



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	55- 12
Applicant:	Major Sheds and Tanks
Assessment Manager:	DBR Building Certification Pty Ltd
Concurrence Agency: (if applicable)	Brisbane City Council (Council)
Site Address:	701 Rode Road Chermside and described as Lot 8 on RP93443 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Building Application for a garage erected within the road boundary setback area. The decision followed the concurrence agency's advice with respect to the siting of the garage.

Date of hearing:	10.00am 14 January 2013
Place of hearing:	The subject site
Committee:	Debbie Johnson – Chair
Present:	Tim Dilger – Applicant representing Major Sheds and Tanks Judy, Craig and Bec Gordon – Property Owners Duncan Kirk – Council Glynn Verity – Council

Decision:

The Building Development and Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of DBR Building Certification Pty Ltd dated 1 November 2012 to refuse the application for building works.

Background

The subject site is rectangular in shape, save the street corners that are truncated. The width of the site is approximately 17M given the total site length is 37.8M and the site area is 622 square metres.

From a development perspective, the site is constrained, as it is a corner site bounded on three sides by roads. Two of these are local streets, whilst the other, to the south is a suburban connector road.

There is just one neighbouring property situated along the eastern boundary of the subject site. The access and frontage for the adjoining site is via the local street to the north.

Both properties accommodate two storey dwellings, positioned in the centre of their respective sites. The homes would have been built approximately 45-50 years ago.

The residence on the subject site features a 6M wide, steel framed carport that is attached to the southern end with a skillion roof.

The road boundary setbacks to both the home and the carport appear to be 6m or greater and are therefore compliant.

The property has two existing driveway crossovers, one from northern side and the other, which provides vehicular access to the carport, from the western side.

The land owners decided to have a garage built and engaged the Applicant to obtain all relevant approvals and erect a steel framed, steel clad garage on the site, adjacent to the connector road. The building design kit chosen was 9M x 6M and 4.7M high, to be constructed on a concrete slab.

Correspondence that has been provided, show that emails were exchanged between the Assessment Manager and the Applicant on 3 April 2012. These emails discussed the proposed siting for the garage to best ensure a siting relaxation is approved.

Similarly, emails were exchanged between these parties on 31 May 2012 and also 6 June 2012. Respectively, these emails referred to the Applicant gaining written consent from the adjoining property owners for the proposed siting of the garage and a site specific floor plan and elevations.

The Applicant, commenced construction of the garage in June 2012, and these works were completed by 27 June 2012. The Applicant's representative told the Committee that he had believed that all of the approvals were in place at that time.

In response to a written request made on behalf of the Committee following the hearing, the Assessment Manager provided written advice stating the application was sent from their office to Council on 29 June 2012. However, Council as the Concurrence Agency only received the referral for design and siting from the Assessment Manger on 6 July 2012 which is after the completion of the building works.

On the 20 July 2012, Council issued the referral agency response to the Assessment Manager stating that the design and siting variation did not comply with the Performance Criteria of Queensland Development Code (QDC) MP 1.2 – Design and Siting Standard for Single Detached Housing – on lots 450 square meters and over.

Subsequently, on 1 November 2012, the Assessment Manager issued a Decision Notice to the Applicant refusing the application for building works citing the referral agency's response.

The Applicant lodged an appeal against this decision to the Committee registrar on 13 November 2012.

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 13 November 2012.

2. Oral submissions by the applicant, the owners and the council representatives at the hearing.
3. The Committees' on site inspection of the garage structure as built.
4. Property details as available through Council's website.
5. The Brisbane City Plan.
6. The Queensland Development Code (QDC) MP1.2
7. *The Sustainable Planning Act 2009* (SPA)
8. *The Building Act 1975* (BA)
9. The Building Regulation 2006 (BR)
10. The National Construction Code 2012
11. Historic aerial photographs of the subject site as viewed through Google Maps.

Findings of Fact

The Committee makes the following findings of fact:

The steel framed, steel clad, garage structure is 9M x 6M wide and approximately 4.7M high and it has already been built within the southern road boundary setback. The setback clearance to this boundary is approximately 1M.

The building does not feature any windows or doors along the road boundary frontage. The finished effect is therefore a continuous metal sheet wall, 9M long and 4.8M high fronting the road.

The road setback along the western side is also reduced due to the truncation of the site in this area. The road boundary setbacks along the western side were difficult to determine which was due to the truncated shape of the lot and the boundary line was not marked.

The application for building works was refused by the Assessment Manager on 1 November 2012. In his decision, the Assessment Manager stated: "*This refusal is solely because of the concurrence agency's direction - The proposal cannot be approved due to the decision made by the concurrence agency*".

The Assessment Manager has the authority to assess and approve building works associated with the construction of a garage. However, where a siting variation is required, as was the case in this instance, the application has to be referred to Council as the Concurrence Agency for the assessment of the siting provisions.

The Council considered the QDC MP1.2 as being the relevant building code to determine the design and siting of the works that were proposed.

In Element 1 of the QDC "Design and Siting of Buildings and Structures" states:

For a detached *dwelling*, *garage* or a *carport* the minimum *road setback* is:

- (i) 6m; or
- (ii) where there are existing *detached dwellings* on both adjoining *lots* and at least one of the *detached dwellings* is *setback* from the *road* between 3m and 6m, and the difference between their *road setbacks* is-
 - (A) not more than 2m- a distance between the two *buildings*; or
 - (B) more than 2m- the average of the *road setbacks* of the adjacent *buildings*; and

For a corner *lot*, the minimum *road setbacks* are-

- (i) as for A1(a)(i); or
- (ii) where the *lot* has an average depth of 24 m or less –
 - (A) for the *nominated road frontage* – as in **Table A1**; and
 - (B) for the other *road frontage* - as for A1(a)(i); and
 - (C) no building or structure over 2M high is built within 9M by 9M truncation at the corner of the two road frontages.

The siting of the garage, does not comply with the acceptable solutions listed above, and cannot comply with the acceptable solutions as the structure has already built.

Where development does not comply with the acceptable solutions, assessment can be considered against the relevant performance criteria.

In Element 1 of the QDC “Design and Siting of Buildings and Structures” P1 states:

- (a) 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.

In this application, Council have considered the performance criteria and responded to the Assessment Manager with the following advice:

- (i) The bulk of the building is excessive compared to other buildings within the local streetscape.
- (ii) The proposed road boundary setback exceeds a 6M differential from the neighbouring building.
- (iii) The outlook to the west from the neighbouring property will be impaired.
- (iv) A site inspection revealed the building has been constructed and placed approximately 1M from the front boundary. A relaxation to the side boundary was not requested.

Reasons for the Decision

As the garage structure has been built and the hearing was held on site it was possible to inspect the completed structure and consider the impacts caused.

The Committee finds that the location of the garage on the site is unacceptable for several reasons:

- (i) the bulk of the structure given the length and height of the southern wall which presents to the road; and
- (ii) the limited opportunity for the garage wall to be screened by landscape elements given the reduced setback of only 1M; and
- (iii) road safety is compromised, as the line of sight is impaired by the location of the garage, given its bulk, and proximity to the corner of the site.

Debra Johnson
Building and Development Committee Chair
Date: 5 April 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