



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	27— 15
Applicant:	Gregory John Snape
Assessment Manager:	Noosa Building Certifiers
Concurrence Agency:	Moreton Bay Regional Council (Council)
(if applicable)	
Site Address:	10 Ferny Crescent Burpengary and described as Lot 53 on SP198965 — the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse in part, a Development Permit for a Garage (Application) at the direction of the Moreton Bay Regional Council as Concurrence Agency. Council refused the Application under the Design and Siting provisions and under their Amenity and Aesthetics Policy.

Date and time of hearing:	11.30am Thursday, 24 September 2015
Place of hearing:	The subject site
Committee:	Robin King-Cullen— Chair Shane Adamson - Member
Present:	Gregory John Snape – Applicant Mark Snape (observer) Joe Zocco – Council representative Tammara Scott – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager and approves the Application for a Development Permit for Building Work for the Garage in accordance with the amended Site Plan submitted by the Applicant to the Committee for their consideration on 30 September 2015, subject to the following conditions:

- (a) setbacks of the garage from the road frontage and from the northern boundary of the site shall be in accordance with amended Site Plan including setbacks of not less than

6m from the Ferny Crescent frontages;

- (b) provision of a vegetation buffer to screen the garage from Ferny Crescent as shown on amended Site Plan;
- (c) No formal driveway or crossover to be installed within the road reserve in front of the proposed garage.

Background

The subject site has an area of approximately 867m² and is located in a low density residential area typically developed with a single story brick dwellings, which are set back approximately 6m from road frontages. Ferny Crescent serves as a local street within the estate. The land is included in the Caboolture Residential A Zone.

The site is roughly rectangular in shape with a truncated road frontage following the curve of Ferny Crescent in a north easterly direction. This configuration results in a substantial part of the allotment being within the 6 metre front setback area. Because of its configuration, the site has the appearance of a corner allotment.

The existing dwelling faces the southern (longer) section of the road frontage. The proposed garage is to be located between the dwelling and the eastern (shorter) section of the road frontage. The site is grassed and slopes gently up from Ferny Crescent. There is limited frontage landscaping. There is also a sewer and manhole located on the eastern side of the property.

The Application

The proposed garage is intended to provide weather protection for the owner's boat. The owner advised the Committee that the height of the garage (reduced to 4.4m on the amended plan submitted to the Committee on the 30 September 2015) is the minimum height required to accommodate the boat.

The appeal relates to the decision of the Assessment Manager to refuse part of the Application on 12 August 2015 due to the direction by Moreton Bay Regional Council as Concurrence Agency on 9 July 2015. The Application was refused in part under the Design and Siting requirements for the Caboolture Residential A Zone and the Council Amenity and Aesthetic Policy.

The decision was based on the original Site Plan (plan not numbered or dated) submitted to Council with the Application. That plan showed a 12m by 6m garage having a maximum height of 4.7m, minimum road frontage setbacks ranging from 3.5m to 6m, and a setback from the northern (side) boundary of about 1.8m.

Council provided two Concurrence Agency responses both dated 9 July 2015. The first response was in relation to the Design and Siting aspects of the Application. The reasons Council provided for refusing this part of the Application were:

- *"In its built form the location of the garage is not compliant with the front or side boundary setbacks for Caboolture's Residential A Zone.*
- *In its built form the location of the shed is out of character with the surrounding built landscape".*

The Committee notes that it appears the reference to the side boundary in the first dot point is in error as a side boundary setback of 1.8m would meet Probable Outcome S13.3 of Part 5 of Division 11 – Assessment Criteria for the Residential A Zone regarding Site configuration which states:

S13.3

Unless specified otherwise in the applicable use code, buildings are setback 1.5 metres from a side boundary.

Furthermore, failure to meet the Probable Solution regarding boundary setbacks does not of itself render the proposal “*not compliant with the front or side boundary setbacks for Caboolture’s Residential A Zone*”. The proposal may alternatively be assessed against Specific Outcome SO13 for Site configuration as follows:

SO13

Buildings and spaces are configured on site in a manner that optimises both reciprocal amenity and functionality and interaction between the public and private domains.

