



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

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| Appeal Number: | 13-15 |
| Applicant: | GMA Certification Group Pty Limited |
| Assessment Manager: | GMA Certification Group Pty Limited |
| Concurrence Agency: (if applicable) | Douglas Shire Council (Council) |
| Site Address: | 9 Ruby Close, Port Douglas and described as Lot 1 on SP 150451 – the subject site |

Appeal

The Appeal is made pursuant to section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision notice issued by GMA Certification Group as Assessment Manager to refuse a building development application for a garage.

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| Date and time of hearing: | Friday 24 April 2015 at 10:00am |
| Place of hearing: | The subject site |
| Committee: | John Eylander– Chair Clayton Baker - Member |
| Present: | Dean and Michelle Gamble – property owners Mr Jeff Evans – Applicant and Assessment Manager Ms Jenny Elphinstone – Council |

Decision:

In accordance to 564(2) of the SPA, the Development Dispute Resolution Committee (Committee) **sets aside** the decision of the Assessment Manager and approves the siting of the garage with the following conditions:

1. The design must be amended so the garage gable roof elevation is constructed with a minimum overhang of 300mm at the street frontage, making the road boundary setback to this elevation 4.98m to the outermost projection.
2. The development must provide a 700mm garden bed adjacent to the neighbouring common property boundary, between the garage street elevation and the road boundary. This garden bed together with the 700mm set back to the street in front of the garage must be landscaped to provide and maintain a hedge screening of approximately 1.5m height.

Background

The subject site is a corner block on a cul-de-sac with an existing low set house with a double garage. At the rear of the property is a patio and swimming pool. The site is 945m² and is located in an established residential subdivision of Reef Park in Port Douglas.

The existing double garage has vehicle access to the western boundary approximately 7m from the street corner. The easterly neighbour has an existing house. The southern neighboring land is vacant and undeveloped.

A development application was lodged by the Assessment Manager with Council as the concurrence agency on 24 February 2015 for a variation to the siting requirements under the Queensland Development Code MP for a steel framed 6.3m by 7.3m double garage. The garage's outermost projection was proposed to be 5.28m from the road boundary. The development application included plans for a portal framed kit garage clad with colorbond steel. The cladding will match the colour scheme of the existing house and garage.

On 11 March 2015, Council approved the development application with the following conditions:

1. a. *The specifications, facts and circumstances as set out in the application submitted to Council; and*
- b. *Condition 2 below.*
2. i. *The design must be amended so that the roof elevation matches the roof style of the western elevation of the existing garage.*
- ii. *The development must provide a 700mm garden bed adjacent to the neighbouring common property boundary, between the shed street elevation and the road boundary. This garden bed together with the 700mm set back to the street in front of the street must be suitably landscaped to the satisfaction of the Chief Executive Officer to provide and maintain a hedged screen of approximately 1.5m height.*

On 16 March 2015, the Assessment Manager issued a decision notice refusing the application despite the Council's approval with conditions.

On 31 March 2015, the Assessment Manager acting under authority from the property owners, lodged a Form 10 – Application for Appeal with the Committee's Registrar.

The Applicants did not contest condition 2(ii) of the conditions.

The issue in contention was the condition 2(i) "*the design must be amended so that the roof elevation matches the roof style of the western elevation of the existing garage*", being a Dutch gable roof.

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 Committees Registrar on 31 March 2015.

2. Letter from GMA Certification Group Pty Limited dated 29 March 2015.
3. Development application decision notice dated 16 March 2015.
4. IDAS Form 1.
5. IDAS Form2.
6. Application for alternative siting assessment by GMA Certification Group Pty Limited dated 23 February 2013.
7. Douglas Shire Council concurrence agency response – with conditions dated 11 March 2015.
8. Douglas Shire Council delegated authority report dated 10 March 2015.
9. Applicant's letter 26 March 2015.
10. Douglas Shire Council submissions filed 23 April 2015.
11. The *Sustainable Planning Act 2009* (SPA).
12. The Queensland Development Code MP1.2 (QDC MP1.2).

Findings of Fact

The Applicant submitted the proposed development meets performance criteria P1 of the QDC MP1.2 and contended the amendment of the plans to meet the Council condition "that the roof elevation matches the roof style of the west elevation of the existing garage" was a costly endeavour. The Assessment Manager refused the development application because of the Council's conditions.

The Council submitted the street elevation of the houses in the area are broken by the type of built form, a mixture of houses and garages and by landscaping and front yards. The proposed elevations of four roller doors are dominant elements that are not repeated or found elsewhere in this neighbourhood to this scale or impact. Council believes that the streetscape is only appropriate if the new built form is at least partly screened by vegetation and is separated along the streetscape from its future neighbour by vegetation and is of a form that matches the design of the existing house.

The Council also referred to the Douglas Shire Planning Scheme Vegetation Management Code that defines a significant tree as "trees with a height, measured from natural ground level, exceeding 7.5m in height". The three Royal Cuban palms at the front of the property may fall within Vegetation Management Code. Ultimately, the Council does not object to the removal of the three Royal Cuban palms so long as the existing vegetation screen to the streetscape and side boundary are maintained.

The Council submitted the portal framed garage can be redesigned to accommodate a Dutch gable end. The existing double garage has a Dutch gable roof. The entrance of the home facing west to the street has a traditional gable with an overhang.

Both roof designs are continued throughout Ruby Close.

The Committee makes the following findings of fact:

- Subject site is a corner block on a cul-de-sac with an existing low set house with a double garage. At the rear of the property is a patio and swimming pool. The site is 945m² and is located in an established residential subdivision of Reef Park in Port Douglas.
- On 24 February 2015, a development application was lodged by the Assessment Manager with Council as the concurrence agency for a variation to the siting requirements under the Queensland Development Code MP1.2 for a steel framed 6.3m by 7.3m double garage. The garage's outermost projection was proposed to be 5.28m from the road boundary.
- On 11 March 2015, Council approved the development application with conditions.
- On 16 March 2015, the Assessment Manager issued a decision notice refusing the application.
- On 31 March 2015, the Applicant acting under authority from the property owners, lodged an application for appeal with the Committee's Registrar.

The Committee determines the proposed plans for the double garage will give the appearance of bulk to the streetscape.

The condition of an overhang to the proposed gable roof will provide a shadow effect to the front wall of the garage and push the appearance of bulk back from this front elevation and will reduce the overall impression of bulk to the streetscape.

Reasons for the Decision

For the reasons outlined above, the Committee in accordance with section 564(2)(c) of the SPA, sets aside the decision of the Assessment Manager and approves the siting of the dwelling as detailed on drawings identified by Ryan Fudala drafting dated 16 February 2015 attached to the development application decision notice with the following conditions:-

1. a. The specifications, facts and circumstances as set out in the application submitted to Council; and
 - b. Condition 2 below.
- 2 .i The design must be amended so the garage gable roof elevation is constructed with a minimum overhang of 300mm at the street frontage, making the road boundary setback to this elevation 4.98m to the outermost projection.
 - ii. The development must provide a 700mm garden bed adjacent to the neighbouring common property boundary, between the garage street elevation and the road boundary. This garden bed together with the 700mm set back to the street in front of the garage must be landscaped to provide and maintain a hedge screening of approximately 1.5m height.

John Eylander – Name of Chairperson
Building and Development Committee Chair
Date: 12 May 2015

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) 1800 804 833 Facsimile (07) 3237 1248