



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>29 - 13</b>
<b>Applicant:</b>	Faizel Jassat and Josiaz Cotwall
<b>Assessment Manager:</b>	Geoff Worrall, Residential Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Brisbane City Council (Council)
<b>Site Address:</b>	70 Beris Crescent, Kuraby and described as Lot 320 on SP140204 - the subject site

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### **Appeal**

Appeal under section 527 of the Sustainable Planning Act 2009 (SPA) against the refusal for a Building Development Application (Application) for a patio by the Assessment Manager as the proposal had been the subject of an Application for siting which had been refused by the Concurrence Agency.(Brisbane City Council) .

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<b>Date and time of hearing:</b>	Wednesday 23 October 2013 at 10am
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Greg Rust – Chair Vanessa Hicks – General Referee
<b>Present:</b>	Mohammad Faizel Jassat – Applicant Geoff Worrall – Assessment Manager Yasmin Khan – Neighbour (27 Beris Crescent, Kuraby) Matthew Wighton – Brisbane City Council Duncan Kirk – Brisbane City Council

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee) in accordance with section 564 (2)(c) of the SPA **changes** the decision of the Assessment Manager and approves the Application for the patio.

### **Background**

The subject site is a rectangular shaped allotment of 562m<sup>2</sup> which contains a double storey dwelling with attached garage, pool, and as built patio, which is the subject of this appeal. The patio, the subject of this appeal, had already been built when the appeal was lodged with the Committee Registrar on 9 September 2013.

The Application for the patio was refused by the Assessment Manager on the 14 August 2013. The reason for refusal was given as:

*“a relaxation of the boundary setback requirements for the proposed structure has not been granted by Brisbane City Council (as a Concurrence Agency).”*

The Council had refused the Application on 23 April 2013, stating the reasons for refusal as the proposal did not comply with the Queensland Development Code (QDC) and the Application:

*“will adversely impact on the amenity and the privacy of the residents at 12 Redland Close, Kuraby”.* This is the property located at the rear boundary of the subject site closest to where the patio had been built.

The Council had considered an earlier Application by the Assessment Manager for a similar proposal for the patio which it had approved on the 6 December 2012.

The general difference between the two Council Applications was that the approved Application was for the patio to be built 12 metres in length and the refused Application was for 14 metres in length.

### **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 Committee Registrar on 9 September 2013
2. Verbal submissions from all parties at the hearing
3. Written submission from the Assessment manager as requested by the Committee after the hearing
4. Queensland Development Code MP1.2 – Design and Citing Standard for Single Detached Housing – on Lots over 450m<sup>2</sup> and over (QDC MP 1.2)
5. *Building Act 1975* (BA)
6. Building Regulation 2006 (BR)
7. The *Sustainable Planning Act 2009* (SPA)
8. Email from Certifier containing copy of Brisbane City Council permit to build over sewer

### **Findings of Fact**

The Committee makes the following findings of fact:

- The patio had already been built when the Application made for its approval was refused.
- Two separate Applications were made to the Council as Concurrence Agency. The first Application was approved the second Application was refused.
- The general difference between the two Applications was that the approved Application was for the patio to be built 12 metres in length and the refused Application was for 14 metres in length.
- The as built patio is 13 metres in length and has a height of 3.08m above the finished ground level and commences 1.4 metres from the western boundary of the subject site.
- The Queensland Development Code MP1.2 (QDC MP 1.2) applies to the siting of the patio.
- Compliance with the code may be achieved by applying the acceptable solutions or the performance criteria. Performance Criteria P2 of the QDC reads:
  - 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 Committee contends that the different results of assessment between the two Council Applications are not substantial enough to refuse approval. That is, the patio has been built 1 metre longer (i.e. 13m) than the Application that Council approved (i.e. 12m).

### **Reasons for the Decision**

Given the above facts, the Committee considers that the patio complies with the Performance Criteria of the QDC MP 1.2. This view is supported by Council's approval of the first Concurrence Agency Application which was for the patio to be built 12 metres in length. The Committee views the fact that the patio being built 13 metres in length as a minor variation and not substantial enough to warrant Council refusal under the provision of the QDC MP1.2.

The Committee therefore changes the decision of the Assessment Manager to refuse the Application based on the Concurrence Agency response and approves the Application for the patio as already constructed.

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**Greg Rust**  
**Building and Development Committee Chair**  
**Date: 25 November 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  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**