



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	24 - 14
<b>Applicant:</b>	Julie Gerhardt
<b>Assessment Manager:</b>	Neil Barralet
<b>Concurrence Agency:</b> (if applicable)	Gympie Regional Council (Council)
<b>Site Address:</b>	Hall Lane Gympie and described as Lot 1 on MPH 23994 – the subject site

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application for Building Work in relation to the construction of a detached extension to the existing dwelling and a detached carport within the prescribed road boundary clearances of the local planning instrument and over relevant infrastructure at the direction of the Concurrence Agency.

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<b>Date and time of hearing:</b>	11.00am, 6 <sup>th</sup> of August 2014
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Don Grehan – Chair Ian MacDonald – Member
<b>Present:</b>	Trevor Gerhardt – Applicant Richard Prout – Council representative. Ian Schiefelbein – Council representative. Andrew Parker – Council representative. Kate Scanlon – Council observer.

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### Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564(2)(c) of the SPA, **sets aside** both the decision of the Assessment Manager and direction of the Concurrence Agency and, in accordance with section 564(1) of the SPA, makes the following directions as considered appropriate:

- The Assessment Manager is directed to re-assess the Development Application for building works in relation to proposed extensions to the dwelling.
- The re-assessment shall be on the basis that Concurrence Agency has no objections to the siting of the proposed carport being a gabled end, open sided structure, 5.0m in width, 6.0m in length, 3.0m in height to the underside of the pitching beam with a roof pitch not exceeding 10° with a minimum road bound clearance of 1.0m from it's outmost projection to the road boundary adjoining Hall Lane.

- (c) The Assessment Manager is directed to refuse any proposal to site the detached extension to the existing dwelling less than 6.0m from it's outmost projection to the road boundary adjoining Hall Lane.
- (d) The Assessment Manager is directed to refuse any proposal to site the detached extension to the existing dwelling or detached carport over, or within 1.2m of the centreline of the relevant infrastructure (Sewer).
- (e) The Assessment Manager is directed to apply the minimum construction requirements detailed in the Queensland Development Code Mandatory Part 1.4 Building Over or Near Relevant Infrastructure in assessing the Application, inclusive of the place and retention of fill material.
- (f) The Applicant is reminded that no part of this decision prevents the amendment of the proposed plans to comply with the directions prior to the Assessment Manager's re-assessment.

## **Background**

The Assessment Manager refused a Development Application for Building Works to construct a detached extension to the existing dwelling and a detached carport within the prescribed road boundary clearances of the local planning instrument and over an existing sewer following receipt of a Concurrence Agency Response from the Gympie Regional Council.

The Council, directing the refusal, considered that the proposed siting did not satisfy the performance criteria of the local planning instrument and would adversely affect the operation and maintenance of the relevant infrastructure.

The Applicant, dissatisfied with the refusal, lodged an appeal with the Committees Registry on 22 July 2014 against the Decision of the Assessment Manager.

## **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 22 July 2014.
2. Assessment Managers Decision Notice, Reference No.1407110 dated 16 July 2014.
3. Gympie Regional Council's Concurrence Agency Response, Reference No. 2014-728 dated 01 July 2014.
4. Verbal submissions from the Applicant's representative given at the hearing.
5. Verbal and written submissions from Council's representative given at the hearing.
6. The *Sustainable Planning Act 2009* (SPA).
7. The *Building Act 1975* (BA).
8. Queensland Development Code Mandatory Part 1.4 Building Over or Near Relevant Infrastructure (QDC MP1.4).
9. Queensland Development Code Mandatory Part 1.2 (QDC MP1.2)
10. Gympie Regional Council's adopted Amenity & Aesthetics Resolution dated 12 June 2013.

## **Findings of Fact**

- The subject site is a 12000m<sup>2</sup> allotment situated within an established residential neighbourhood, the topography of the site is such that a relatively level platform exists adjacent to the eastern property

boundary adjoining Hall Lane with the remainder of the property falling moderately to steeply to the west /south west.

