



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

**Appeal Number:** 3—09-047

**Applicant / Appellant:** Chris & Jenny Sorensen

**Assessment Manager / Respondent:** GMA Certification Group

**Concurrence Agency / Co-Respondent:** Burnett Shire Council

**Site Address:** 25 Sea Esplanade, Burnett Heads, and described as Lot 40 on RP 7200 —

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### Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision, dated 30 April 2009, by GMA Certification Group on instruction from the concurrence agency, Burnett Shire Council, to refuse an application relating to an existing class 10a building structure (garage) constructed greater than the allowable size on the subject site.

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**Date of hearing:** 11.00 am — Tuesday, 30 June 2009

**Place of hearing:** The subject site

**Tribunal:** Georgina J Rogers – Chair

**Present:** Chris & Jenny Sorensen – Applicant  
John Hartnett – GMA Certification Group  
Alicia Fitzhenry – Cadet, GMA Certification Group  
Richard Jenner – Senior Planner, Bundaberg Regional Council  
Merinda Grayson – Planning Officer, Bundaberg Regional Council  
Gillian Archibald – Builder, Garage World  
John Archibald – Builder, Garage World

### Decision:

The Tribunal, in accordance with section 4.2.34 (2)(c) of IPA **sets aside** the decision appealed against to refuse the development application for building works, namely a class 10a structure (garage) greater than 60sq.m. in size to the rear of the existing dwelling and site and **directs** the assessment manager to re-assess the development application with the increased area of 124.5 sq.m.

## Background

During the on-site hearing, the Tribunal observed that the neighbourhood has low traffic volume and is a small beachside community with a mix of older and new residential dwellings.

The site is a rectangular lot fronting Sea Esplanade. The site also has a frontage of 20.2m to Sea Esplanade and a 49.4m depth. The lot is generally flat and the site behind rises up. The Sea Esplanade frontage overlooks an open parkland and beach to the east.

Onsite car-parking is accessed via Sea Esplanade through an open carport attached to the new dwelling, through to a class 10a structure (garage), subject to the appeal, which is located adjacent to the rear alignment of the lot.

The garage structure is shown on plans to be 18m parallel to and offset 1.5m from the rear alignment (western). It is shown to be 6.9m wide and parallel to the side alignments. The structure was measured on site to be offset approximately 1.5m from the left hand side boundary (southern) and 0.6m from the right hand side boundary (northern). The height of the structure at the fascia is shown to be 3.9m and the roof pitch was advised to be 15 degrees.

The garage has been sheeted with steel wall and roof cladding. The wall colour is cream and similar to the colour of the new dwelling which has been constructed on site. The owners advised that it was intended to match the colour of the garage and the new dwelling.

There is a new 2 storey dwelling being constructed on site which fronts Sea Esplanade. It is setback approximately 9.0m from the front alignment and setback from the southern side alignment by 2.87m and the northern side alignment by 2.36m, thereby substantially restricting any view the garage located to the rear of the site from view from Sea Esplanade and therefore from public view.

The site to the rear of the lot is currently vacant and therefore the garage is very visible and currently appears quite substantial. A 1.8m high fence has been constructed along the rear alignment and this helps reduce the impact of the structure.

There appears to be a similar size garage structure on the adjacent lot, and it is located adjacent to the common southern side alignment of this lot.

The following correspondence and documentation was reviewed and taken into consideration:-

- **30 June 2009** – Appeal meeting – Chris Sorensen – Time Line and history of development process.
- **30 June 2009** – Appeal meeting – example of ‘Development Permit – Superseded Planning Scheme’ required to be lodged under superseded planning scheme by which method it would have received automatic approval.
- **30 June 2009** – Bundaberg Regional Council – Order of events relating to concurrence request for building works and associated applications, lodgement details, plans, sections of Burnett Shire Planning Scheme 2006.
- **Burnett Shire Planning Scheme** – commenced in May 2006.
- **Burnett Shire Council** – resolved to accept ‘triggered’ applications under the superseded planning scheme which ceased to have effect on 30 May 2008.
- **30 April 2009** – Amended Development Application Decision Notice - *Refusal*
- **9 February 2009** – Bundaberg Regional Council – Development Application Decision Notice – *Refusal*
- **3 February 2009** – Bundaberg Regional Council – Minutes of Council Meeting

- **12 January 2009** – GMA response to information request.
- **7 January 2009** – Bundaberg Regional Council – Information Request
- **December 2008** – GMA submitted Town Planning application to Council.
- **25 September 2008** – Bundaberg Regional Council to owner and assessment manager responding to public complaints.
- **18 August 2008** – Bundy Sheds advised finalized construction.
- **8 January 2008** – GMA Certification Group – Development Application Decision Notice to applicant Bundy Sheds - Approval
- **26 October 2007** - Form 1 Development Application – Parts A & B lodged by Bundy Sheds (received by assessment manager 15 January 2008).

As a result of the assessment manager's refusal of the building development application (based on concurrence agency advice), the applicant chose to appeal the decision to the Building and Development Tribunals by Notice of Appeal, received 4 June 2009.

