



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	04-15
Applicant:	Patrick Joseph Geaney
Assessment Manager:	Noosa Building Certifiers (Terry Neller, Building Certifier A921828)
Concurrence Agency: (if applicable)	Moreton Bay Regional Council (Council)
Site Address:	20 Garsden Street, Redcliffe, and described as Lot 28 R 34311 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse a Class 10a shed. Moreton Bay Regional Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building as it did not meet and could not be conditioned to meet the requirements of Councils Amenity & Aesthetics Resolution (Resolution number 14/226, Dated 25/2/14, Policy number 14-2150-076) or the siting provisions of the Queensland Development Code MP 1.2.

Date and time of hearing:	27 February 2015 at 10.00am
Place of hearing:	The subject site,
Committee:	Richard Prout – Chair Graham Osborn - Member
Present:	Patrick Joseph Geaney – Applicant Chris Trewin, Sigrid Pembroke, Tammara Scott – Moreton Bay Regional Council representatives

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 to refuse the Class 10a shed at the direction of Council, and approves the building with the following conditions:

- The proposed shed shall be in accordance with the endorsed drawings (Committees Appeal Number 04-15, Dated 25/3/15, Sheets 1 and 2); and
- The existing Class 10a shed which forms part of the pool barrier shall be demolished and removed from site within 40 business days from the date the occupation of the proposed shed commences; and
- The proposed shed shall be setback a minimum 2 metre from the front road boundary with Rotary Crescent; and

- The 2 metre strip of land between the proposed shed and the front road boundary with Rotary Crescent shall be landscaped to soften the visual impact of the building when viewed from the street; and
- The overall height of the proposed shed shall not exceed a maximum height of 3.6 m above natural ground level; and
- The Applicant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for Building Work.

Note: The removal of the existing Class 10a shed which forms part of the swimming pool barrier will trigger the requirement for the replacement of a 3m – 4 metre section of the pool barrier.

The Committee reminds the Applicant that the alterations to the pool barrier trigger the requirement for an inspection of the pool barrier by a licensed Pool Safety Inspector and the issuing of a Pool Safety Certificate as per section Schedule 2C (Repairs, Maintenance and other Work for Regulated Pools) of the *Building Regulation 2006*.

Background

The subject site is a 759 m² allotment located at 20 Garsden Street, Redcliffe, and is zoned Low Density Residential under the Redcliffe City Planning Scheme 2005. The allotment is long and narrow (15 m wide 45 m long) with a double street frontage, namely Garsden Street to the west and Rotary Crescent to the east.

The existing dwelling on the site was built approximately fifty years ago and reflects the construction type for that era of timber frame construction with weatherboard external cladding. The front entry to the dwelling is via Garsden Street with the dwelling setback approximately 6 m from the front road boundary.

Garsden Street is not a through road and there is a turning area directly outside the subject site. As such there is no street parking permitted directly outside the property. The property does not incorporate any undercover parking off Garsden Street and the only position where covered parking could be sited is within the front road boundary setback.

As such the Applicant lodged a Development Application for Building Work with Noosa Building Certifiers as the Assessment Manager for a Class 10a shed located 1 m from the front road boundary of Rotary Street and 1 m from the northern side boundary.

The shed did not comply with the self-assessable provisions of the following applicable codes:

1. The Acceptable Solution A1(a) of the Queensland Development Code MP 1.2 Design and Siting Standard for Single Detached Housing – on Lots 450 m² and over (QDC MP1.2) as the shed is located within the 6 m front road boundary setback; and
2. The Application Statements of the Council's Amenity & Aesthetics Resolution (Resolution number 14/226, Dated 25/2/14, Policy number 14-2150-076):
 - Application Statement 2(c) – as the shed exceeded the height limitation of 3 m above natural ground level; and
 - Application Statement 3 - as the combined site coverage of the proposed shed and the existing sheds on the site, exceeded the allowable site coverage for garages, shed, carports and alike of 80 m².

The Assessment Manager lodged a request for referral agency response for building work with the Council. It should be noted that Council issued two Concurrence Agency Responses refusing the same Application on the 8 December 2014 - one refusal against the design and site provisions of the QDC MP1.2 and the second refusal against the provisions of Council Amenity

and Aesthetic Resolution - both instructed the Assessment Manager to refuse the Class 10a shed. The Assessment Manager issued a Decision Notice on the 18 December 2014 refusing the proposed shed as per Council direction.

