in (a) above, particularly in respect to reducing the height of the proposed garage, subscribing to a greater front setback and additional landscaping.

The length of the proposed garage, adjacent to the neighbour will not have a significant affect on the neighbour as it will be located adjacent to neighbour's dwelling which does not currently have significant window openings. The exclusion of any windows or openings along the eastern wall of the proposed garage will ensure that there is greater privacy and less likelihood of noise nuisance to the neighbouring property.

Therefore the proposed garage as amended will not adversely impact on the amenity or privacy of adjoining residents, or those within the immediate neighbourhood.

**(d) Nuisance and safety to public**

The current neighbourhood appears to have low pedestrian and vehicle traffic usage. The predominant use of the garage is for storage of a caravan and vehicles which should not be used on a daily basis. Therefore the proposed garage should not impact on the safety of the public nor provide any potential nuisance to the neighbourhood.

2. The QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The Council is in a position to vary the Acceptable Solutions in relation to an Application for siting requirements and to assess the Application based on its merits.

Based on the above, it is the Committees decision that the siting variation be approved.

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**Georgina Rogers**  
**Building and Development Committee Chair**  
**Date: 6 February 2013**

## **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  
PO Box 2457  
CITY EAST QLD 4001  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**