



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	45-14
Applicant:	Tuff Built Garages
Assessment Manager:	Noosa Building Certifiers
Concurrence Agency: (if applicable)	Moreton Bay Regional Council (Council)
Site Address:	76 – 80 Facer Road Burpengary

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against a Decision Notice issued by Noosa Building Certifiers as the Assessment Manager refusing an Application for a shed, as a result of advice from Moreton Bay Regional Council as the Concurrence Agency. Council refused the Application due to the scale and bulk of the proposed shed under Council's Amenity & Aesthetics Policy for Class 1(a) and 10(a) buildings.

Date and time of hearing:	Tuesday 27 January 2015, 11:00 am
Place of hearing:	The subject site
Committee:	Georgina Rogers – Chairperson James Dunstan – General Referee
Present:	Alan Dahl – Applicant (Tuff Built Garages) Jonathon Morgan – Property Owner Chris Trewin – Council representative Chris Hyde – Council representative Sigrid Pembroke – 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 on 10th December 2014 to refuse the Application for the shed. As a result of negotiations at the appeal hearing between the Property Owner, Council and Applicant, a satisfactory outcome for all parties was achieved when Council revised their Concurrence Agency advice and approved the Application, subject to conditions, under their Amenity and Aesthetics policy. The revised Council advice was dated 30 January 2015.

Background

The appeal is in relation to a Decision Notice issued by the Assessment Manager to refuse a Building Development Application (Application) for a proposed 30metre x 9metre shed located at the subject site. This proposed shed is in addition to an existing 9m x 7m shed. The refusal was based on advice from Moreton

Bay Regional Council, as Concurrence Agency dated 13 November 2014. Council refused the Application under their Amenity and Aesthetics Policy for Class 1(a) and 10(a) Buildings.

The Concurrence Agency referral was triggered due to the proposed shed exceeding the maximum floor area of 150m² under the Council Amenity & Aesthetics Policy. The total combined floor area of the outbuildings is 333m².

Council issued a refusal on the following grounds:

“When the proposed garage is built, the scale and bulk of the garage and existing outbuildings on the property will have an extremely adverse effect on the amenity of the locality, and will be in extreme conflict with the intended character of a residential locality.”

The Assessment Manager, upon receiving Council advice issued a Decision Notice dated 10 December 2014, refusing the Application.

The Applicant, upon receiving the refusal then lodged an appeal to the Building and Development Dispute Resolution Committee Registry on 19 December 2014.

A hearing was conducted at the subject site on Tuesday, 27 January 2015 attended by the persons listed above to hear the appeal and conduct a site inspection.

Both the Applicant and Council made representations at the hearing regarding the refusal to permit the proposed shed.

The Applicant made representations on the following key items:

- The shed is to be used predominantly for vehicle parking as he has a collection of cars, motorbikes and caravans, the other area is to be used ancillary storage use;
- There is no built in carparking on the existing dwelling, which should give some concession to allow larger outbuildings;
- Prior to February 2014, this policy was not in affect and subsequently there are several large sheds in the surrounding area that have been approved;
- The shed, being located at the rear of the property will not impact on the amenity of the surrounding area as is not visible from the street;
- Shed is located in cut near the boundary, reducing the overall height and impact on the neighbour affected;
- The affected neighbours have been consulted and provided their support for the proposed shed. This was subject to some conditions which were agreed and documented between the owner and neighbour, and were documented in their consent letter which has been provided;
- During the referral process, a site meeting was undertaken with a Council representative to discuss the possibility of a change in shape of the shed to reduce length, and increase width. Was determined due to access constraints, the shed design could not be widened and still allow for vehicle access;
- Nothing in the Amenity and Aesthetics policy refers to length of building.