The Applicant did not appeal the Assessment Manager Decision Notice within the required twenty business day appeal timeframe. However, after some discussion with Council representatives and the Assessment Manager, Council re-issued both Concurrence Agency Responses on the 15 January 2015 and the Assessment Manager issued an amended Decision Notice refusing the Application on the 20 January 2015

The Applicant lodged a Form 10 – Application for appeal/declaration, against the Assessment Manager’s Decision Notice, with the Building and Development Committees Registrar on the 28 January 2015.

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 28 January 2015;
2. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
3. Moreton Bay Regional Council Application Form – Design & Siting and/or Amenity & Aesthetics – referral to Concurrence agency (Council) 12 November 2014;
4. Concurrence Agency Response from Moreton Bay Regional Council (Design and Siting Provisions) dated 8 December 2014;
5. Concurrence Agency Response from Moreton Bay Regional Council (Amenity and Aesthetic Provisions) dated 8 December 2014;
6. Decision Notice issued by Noosa Building Certifiers dated 18 December 2014;
7. Concurrence Agency Response from Moreton Bay Regional Council (Design and Siting Provisions) dated 15 January 2015;
8. Concurrence Agency Response from Moreton Bay Regional Council (Amenity and Aesthetic Provisions) dated 15 January 2015;
9. Decision Notice issued by Noosa Building Certifiers dated 20 January 2015;
10. The following drawings:
 - Tuff Built Garages, Floor Plan & Elevations, Drawing Number Q-TBS-01-0038 page 1/1;
 - Site Plan, Job Number 10604;
 - Tuff Built Garages, 100x4 SHS Mid Column Details, Drawing Number Q-TBS-01-0038 page 2/2;
 - Tuff Built Garages, Floor Plan & Elevations Drawing Number Q-TBS-01-0038 page 1/2;

- Form 15 Compliance Certificate for building Design or Specification, Dated 23//10/14, signed John L Towler, Job Reference 14-J8150-C12;
- Tuff Built Garages, Drawing Register - Project No 12-J7802, Drawing No TB2012-00, Standard Details Bolted Range - Project No 12-J7802, Drawing No TB2012-01A, Standard Details Welded Range - Project No 12-J7802, Drawing No TB2012-01B, Standard Details - Project No 12-J7802, Drawing No TB2012-02, Fly Brace Standard Details - Project No 12-J7802, Drawing No TB2012-03, Stand Doors & Window Detail - Project No 12-J7802, Drawing No TB2012-04, Standard Roller Door Details - Project No 12-J7802, Drawing No TB2012-05, Standard Bracing Details - Project No 12-J7802, Drawing No TB2012-06, Standard Slab & Foundation Details - Project No 12-J7802, Drawing No TB2012-07, Piers only Details - Project No 12-J7802, Drawing No TB2012-08;

11. Verbal submissions at the hearing from all parties to the appeal;
12. Moreton Bay Regional Council, Amenity and Aesthetic – Impact of Proposed Building Work, Council Resolution number 14/226, Dated 25/2/14;
13. Redcliffe City Planning Scheme 2005;
14. The Queensland Development Code MP 1.2 (QDC MP1.2);
15. The *Sustainable Planning Act 2009* (SPA);
16. The *Building Act 1975* (BA).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is an 759 m² allotment located at 20 Garsden Street, Redcliffe, and is zoned Low Density Residential under the Redcliffe City Planning Scheme 2005;
2. The allotment was created on the 1 September 1950, and when the allotment was created there was no Council road to the rear of the property;
3. The allotment is long, narrow (15 m wide 45 m long) and flat with a double street frontage, namely Garsden Street to the west and Rotary Crescent to the east;
4. The following buildings and structure were noted onsite:
 - A dwelling approximately 50 – 60 years old with a front road boundary setback of 6m from Garsden Street;
 - An in ground swimming pool located to the rear of the dwelling;
 - An older shed approximately 3 m x 3 m which is located to the rear of the swimming pool, and which forms part of the pool barrier;
 - A Class 10a shed approximately 9 m x 6m approved on the 24 June 2006 located 8.5 m from the front road boundary with Rotary Crescent and 2 m from the northern side boundary;