### **Material considered**

The material considered in arriving at this decision comprises:

1. Form 10 – 'Notice of Appeal' and grounds for appeal received 4 June 2009.
2. Decision notice from the assessment manager advising that the concurrence agency directed refusal of the development application, dated 30 April 2009.
3. Site plan, plans and elevations of the class 10a structure (garage).
4. Verbal submissions from the owner and reasons for class 10a structure (garage) to be retained in full in its current size and location to the rear of the site.
5. Verbal submissions from the builder and reasons for class 10a structure (garage) to be retained in full in its current size and location to the rear of the site.
6. Verbal submissions from the assessment manager, including reasons why the class 10a structure (garage) should be retained.
7. Verbal submissions from Council's representative (as concurrence agency) at the hearing outlining Council's assessment of the application and reasons for refusing the application.
8. Discussion with available adjoining owners.
9. IPA.
10. *Building Act 1975* (BA)
11. *The Building Regulation 2006*.
12. The Queensland Development Code (QDC).

### **Findings of Fact**

The Tribunal makes the following findings of fact:

1. It was determined that the owners (C & J Sorensen) entered into a contract with the builder (Bundy Sheds) and who then lodged a building application on their behalf through the assessment manager (GMA Certification Group) for a class 10a structure (garage). This was undertaken during a transitional period where there was both a new planning scheme being implemented and an existing planning scheme being superseded. The building application was able to be lodged under either scheme. From the information gathered it was determined that a separate request had to be made to

the existing Council at the time and a fee paid, for the application to be assessed under the superseded planning scheme. There does not appear to be any record of this being made or received.

2. It would appear from the discussions on site that this oversight was missed by all assessing parties and the owner was not informed of the requirement and therefore not aware of the need to act on it. Greater diligence in the lodgement and assessment processes is essential.
3. Advice was received that had the request been received to assess the structure under the superseded planning scheme, there would have been no avenues for refusing the construction of the class 10a structure (garage) in its current size. The new planning scheme limits the size of a class 10a structure (garage) to no more than 60 sq m in this zone at Burnett Heads.
4. The structure has been erected with the intent of garaging three vintage cars which the owner possesses. There is no other suitable location on site for these vehicles and insufficient garaging space under the new dwelling. Had the garages been attached as part of the new dwelling there would have been no avenue for refusal of the application.
5. Site cover including the class 10a structure (garage), new dwelling and pool is less than 50% site cover. As there is a requirement for bio-cycle sewerage system on site, there is limited available space on site for garaging purposes.
6. The proposed structure is of a type and form found in the area.
7. The proposed structure is consistent with other similar structures within the neighbourhood which have received Council approval on lots with similar size, shape and outlook.
8. Objections were received from the neighbourhood and noted.

### **Reasons for the Decision**

1. **QDC MP1.2 (Design and siting standard for single detached housing – on lots 450m2 and over)**  
MP1.2 of the QDC sets out Performance Criteria (P1 & P2) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criterion for that application. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria:-

#### ***P1 – Design and Siting of Buildings and Structures***

##### ***(a) The bulk of the building***

From the plans and on-site inspection, the class 10a structure (garage) does not significantly increase the bulk of the new dwelling being constructed on site.

The greatest impact of the size and bulk of the structure is viewed from across the rear lot which is currently vacant. The impact from Sea Esplanade is shielded by the new dwelling on site and adjoining dwellings in the neighbourhood.

##### ***(b) The outlook and views of neighbouring residents***

The impact of the class 10a structure (garage) across the vacant site to the rear of the lot is shielded substantially by a high solid fence. However, while it is still visible, the outlook and views of neighbouring residents are not significantly impaired by this particular structure.

##### ***(c) Nuisance and safety to public***

The class 10a structure (garage) in its proposed location will have no impact on the safety of the public nor provide any potential nuisance to the neighbourhood.

#### ***P2 Building and Structures***

##### ***(a) Provide adequate daylight and ventilation to habitable rooms***

From the plans provided and on-site inspection, the garage does not affect the provision of adequate daylight and ventilation to the habitable rooms of this dwelling.

**(b) Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots**

The class 10a structure (garage) in its current location does not affect the provision of adequate daylight and ventilation to the habitable rooms of the existing adjoining dwellings. Therefore the structure will have no impact on the light and ventilation of habitable rooms on adjoining lots.

**(c) Do not adversely impact on the amenity and privacy of residents on adjoining lots**

The class 10a structure (garage) does not impact on the privacy of residents on the adjoining or adjacent lots.

2. Based on the above facts it is considered that the appeal is upheld. The decision held in this application is separate to any other applications which may be made over the property at this time or in the future.
3. The QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the Code in relation to the class 10a structure (garage) in its current size and location the Tribunal found that there were grounds to allow for the structure to be retained.

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**Georgina Rogers**  
**Building and Development Tribunal Chair**  
**Date: 18 August 2009**

## **Appeal Rights**

Section 4.1.37 of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
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