The Council representative, Chris Trewin, made representations on the following key items and reasons for Council refusal:

- The proposed total floor area was well in excess of the maximum permitted under the Amenity and Aesthetics policy of 150m²;
- The main issue Council has with the proposal, is the length of the building being a single plane, 30m long building;
- The overall height of the walls and ridge of the building were not an issue;
- The fact there is no attached garage to the dwelling is a consideration;
- Although nothing in the policy mentions length of wall, it is a factor in assessing overall bulk of a building where the floor area exceeds the maximum permitted;

- Council made a resolution to adopt this policy to control the large sheds that had been built previously to reduce impacts on areas;

Following these representations, and viewing the subject area, both Council and the Applicant were asked to consider what they would be willing to accept as a negotiated outcome. It was discussed and agreed that a reduction in length from the Northern end of the shed, reduced to a maximum 25m in length, and the incorporation of vegetation screening between the shed and side boundary would be considered acceptable.

The Applicant, in agreement with Council, was then to submit amended plans and an amended Application for the Council's response.

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 19th December 2014;
2. Written submission by the owner stating use and reason for size of building proposed;
3. Decision Notice – Refusal issued by Noosa Building Certifiers Dated 10th December 2014;
4. Concurrence agency response – Refused by Moreton Bay Regional Council Dated 13th November 2014;
5. Neighbours Letters – Provided by the owner to Council in support of the application;
6. Written and photographic submissions provided by the Applicant/ Property Owner;
7. Moreton Bay Regional Council Amenity and Aesthetics policy reference 14-2150-076 Version 1 dated 25th February 2014;
8. Verbal evidence provided by the Applicant at the hearing;
9. Verbal evidence provided by the Property Owner at the hearing;
10. Verbal evidence provided by Council representatives at the hearing;
11. Research undertaken regarding similar structures in the surrounding area;
12. Revised Concurrence Agency Response – Approved with conditions dated 30th January 2015

Findings of Fact

The Committee makes the following findings of fact:

- The subject site contains an existing 9m x 7m shed and dwelling, with no attached garage;
- The proposed shed exceeded the maximum floor area permitted under the Amenity & Aesthetics policy by 183m² (Combined total of existing and proposed);
- All affected neighbours had been consulted, and had provided conditional consent regarding the siting of the shed;
- The Property Owner had advised verbally that he was happy to comply with the requested conditions of the neighbours who had given their consent through consultation;
- A Concurrence Agency referral was lodged with Moreton Bay Regional Council for their advice, which was refused;
- The reason for refusal was as follows:

“When the proposed garage is built, the scale and bulk of the garage and existing outbuildings on the property will have an extremely adverse effect on the amenity of the locality, and will be in extreme conflict with the intended character of a residential locality.”

- Through investigating the surrounding area, multiple examples of similar sized structures were found, some in multiple separate buildings and others in large, long buildings, similar to that proposed;
- A negotiated outcome was reached at the appeal hearing between the Property Owner and Council reducing the shed in length to 25m.
- Following negotiations at the hearing, Council issued a revised Concurrence Agency response dated 30 January 2015, under their Amenity & Aesthetics Policy, supporting the approval of the shed with conditions.

Reasons for the Decision

The Committee has considered all information provided and through negotiations at the hearing between the Property Owner, Council and Applicant, a satisfactory outcome for all parties was achieved and as such Council issued a revised Concurrence Agency advice on 30 January 2015 approving the Application, with conditions, under their Amenity and Aesthetics policy.

Therefore the Assessment Manager is now able to issue an amended Decision Notice and approve the building works subject to conditions. The conditions of the Council response are to be incorporated in the amended Decision Notice and form part of the approval.

Please Note: It is the Assessment Manager’s responsibility to ensure the use of the building is consistent with the provisions of the Caboolture Shire Planning Scheme. Attention is drawn to the provisions under the Dwelling House code for maximum Gross Floor Area of outbuildings. Any non-compliance with these provisions will require a code assessable planning application.

Georgina Rogers
Building and Development Committee Chair
Date: 9 February 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