The second Concurrency Agency response also dated 9 July 2015 related to the Amenity and Aesthetics component of the Application as the garage showed a maximum building height of 4.721m which triggered consideration under the Council Amenity and Aesthetics Policy (Policy No: 14-2150-076) for Class 1 and 10 buildings and structures. The reasons provide by Council for refusal under this policy were as follows:

Reasons for not supporting the proposal are that when the garage is built Council considers that its scale and bulk due to its height and size will:

- *have an extremely adverse effect on the amenity or likely amenity of the locality; and*
- *be in extreme conflict with the character of the locality.*

Whilst processing the Application, Council advised the Applicant that rotation of the garage 90 degrees would reduce its impact. However, in the Grounds for Appeal submitted with the Appeal, the Applicant states that he did not wish to rotate the garage due to traffic safety concerns raised by the limited manoeuvring space, access difficulties and the resulting need to move the property sewer away from the access point.

In an attempt to address Council's concerns regarding the bulk and scale of the proposed garage, the Applicant presented an amended plan. This showed the garage having a reduced size and height and increased frontage setbacks; however, this resulted in a decreased northern side boundary setback of 0.8m. This amended plan was never formally acknowledged by Council and the decision to refuse the application was based on the original proposal plan.

The Assessment Manager issued a Decision Notice dated 12 August 2015 refusing the Application in part as directed by Council.

The Applicant lodged an Application for appeal/declaration (Form 10) with the Building and Development Committee Registrar on 21 August 2015.

Amended proposal provided to the Committee after the hearing

Following the hearing, the Applicant forwarded a further amended Site Plan to the Committee for their consideration by email dated 30 September 2015. The amended proposal shows:

- the garage reduced in size to 10m by 5.3m with a maximum height of 4.4m and a 10 degree roof pitch;
- a minimum setback from the road frontage of 6m;
- a minimum side boundary setback from the northern site boundary of 0.8m; and
- a vegetated buffer approximately 8m in length between the garage and the eastern road boundary of the site.

The amended proposal now provides at least a 6m setback from all road frontages and therefore meets Acceptable Solution S13.1 Site Configuration (Part 5, Division 11). Consequently, the matter of minimum frontage setbacks does not need to be considered further.

The Committee also notes that the size (site coverage) of the proposed structure is not in conflict with the Council Amenity and Aesthetics policy because it does not exceed a maximum of 80m².

There remain two aspects where the amended proposal does not comply with the Moreton Bay Regional Amenity and Aesthetics policy or does not meet the Probable Solutions of the Caboolture Residential A Zone requirements. These aspects include non-compliance with building height and the side boundary setback.

Building height:

The amended height of the garage is 4.4m which therefore triggers consideration under Moreton Bay Regional Council Amenity and Aesthetics Policy because it exceeds 4m in height.

The Committee noted that the finished level of the garage roof should be below the roof height of the existing dwelling and neighbouring dwellings. While the amended proposal exceeds the 4m height requirement, this is only for a relatively small portion of the roof, being 400mm measured from the apex of the roof pitch.

While the additional height of the roof will add to the bulk of the building, The Committee considers the impact will not be significant because of the scale of the dwellings in the locality and the landscaping proposed along the length of the garage in the amended proposal. Further, the level of impact must be considered in terms of the area of non-compliance only, being 400mm over the height at the roof pitch and not over the whole of the garage.

Side boundary setback:

A side boundary setback of 0.8 metres is proposed to the northern boundary of the subject site. As this setback is less than the side boundary setback of 1.5m nominated under Probable Outcome S13.3, the proposal is to be assessed against Specific Outcome SO13 for Site configuration, which states:

SO13

Buildings and spaces are configured on site in a manner that optimises both reciprocal amenity and functionality and interaction between the public and private domains.

