



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	05- 14
<b>Applicant:</b>	Geoffrey Elsden
<b>Assessment Manager:</b>	qdp Pty Ltd (qdp)
<b>Concurrence Agency:</b> (if applicable)	Toowoomba Regional Council (Council)
<b>Site Address:</b>	86 Ware street Brookstead and described as Lot 1 on RP 74397 - the subject site

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### Appeal

The appeal is made pursuant to section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by qdp Pty Ltd as the Assessment Manager, which was based on advice from Toowoomba Regional Council acting as Concurrence Agency, to refuse a Building Development Application (the Application) for building works for the design and siting of a structure incorporating a class 10 shed and attached skillion roof.

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<b>Date and time of hearing:</b>	Monday 7 April 2014 at 11am
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Mr Peter Rourke - Chair
<b>Present:</b>	Mr Geoffrey Elsden,– Applicant Mr Mark McKecknie -_Assessment Manager, qdp Pty Ltd Ms Vanessa Hick – Council representative Mr Robert Gray – Council representative

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### Decision:

In accordance with section 564(2) (c) of the SPA, the Committee **sets aside** the decision of the Assessment Manager dated 19 February 2014 and approves the Class 10a structure and attached skillion roof (the structure) as detailed on the drawings accompanying the application.

### Background

The subject site is bounded by Taylor Brookstead Road, Ware Street (primary frontage) and Rosa Street, is triangular in shape and approximately 1900 m<sup>2</sup> in area. The building work is an existing structure with its long side facing Ware Street and the end wall is adjacent to the western side boundary. The land in the surrounding area is predominantly used for agricultural purposes.

There are very few houses in vicinity of the subject site with the nearest neighbour being approximately 200m away. The Applicant owns the adjoining, large vacant parcel of land to the west of the subject site.

Immediately opposite the subject site on the Ware Street frontage, there are a number of large concrete silos and associate structures. The silos are approximately 30 – 40m in height.

On 31 May 2013, pursuant to section 287(2) (b) of the SPA, the Assessment Manager was directed to refuse the Application on the grounds that the Council, as Concurrence Agency, believes the design and siting of the structure does not comply with Performance Criteria P1 (a) to (c) and P2 (b) and (c) of QDC MP1.2.

Performance Criterion P1 (a) to (c) states:

The location of a *building* or *structure* facilitates an acceptable streetscape, appropriate for –

- (a) the bulk of the *building* or *structure*; and
- (b) the *road* boundary *setbacks* of neighbouring *buildings* or *structures*; and
- (c) the outlook and views of neighbouring residents;

Performance Criterion P2 (b) and (c) requires building and structures:

- (b) Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots; and
- (c) Do not adversely impact on the amenity and privacy of residents on adjoining lots.

The reasons given by Council for directing refusal of the Application were that they consider the structure would:

- Impose an unsuitable bulk on the streetscape.
- Be inconsistent with existing road boundary setbacks or requirements of neighbouring lots
- Obstruct the outlook and views from neighbouring properties;
- Adversely impact on the amenity and privacy of potential development on adjoining lots.
- There is adequate room for alternate on-site locations to resite the structure so as to comply with Performance Criteria P1 and P2.

On 19 February 2014, the Assessment Manager issued a Decision Notice refusing the Application and on the same day the Applicant lodged a 'Form 10 – Appeal Notice', grounds for appeal, and accompanying correspondence with the Committees Registrar.

This Decision Notice was issued in response to a new application lodged with Council requesting a change to the Development Approval. Under section 272 of SPA, Council confirmed their previous advice issued in correspondence of 31 May 2013.

At the hearing the Chair confirmed with Council that their Concurrence Agency response of 31 May 2013 was in response to the new application lodged requesting a change to the Development Approval.

Subsequent to the hearing, the Council's representative submitted an aerial survey of the site, which indicated that the subject structure might be constructed over the Ware Street front boundary. However, a survey of the site was carried out on 12 May 2014 to locate the original property boundaries. The survey shows that the structure is located wholly on the allotment.

The survey indicates that the structure is 1.07 metres from the side boundary at its closest point. The southern face of the structure, measured from the Ware street frontage is 4.76m from the southwest corner and 1.8m from the southeast corner.

The structure is detached from the house but because it is within the 6.0 m front and 1.5m side boundary clearance requirements of Mandatory Part 1.2 of the Queensland Development Code (QDC MP1.2), it must be referred to the Council as a Concurrence Agency.