- The slab/footing for the proposed Class 10a shed 6.5 m x 10 m located 1 m from the front road boundary with Rotary Crescent and 1 m from the northern side boundary.
5. The allotment on the northern side of the subject site is Scarborough State School (the School). The School has a large building located close to the side boundary which runs along the majority of its length;
 6. The streetscape in Garsden Street consists of open playing fields for the School along the western side of the street. The eastern side of the street is residential predominately consisting of open fronted allotments with soft landscaping and buildings setback 6 m from the front road boundary;
 7. The streetscape in Rotary Crescent is predominately residential accept for a 25 m section of street frontage from Scarborough State School which commences on the northern side boundary of the subject site. The remainder of the street predominately consists of open fronted allotments with soft landscaping and dwellings setback 6 m from the front road boundary. A number of open carports have been built within the prescribed setback and the allotment on the southern side of the subject site has a garage with a 3 m front boundary setback.

Application Process

1. The Applicant lodged a Development Application for Building Work with the Assessment Manager in November 2014 for a Class 10a shed located 1 m from the front road boundary with Rotary Crescent and 1 m from the a side northern boundary. The dimensions of the building were length 10 m, width 6.5 m, and overall height 3.282 m;
2. The shed did not comply with Acceptable Solution A1(a) of QDC MP 1.2 as the building was located within the 6 m front road boundary setback;
3. The shed did not comply with the Application Statements of Moreton Bay Regional Council Amenity & Aesthetics Resolution (Resolution number 14/226, Dated 25/2/14, Policy number 14-2150-076). Namely:
 - Application Statement 2(c) – as the shed exceeded the height limitation of 3 m above natural ground level; and
 - Application Statement 3 - as the combined site coverage of the proposed shed and existing sheds on the site, exceeded the allowable site coverage for garages, shed, carports and alike of 80 m².
4. The Assessment Manager lodged a request for referral agency response for building work with the Council on the 12 November 2014, against the Application Statements of Council Amenity & Aesthetics Resolution (Resolution number 14/226, Dated 25/2/14, Policy number 14-2150-076), and the Performance Criteria P1 of the QDC MP1.2;
5. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the *Building Act 1975* allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover. The Building Works Code 6.1 of the Redcliffe City Planning Scheme 2005 has a number of Probable Solutions that relate to garages and carports, namely:

Specific Outcomes (c) House	Probable Solutions
SO9 Car accommodation is adequate and does not dominate the streetscape	<p>PS 9.1 A minimum of 1 covered and 1 uncovered parking space is to be provided within the boundaries of the site; and</p> <p>PS 9.2 Double garages and carports are setback a minimum of 3m from the road alignment where not designed to match the existing roofline of the dwelling.</p> <p>PS 9.3 Double garages and carports are setback a minimum of 0.5 m from the road alignment where designed to match the existing roofline of the dwelling.</p> <p>PS9.4 Single garages and carports are setback a minimum of 5.5m from the road alignment.</p> <p>PS9.5 Garages and carports may be provided with roller doors provided such doors do not open over the footpath.</p>

6. Section 1 (Acceptable Solutions for self-assessable development) of 6.1.3 Assessment Criteria, of Building and Works Code 6.1 of the Redcliffe City Planning Scheme 2005 states the following:

Note:

Where the Planning Scheme does not set a specific requirement with regard to building works the provisions contained within the Queensland Development Code, and the Building Code of Australia apply, e.g. side and rear boundary setbacks for carport, garages and dwelling houses.

It is the Committees' view, and it was agreed by all parties at the hearing, that none of the above Probable Solutions are applicable to the subject Application as the proposed shed cannot be considered to be a double/single garage or a double/single carport and therefore the requirements of the QDC MP 1.2 are applicable.