The Committee considers that in terms of both amenity and functionality SO13 is most satisfactorily achieved by maintaining a minimum 6m frontage setback given the shape of the allotment, notwithstanding that this has the effect of reducing the side boundary setback to 0.8m.

The Committee also noted that the adjoining dwelling to the north has no habitable rooms in the vicinity of the common boundary, where the garage is proposed to be located. Further, the garage has a width of 5.3m and there is an existing fence approximately 1.8m in height along the common boundary. As a result, amenity of the adjoining property to the north is unlikely to be significantly affected by the reduced setback of 0.8m.

The Council, by email to the Committee dated 7 October 2015, indicated it was generally in support of amended proposal subject to certain conditions being imposed.

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 21 August 2015;
2. Moreton Bay Regional Council Concurrency Agency responses – two in number both dated 9 July 2015;
3. Noosa Building Certifier (Assessment Manager) Decision Notice (approved in part) dated 12 August 2015;
4. Oral submissions by the Applicant and Applicant's observer; the building certifier and the Council representatives at the hearing;
3. Applicant's email response dated 30 September 2015 to the Committee's request for the amended proposal on which the appeal is to be decided;
4. Council's email response dated 7 October 2015 to the Applicant's amended proposal;
5. *Sustainable Planning Act 2009* (SPA);
6. The Moreton Bay Regional Council Design and Siting Provision – front and side boundary setbacks for Caboolture Residential Zone A;
7. The Moreton Bay Regional Council Amenity and Aesthetics Policy (Policy No.14-2150-076) for Class 1 and 10 Buildings and structures.

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site has an area of approximately 867m² and is located in a low density residential area typically developed with a single story brick dwellings, which are set back approximately 6m from road frontages. Ferny Crescent serves as a local street within the estate. The land is included in the Caboolture Residential A Zone.
2. The Application involves the addition of a garage to provide weather protection for the owner's boat. The owner advised the Committee that the 4.4m height of the garage is the minimum height required to accommodate the boat.
3. The existing dwelling faces the southern (longer) section of the road frontage. The proposed garage was to be located between the dwelling and the eastern (shorter) section of the road frontage. There is also a sewer and manhole located on the eastern side of the property.
4. Council refused the Application on 9 July 2015 under the Design and Siting Caboolture Residential Zone A provisions and the Amenity and Aesthetic Policy (Policy No: 14-2150-076) height limitations for Residential A Zone for the Caboolture district.
5. The Assessment Manager issued a Decision Notice refusing the Application in part, as directed by Council as Concurrence Agency, on 12 August 2015.
6. The Applicant lodged an appeal against the Decision Notice with the Building and Development Committee Registrar on 21 August 2015.
7. The Applicant submitted an amended proposal to the Committee by email on 30 September 2015 following the appeal hearing on 24 September 2015. The Council advised the Committee by email dated 7 October 2015 that it was generally in support of the amended

proposal subject to certain conditions being imposed which the Committee duly considered as part of their decision.

Reasons for the Decision

The amended proposal provided to the Committee on 30 September 2015 is:

- not in breach of Moreton Bay Regional Council Policy No: 14-2150-076 Amenity and Aesthetics - Impact of Proposed Building Work Section (3)(b) in that the aggregate site coverage of existing and proposed garages, sheds, carports or the like on a property does not exceed a maximum of 80m²;
- provides for a minimum setback from the road frontage of 6m;
- does not create a significant amenity and aesthetic issue because the adjoining dwelling to the north has no habitable rooms in the vicinity of the common boundary where the garage is to be located with a reduced setback of 0.8m and there is an existing fence approximately 1.8m in height along the common boundary;
- includes a landscaped buffer area to reduce the visual impact of the garage from the eastern (shorter) section of the road frontage;
- the area of non-compliance with respect to building height is for 400mm at the apex of the roof only; and
- the Council advised the Committee by email on 7 October 2015 that they were generally in support of the amended plan with conditions.

Robin King-Cullen
Building and Development Committee Chair
Date: 20 October 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