The enclosed part of the structure is 15.032 metres long and 9.032 metres wide. Its height measured from finished ground level to the ridge (highest part of the structure) is approximately 5.5m at the western

boundary. The attached skillion roof is 15.032m long and 4.35m wide. The structure is clad entirely in corrugated colorbond metal.

Acceptable Solutions A1 (a) (i) and A2 (a) (ii) of QDC MP1.2 apply to the structure. To satisfy Acceptable Solution A1 (a) (i) the structure must have a road setback of 6.0m. Alternatively, the structure must be shown to comply with the relevant Performance Criteria P1 of QDC MP1.2 before the Assessment Manager can approve the Application.

Acceptable Solution A2 (a) (ii) requires the parts of the structure in excess of 4.5m in height to be located at least 2.0m from a side boundary. There are concessions in A2 (d) of QDC MP1.2, which allow certain structures to be placed within the side boundary setbacks specified in A2 (a) (i) but those concessions do not apply in this case because the structure exceeds 4.5m at its highest point.

To satisfy Acceptable Solution A2 of QDC MP1.2, the parts of the structure in excess of 4.5m in height must be set back at least 2.0m from the side and rear boundaries. Alternatively, the structure must be shown to comply with the relevant Performance Criteria P2 of QDC MP1.2 before the Assessment Manager can approve the Application.

It was agreed at the hearing by all parties that Performance Criterion P2 (b) does not apply in this appeal, as there are no buildings on adjoining lots.

### **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 19 February 2014.
2. The Concurrence Agency response for design and siting dated 31 May 2013,
3. Decision Notice issued by the Assessment Manager dated 19 February 2014.
4. The Form 16, issued by Byrne Surveyors Pty Ltd, dated 15 May 2014, detailing the boundary clearances of the structure.
5. Queensland Development Code Part MP1.2 – Design and siting standards for single detached housing – on lots greater than 450m<sup>2</sup> (QDC MP1.2)
6. *Sustainable Planning Act 2009* (SPA)
7. *Building Act 1975* (BA)
8. Volume 2 of the Building Code of Australia 2014 (the BCA)
9. An undated letter from the nearest adjacent neighbour indicating support for the structure in its current location.
10. Verbal representations by appeal parties at the hearing.

### **Findings of Fact**

The Committee makes the following findings of fact.

- There are no alternative siting standards, pursuant to section 33 of the BA, applicable to the site.
- The land area exceeds 450m<sup>2</sup> therefore QDC MP1.2 applies to the site.
- The structure, at its highest point (western face), exceeds 4.5m in height.

- The setback from the Ware Street frontage is 4.76m to the southwest corner and 1.8m from the southeast corner.
- Because the structure is within the boundary clearances prescribed in Acceptable Solutions A1 and A2 of QDC MP1.2, the building work must be assessed against Performance Criteria P1 and P2 of It QDC MP1.2.
- Performance Criteria P1 (a) to (c) and P2 (b) and (c) apply in this appeal.
- The side and front boundary clearances of the structure satisfy the fire safety requirements of the BCA applicable to a class 10a building.

### **Reasons for the Decision**

- The large silos and associated structures located on the opposite side of Ware Street, dominate the streetscape. The subject structure has no additional impact on the area.
- Existing structures in the area are sparse with the nearest residential premises being locate approximately 200m from the subject site. The owner of that land has indicated support for the subject structure in its current location.
- The Committee has formed the view that the subject structure will not be inconsistent with existing road boundary setbacks or requirements of neighbouring lots for the following reasons:
  - Other structures in Ware Street consist of older houses and some older, commercial premises to the southeast of the subject site some of which are located within the current required road boundary set back requirements.
  - There are no visible structures to the southwest of the subject site.
  - The parcel of land adjoining and to the west of the subject site is vacant and is owned by the Applicant.
- The nearest residential, neighbouring property is approximately 200m from the subject site. The owner of that property has given support to the subject structure in its current location.
- The large concrete silos and associated structures located on the opposite side of Ware Street dominate the streetscape. The subject structure does not add to that impact, nor will it reduce the existing level of amenity and privacy of potential development on adjoining lots
- The structure satisfies the fire safety requirements of the BCA relevant to a class 10a building.
- The subject site is triangular in shape and has a three-road frontage. Given this constraint, it would be difficult to locate the structure so that it complies with the acceptable solutions A1 and A2 of QDC MP1.2. If this was possible, in my opinion, it would not result in any less impact than the structure in its current location..
- The structure complies with Performance Criteria P 1 and P2 of QDC MP 1.2 in its proposed location.

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**Peter Rourke**  
**Building and Development Committee Chair**  
**Date: 29 May 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**