7. The Council issued a Concurrence Agency Response on 8 December 2014 against the provisions of Councils Amenity and Aesthetic Provisions directing the Assessment Manager to refuse the shed for the following reasons:

Please be advised that reasons for not supporting the proposal are that when the garage is built, Council considers that it will:

- *Have an extremely adverse effect on the amenity or likely amenity of the locality;*
- *Be in extreme conflict with the character of the locality; and*
- *Will have a negative effect on the streetscape; and*
- *Become a dominant feature of the streetscape.*

8. The Council issued a second Concurrence Agency Response on the 8 December 2014 against the QDC MP1.2 Design and Siting Provisions directing the Assessment Manager to refuse the shed for the following reasons:

Please be advised that reasons for not supporting the proposal building work are as follows:

- *Does not provide positive street frontage; and*
- *Is not of a scale and form which is compatible for the existing character of the area; and*
- *Have an extremely adverse effect on the amenity or likely amenity of the locality; and*
- *Will have a negative effect on the streetscape; and*
- *It will become a dominant feature of the streetscape.*

9. The Assessment Manager issued a Decision Notice on the 18 December 2014 refusing the shed as directed by the Concurrence Agency;
10. The Applicant did not appeal the Assessment Manager Decision Notice within the required twenty business day appeal timeframe. However, after some discussion with Council representatives and the Assessment Manager, Council re-issued both Concurrence Agency Responses on the 15 January 2015 and the Assessment Manager issued an amended Decision Notice refusing the Application on the 20 January 2015.
11. The Applicant lodged a Form 10 -Application for appeal/declaration on the 28 January 2015 with the Committees Registrar.

Reasons for the Decision

The Committee sets aside the decision of the Assessment Manager to refuse the shed at the direction of Council for the following reasons:

- At the hearing, the appeal parties negotiated an alternative location for the shed and conditions for the approval; and
- The Applicant submitted amended drawings to the Council on the 20 March 2015 and Council advised the Committee that they were satisfied with the proposal on the 23 March 2015.

Richard Prout
Building and Development Committee Chair
Date: 25 March 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

SITE PLAN

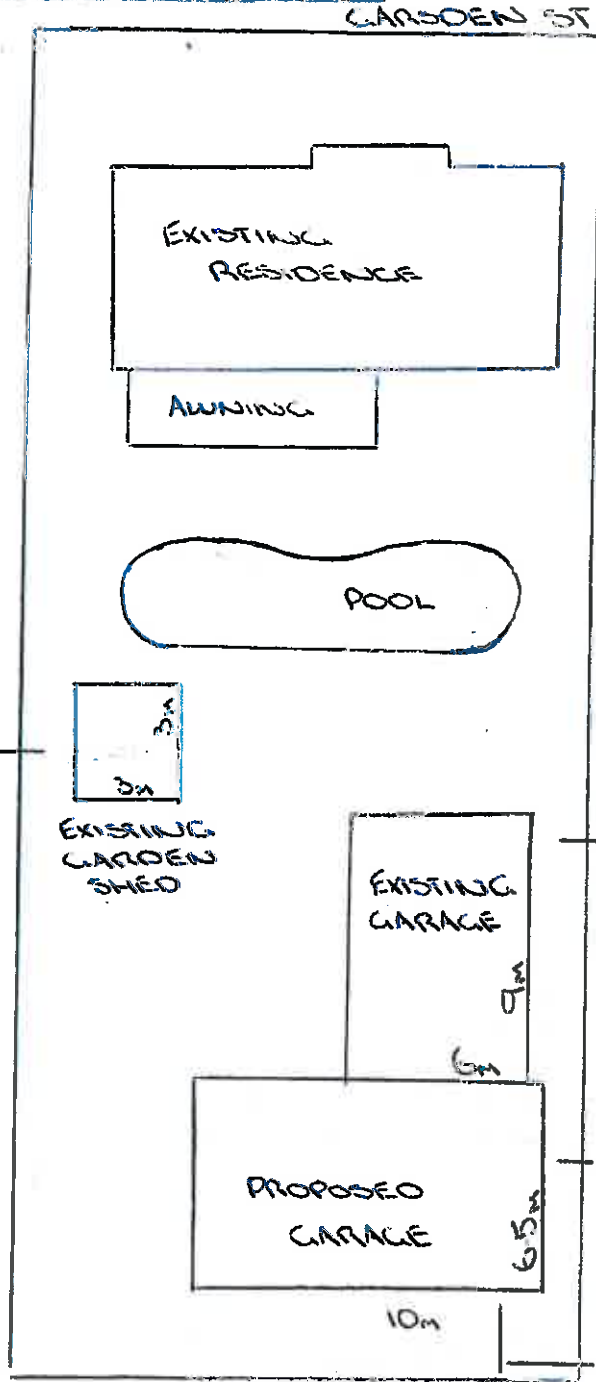
NOT TO SCALE

NAME: PAT CLEANEY
 JOB NUMBER: 10604
 POSTAL ADDRESS: _____

 SITE ADDRESS: 20 CARSDEN ST
NEOLIFFE
 RPD: LOT 28 RP 54511
 PARISH: MORETON COUNTY

LEGEND:	
DRAWN:	<i>[Signature]</i>
CHECKED:	