- A dwelling of approximately 185m<sup>2</sup> has recently been constructed in the north east corner of the Hall Lane frontage. The setback from the road and side boundaries to this dwelling are consistent with the specific provisions of Gympie Regional Council's adopted Amenity & Aesthetics Resolution.
- A Sewer dissects the south east corner of the Hall Lane frontage, Gympie Regional Council is the relevant service provider.
- The Applicant proposes to construct a detached extension to the existing dwelling and a detached carport in the south east corner of the Hall Lane frontage with road boundary clearances of 4.0m and 1.0m respectively.
- The Applicant's proposal consists of a low set building comprising a suspended timber floor of appropriately 1.0m minimum height above finished ground level supported on pier footings, to be located over the Sewer line.
- The proposed siting of the detached extension to the existing dwelling and a detached carport with road boundary clearances of 4.0m and 1.0m respectively is inconsistent with specific provisions of the Gympie Regional Council's adopted Amenity & Aesthetics Resolution and accordingly, triggers assessment against the following Performance Criteria of the Resolution as alternate provisions to relevant parts of the Queensland Development Code MP1.2 (QDC MP1.2) :

#### Detached Extension to the Existing Dwelling

**PC1** *Dwelling houses are of a size, bulk and form that is in keeping with the character of the area; and*

**PC2** *The location of the dwelling house provides for an acceptable streetscape and does not adversely impact upon the amenity of neighbouring properties.*

#### Detached Carport

**PC5** *Buildings or structures are of a size, bulk and form that is in keeping with the character of the area.*

**PC6** *The location of the building or structure provides for an acceptable streetscape and does not adversely impact upon the amenity of neighbouring properties.*

**PC7** *Buildings or structures are designed and sited to visually integrate with the dwelling house and avoid dominating the street by minimising the:*

*(i) width of the structure; and*

*(ii) projection of the structure forward of the main face of the dwelling house.*

- The proposed siting of the south east corner of the detached extension to the existing dwelling over the Sewer line is inconsistent with Acceptable Solutions of Queensland Development Code Mandatory Part 1.4 Building Over or Near Relevant Infrastructure (QDC MP1.4) and accordingly, triggers assessment against the following Performance Criteria of MP1.4, namely:

**P1** *Building work for a building or structure on a lot that contains, or is adjacent to a lot that contains relevant infrastructure does not—*

*(a) adversely affect the operation of the relevant infrastructure; or*

*(b) place any load on the relevant infrastructure.*

**P2** *When completed, building work for a building or structure on a lot that contains relevant infrastructure, allows—*

*(a) the relevant service provider to gain access to the relevant infrastructure for the purpose of inspecting, maintaining or replacing the relevant infrastructure.*

- No detailed cadastral survey data has been provided documenting the precise location or depth of the relevant Sewer relative to the proposed location of the detached extension to the existing dwelling.
- No CCTV or similar photographic survey has been provided documenting the condition of the Sewer.
- No site specific engineering design documenting the method of protection of the Sewer in relation to the location of the pier footing has been provided.
- It is noted that most contemporary class 1a buildings within the immediate streetscape are setback the equivalent to the specific provisions of the Gympie Regional Council's adopted Amenity & Aesthetics Resolution for minimum road boundary setbacks, inclusive of the detached dwelling to which the proposed extension is appurtenant.
- It is noted that the siting of the proposed carport is not dissimilar to other detached car accommodation in the immediate streetscape.

### **Reasons for the Decision**

- The Committee is not satisfied that the proposed siting of the extension to the existing dwelling relative to the Sewer does not adversely affect the operation of the infrastructure or place any load on the infrastructure in accordance with Performance Criteria P1 of MP 1.4.
- The Committee is not satisfied that the proposed siting of the extension to the existing dwelling relative to the Sewer allows the service provider, when the building is completed, to gain access to the infrastructure for the purpose of inspecting, maintaining or replacing the service in accordance with Performance Criteria P2 of MP 1.4.
- The Committee is not satisfied that the proposed siting of the extension to the existing dwelling with a road boundary setback of 4.0m provides for an acceptable street scape in accordance with Performance Criteria PC2 of the Gympie Regional Council's adopted Amenity & Aesthetics Resolution.
- The Committee is satisfied that the proposed siting of the carport with a road boundary setback of 1.0m is of a size, bulk and form that is in keeping with the character of the area, provides for an acceptable street scape, does not adversely impact upon the amenity of neighbouring properties, visually integrates with the dwelling house and avoids dominating the street in accordance with Performance Criteria PC5, PC6 and PC7 of the Gympie Regional Council's adopted Amenity & Aesthetics Resolution.

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**Don Grehan**  
**Building and Development Committee Chair**  
**Date: 23 September 2014**

## **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**