



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	70-10
<b>Appellant:</b>	McCarthy Homes
<b>Assessment Manager:</b>	BA Group Australia Pty Ltd
<b>Concurrence Agency:</b> (if applicable)	Brisbane City Council (Council)
<b>Site Address:</b>	6 Carbis Street, Nudgee Queensland, described as L9 SP 229604 - the subject site.

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of BA Group Australia Pty Ltd as the assessment manager to refuse a development application for building work in relation to the proposed construction of dwelling and attached garage. The refusal was based on a response from Council as the concurrence agency.

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<b>Date of hearing:</b>	2.30pm – Tuesday 9 November 2010
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Don Grehan – Chair Kylee Creighton – General Referee
<b>Present:</b>	Jeremy Verhey – Appellant’s representative Sharyn Roddick – Appellant’s representative John Young – Appellant’s representative Peter Bird – Council’s Representative

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### Decision:

The Committee, in accordance with section 564(2)(c) of the SPA, **sets aside** both the decision of the assessment manager and, to the extent that relates to the siting of the garage, the refusal of the concurrence agency and, in accordance with section 564(1) of the SPA, makes the following directions:

- (a) The assessment manager is directed to re-assess the development application for building works in relation to the dwelling and garage.
- (b) The re-assessment shall be on the basis that the concurrence agency has no objections to the siting of the garage with road setback of 3.0m to its outer most projection from the allotment boundary fronting Carbis Street.
- (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. Any external wall of the garage, where located less than 750mm to a property boundary, is to be maintenance free such as unpainted or untreated masonry in accordance with Acceptable Solution A6(b) of the Queensland Development Code (QDC), MP 1.2.
- (d) The assessment manager is reminded that the decision of the Committee relates only to the concurrence agency aspects of the development and specifically excludes issues of Building Code of Australia (BCA) compliance.
- (e) All parties are reminded that the provisions of the concurrence agency response (Ref No. BD07236695810) dated 30 September 2010, save for those relating to siting of the garage, are unchanged by the decision of the Committee and remain in effect.

## **Background**

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

The request to Council, as the concurrence agency, was required as the siting of the proposed works would result in a road setback of 3.0m to a garage and 3.009m to a family room which is contrary to Acceptable Solution A1(a)(i) of QDC MP1.2.

Council, in lieu of rejecting the proposal and having no objection to the proposed siting of the family room, directed the assessment manager to condition an alternate minimum road setback of 4.5m to the garage as Council did not consider the proposed 3.0m setback to adequately satisfy Performance Criteria P1(a), P1(b) and P1(c) of QDC 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 – Application for appeal/declaration and appellant's correspondence accompanying the appeal as lodged with the Registrar on 21 October 2010.
2. The concurrence agency response (Ref No. BD07236695810) dated 12 August 2010, 24 August 2010 and 30 September 2010.
3. The assessment manager's decision notice (Ref No. 100299) dated 20 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 QDC MP 1.1, Design and Siting Standard for Single Detached Housing - On Lots under 450m<sup>2</sup> .
10. The QDC MP 1.2 - Design and Siting Standard for Single Detached Housing - On Lots 450m<sup>2</sup> and Over (QDC MP1.2).
11. Registered Survey Plans as presented by the Appellant at the hearing.

## Findings of Fact

The Committee makes the following findings of fact:

- The appellant proposes to construct a new two storey dwelling on the subject site.
- Section 30 of the BA clarifies the relevant laws and other documents for the assessment of building work including QDC MP1.2.
- The proposed siting of the two storey dwelling on the subject site would result in a road setback of 3.0m to a garage and 3.009m to a family room which is contrary to Acceptable Solution A1(a)(i) 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.
- 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.
- The appellant made a request to Council for a concurrence agency response in relation to the proposed building setbacks which, following ongoing discussions between the parties resulted in separate responses being issued dated 12 August 2010, 24 August 2010 and 30 September 2010.
- In the response dated 30 September 2010, Council, confirmed the 3.009m road setback in relation to the proposed family room and additionally directed the assessment manager to condition an alternate minimum road setback of 4.5m to the garage in lieu of rejecting the proposal.
- In arriving at this decision and confirmed in the response dated 12 August 2010, Council did not consider the proposed 3.0m setback to the proposed garage to adequately satisfy Performance Criteria P1(a), P1(b) and P1(c) of QDC MP 1.2 given that the proposed development was in a “newly established estate and a precedent will be created”.
- At the time of the request and the initial response, little or no development had occurred on the allotments directly adjacent to the subject site or within subdivision.
- Subsequent to the date of the request and the initial response, development has occurred on the allotments directly adjacent to the subject site and, given the dimensions of these allotments, has been undertaken on the basis of QDC MP 1.1.
- The road setback to the buildings on the allotments directly adjacent to the subject site is 3.0m as prescribed by Acceptable Solution A1(a)(i) of QDC MP1.1.

## Reasons for the Decision

- The Committee, having considered Performance Criteria P1 of QDC MP1.2, the plans submitted as part of the original request for concurrence agency response, the site and the subsequent adjacent development, is satisfied that the proposed 3.0m road setback to the garage:
  - (a) facilitates an acceptable streetscape in relation to the bulk of the building;
  - (b) is consistent with the road boundary setbacks of neighbouring buildings;
  - (c) does not unduly effect the outlook and views of neighbouring residents; and
  - (d) does not cause nuisance or risk the safety of the public.

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**Don Grehan**  
**Building and Development Committee Chair**  
**Date: 1 December 2010**

## **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**