FIXED
 09-05-15



* REVISED SITING
 SHOWING GARAGE
 MOVED FROM
 ORIGINAL LOCATION

TUFF BUILT GARAGES
 9 Huntington St Clontarf 4019
 Phone: 3284 6333
 ABN: 28 662 905 350

COMMITTEES APPEAL NUMBER 04-15
 DATED 25-3-15
 SHEET 1 OF 2

2.3m
 FROM
 BOUNDARY

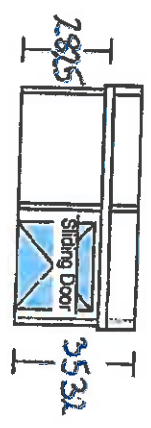
2m FROM BOUNDARY

1m FROM BOUNDARY

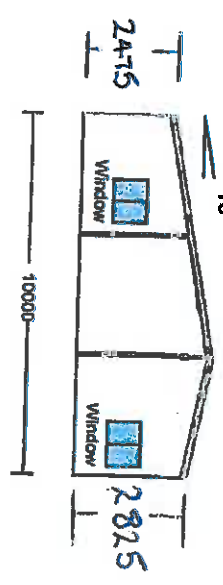
2m FROM BOUNDARY

ON COMPLETION OF SITE PLAN, CHECK THAT YOU HAVE MARKED THE DISTANCES FROM ALL OUT BUILDINGS AND AT LEAST 2 BOUNDARIES - THE NORTH POINT - ROLLER DOOR AND DOWN PIPE POSITIONS.

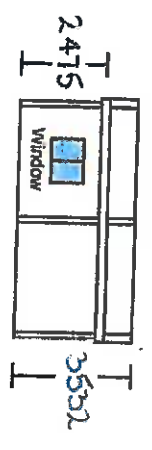
SOUTH View
A1 - A3



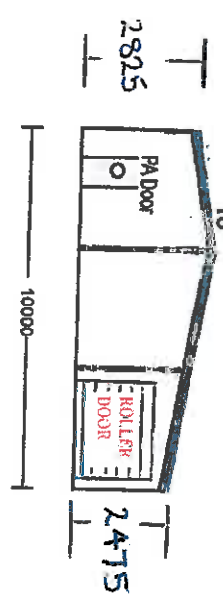
EAST View
C3 - A3



NORTH View
C1 - C3



WEST View
A1 - C1



*** REVISED ELEVATIONS
SHOWING COMPATIBILITY
WITH EXISTING GARAGE**



TUFF BUILT GARAGES
9 Huntington St Clontarf 4019
Phone: 3284 8333
A&M: 28 862 805 850

COMMITTEES AREN NUMBER 04-15
DATED 25-3-15
SHEET 2 OF 2

Tuff Built Garages
9 Huntington Street
Clontarf QLD 4019

CLADDING	
ITEM	FINISH COLOUR
ROOF	COLORBOND
WALLS	COLORBOND
BARGE	COLORBOND
GUTTER	COLORBOND
DOWNPIPE	COLORBOND

ACCESSORY SCHEDULE & LEGEND		
QTY	MARK	DESCRIPTION
1	Sliding Door	2700 x 2400 XO Decorative Clear Glaze S/Door
3	Window	900 x 1210 XO Decorative Clear Glaze SW Window
1	PA Door	Deluxe Personal Access Door Colorbond
1	ROLLER DOOR	

ARCHITECTURAL DRAWING ONLY NOT FOR CONSTRUCTION USE	
Wind Category N3 (W41N)	
CLIENT GEANY-PAT	
SITE 20 GARDEN ST REDCLIFFE 4020	
BUILDING 1 Bolted Tuff Shed 10m SPAN x 2.4m HIGH x 6.5m LONG	
TITLE FLOOR PLAN & ELEVATION	
DRAWING NUMBER Q-TBS-01-0038	PAGE 1/1