



## Building and Development Dispute Resolution Committees—Decision

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### ***Sustainable Planning Act 2009***

<b>Appeal Number:</b>	<b>93 – 11</b>
<b>Applicant:</b>	Roland & Elena Lee
<b>Assessment Manager:</b>	Rockhampton Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Rockhampton Regional Council (Council)
<b>Site Address:</b>	77 McKean Street, Berserker and described as Lot 6 on SP 604584 – the subject site

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Preliminary Decision Notice issued by Rockhampton Regional Council for proposed building works as the application has not demonstrated compliance with the Queensland Development Code.

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<b>Date of hearing:</b>	27 February 2012
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Bruce Shephard – Chair
<b>Present:</b>	Roland Lee – Applicant Phillip Gau – Rockhampton Regional Council Andrew McDonald – Rockhampton Regional Council Bruce Krenske – Rockhampton Building Approvals Boyd Hall – Builder Robert Bell – Builder

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with Section 564 of the *Sustainable Planning Act 2009* (SPA) finds that it does not have jurisdiction under Section 527 of SPA to hear the appeal.

### **Background**

The land subject to this appeal is located in a traditional residential area developed approximately during the 1940's to 1960's. The surrounding area consists mainly of single detached dwellings of timber construction with some sites renovated or redeveloped. The subject site has been recently raised to accommodate a slab on ground, with the existing house sitting approximately 3 metres above the slab to allow enclosing under for habitable area.

An application was made to Rockhampton Regional Council (Council) seeking a siting variation to allow the construction of a garage addition to the front boundary and an extension to the rear requiring a variation from the side boundary (as shown on the plans by Capricorn Engineering and Drafting Service, Revision B).

Council dealt with this application as a Preliminary Assessment and issued an extension of time and an information request. Further information was supplied by the Applicant and Council issued a Decision Notice – Preliminary Approval, allowing the southern and eastern encroachments but included conditions amending the site plan regarding the extension along the western boundary, to be no closer than 2 metres. It is unclear if the Council intends the 2 metres to be measured from the outer most projection or the wall.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 6 December 2012.
2. Decision Notice – Preliminary Assessment issued by Rockhampton Regional Council dated 16 November 2011.
3. Preliminary Application Assessment Report Reference number 1928-2011-B-PA.
4. Report for Application of Preliminary Decision for Building Work prepared by Rockhampton Building Approvals.
5. Notice of Extension of Assessment Period issued by Rockhampton Regional Council dated 20 October 2011.
6. Lodgement of Preliminary Application for Proposed Building Work issued by Rockhampton Regional Council dated 11 October 2011.
7. Request for information issued by Rockhampton Regional Council dated 27 October 2011.
8. Response to information request, by Roland and Elena Lee dated 27 October 2011.
9. Plans prepared by Capricorn Engineering and Drafting Service, Revision B.
10. Rockhampton City Plan.
11. Queensland Development Code M.P. 1.2.
12. *Sustainable Planning Act 2009* and associated Regulations.

### **Findings of Fact**

The Committee makes the following findings of fact:

1. Applicant made an application to the Council regarding a siting matter which did not comply with the acceptable solutions in the Queensland Development Code M.P. 1.2.
2. This was processed by the Council as a Preliminary Assessment and a modified approval was issued by Council.
3. No Building Application Decision is evident.

## **Reasons for the Decision**

The application lodged with Council was for siting of proposed alterations and additions to an existing detached dwelling which is deemed building work, as defined in Section 10 of SPA. After a review of the Rockhampton City Plan, siting requirements are assessed in accordance with the Queensland Development Code M.P. 1.2, which was confirmed by both Phillip Gau and Andrew McDonald of Council.

The proposed plans prepared by Capricorn Engineering and Drafting Service don't comply with the acceptable solutions of the Queensland Development Code M.P. 1.2, therefore Schedule 7, Item 20 of *Sustainable Planning Regulation 2009* (SPR), states that a siting variation is required from the local government as a Concurrence Agency. In this case the Assessment Manager is the private building certifier, Rockhampton Building Approvals.

No matter how the Council labels the advice (Decision Notice – Preliminary Assessment) the notice can only be considered as Concurrence Agency advice. Under Section 527 of SPA appeals for decisions for Development Applications can be lodged with the Committee. As the Assessment Manager, Rockhampton Building Approvals has not yet made a decision therefore there is no decision for the Applicant to appeal. Subsequently the Committee does not have jurisdiction to hear the appeal until such time as a Decision Notice is issued.

During the hearing, alterations to the western side boundary design were discussed and a suitable solution was agreed to by all parties. The agreed solution was for the western wall of bedroom 1 to be located no closer than 1000mm to the western boundary with the following changes. The window in bedroom 1 western wall, was to have the sill no lower than 1650mm above finished internal floor level and the roof overhang or other shading devices to be no closer than 500mm from the western boundary.

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**Bruce Shephard**  
**Building and Development Committee Chair**  
**Date: 15 March 2012**

## **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 Local Government and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**