



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	25 - 14
Applicant:	Darren Malouf
Assessment Manager:	JMBS – John Middlemiss Building Surveyor
Concurrence Agency: (if applicable)	Gympie Regional Council (Council)
Site Address:	406 Groundwater Road, Gympie and described as Lot 19 on SP163181 – the subject site.

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 storage shed that that conflicts with the Amenity and Aesthetics Resolution of the Local Authority at the direction of the Concurrence Agency.

Date and time of hearing:	11.00am, 15 August 2014.
Place of hearing:	The subject site.
Committee:	Georgina Rogers– Chair Don Grehan – Member
Present:	Darren Malouf – Applicant. Kerri Malouf - Applicant. Andrew Parker – Council representative Sonia Lynch – Council representative

Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564 of the SPA, **sets aside** the decision of the Assessment Manager and approves the proposed storage shed subject to the following conditions:

1. The setback from the western side boundary alignment to the outermost projection of the proposed storage shed is a minimum of 8.0m to its outermost projection and in line with the western alignment of the existing shed on site.
2. The maximum height of the proposed storage shed is not to be more than 4.8m in height above the existing ground level;
3. The separation between the proposed storage shed and the existing shed on site is to be 11.0m to the north.
4. The maximum dimensions of the proposed storage shed are to be 12m wide x 14.0m long. The 12.0m width is to be parallel to the existing shed on site.

5. The proposed storage shed is to be constructed in the same character as the existing shed being of barn style construction, colorbond (or equal) metal sheeted walls, gutters and doors to match existing.
6. Structural details for the proposed storage shed (footings, slab, masonry reinforcement, framing, bracing and tiedown specifications) prepared by a Registered Professional Engineer of Queensland and accompanied by a Form 15 Design Certificate is to be submitted to the Assessment Manager prior to the commencement of works.
7. Stormwater off roofed areas (including rainwater tank overflows) is to be collected and discharged to protect the building and other property (including neighbouring allotments) from adverse effects.
8. The Applicant must ensure a notice of inspection is given to Assessment Manager before proceeding past the following stages of construction.
 - (a) Footing excavations (including pier holes) with reinforcing steel in place, prior to the placement of concrete.
 - (b) Masonry Block Work, with reinforcing steel in place, prior to core filling.
 - (c) Final, on completion of all works relating to this approval.

Background

The Assessment Manager refused a Development Application for Building Works to construct a detached storage shed the size of which, in combination with other existing Class 10a buildings onsite, exceeded the limitations imposed by the local planning instrument following receipt of a Concurrence Agency Response from the Gympie Regional Council.

The Council, directing the refusal, considered that the proposed building would not be in keeping with the character of the area and, if built, would have an extremely adverse effect on the amenity, or likely amenity of its neighbourhood.

The Applicant, dissatisfied with the refusal, lodged an appeal with the Committees Registry on 29 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 29 July 2014.
2. Assessment Managers Decision Notice, Reference No.351-14 dated 21 July 2014.
3. Gympie Regional Council's Concurrence Agency Response, Reference No. 2014-612 dated 04 June 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. Gympie Regional Council's adopted Amenity & Aesthetics Resolution dated 12 June 2013.

Findings of Fact

- The subject site is a 6000m² allotment situated within an established Rural Residential neighborhood, the topography of the site is such that a relatively level platform exists

adjacent to the South Eastern property boundary adjoining Groundwater Road with the remainder of the property falling gradually to the North West.

- A single detached dwelling and garage/storage shed are currently located on the subject site. The existing garage/storage is steel framed, metal sheet clad barn style building with floor area of approximately of 120m².
- The Applicant proposes to construct an additional detached storage shed of 168m² to the rear of the existing garage/storage.
- Gympie Regional Council's Planning Scheme 2013 prescribes Adopted Amenity & Aesthetics Resolution – 12 June 2013 as an alternate provision to Queensland Development Code Mandatory Part MP1.2 in relation to the siting of Class 1 and 10 buildings and structures.
- In terms of acceptable measures, Gympie Regional Council's adopted Amenity & Aesthetics Resolution imposes a 120m² Gross Floor Area (GFA) limitation on the combined total floor areas of Class 10a Buildings proposed on allotments of between 4001m² and 20000m².
- The proposed new storage shed, when considered in conjunction with the existing garage/storage shed on site, is inconsistent with specific provisions of the Gympie Regional Council's adopted Amenity & Aesthetics Resolution in relation to the combined total GFA and accordingly, triggers assessment against the following Performance Criteria of the Resolution:

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.

- Save for GFA, the proposed new storage shed is consistent with the specific provisions of the Gympie Regional Council's adopted Amenity & Aesthetics Resolution in relation to road and side boundary setbacks.
- There are no specific provisions in the BA which limit the proposed construction of the new storage shed.
- The proposed storage shed is located at a level lower than Groundwater Drive, behind the existing garage/storage shed and is screened by existing vegetation limiting its exposure from the streetscape.
- The proposed storage shed is sited on the downhill slope of the allotment and setback in line with the existing garage/storage shed some 8.0m from the western side alignment.
- It is noted that while the neighbouring dwellings do overlook the proposed location of the new storage shed, their outlook equally contains views of their own sheds and sheds on adjacent sites.
- The zoning of the premises and the allotment size is such that larger class 10a buildings are typically consistent with both the nature of the land use and expectations and occupants of the neighbourhood.

Reasons for the Decision

- The Committee is not satisfied that the proposed storage shed is likely to have an extremely adverse effect on the amenity, or likely amenity of the locality, or is in extreme conflict with the character of the locality in which it is proposed.
- The Committee is satisfied that, subject to conditions imposed by this decision, the proposed storage shed 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.

Georgina Rogers
Building and Development Committee Chair
Date: 1 October 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