



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	02 - 14
Applicant:	Downs Designer Homes Pty Ltd
Assessment Manager:	qdp Pty Ltd (qdp)
Concurrence Agency: (if applicable)	Toowoomba Regional Council (Council)
Site Address:	11 Bonville Court, Middle Range and described as Lot 3 on SP 169801 - the subject site

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 the design and siting of a structure incorporating an unenclosed covered area abutting the eastern side boundary.

Date and time of hearing:	Monday 10 February 2014 at 11am
Place of hearing:	The subject site
Committee:	Mr Peter Rourke - Chair
Present:	Mr Jeff Bubeck, Downs Designer Homes – Applicant Mr Grant Forde - Assessment Manager, qdp Pty Ltd Mr Bob Orr – Council representative Mr Tony Hooiveld – Council representative

Decision:

In accordance with section 564(2) (c) of the SPA, the Committee **sets aside** the decision of the Assessment Manager and approves the roofed, unenclosed structure as detailed on drawings identified as Dwg No 334-1413 sheets SD 01 and SD 02 (amendment B), issue date 5/11/13.

Background

The subject site is rectangular in shape and approximately 1000 m² in area. The proposed building work is to be constructed on the eastern side boundary of the property. The boundary is shared with number 9 Bonville Court.

The structure is to be detached from the house but because it is within the 1.5m 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 structure is to be unenclosed around its perimeter, 4.7m long and 2.7m wide measured to the outside of the fascia boards. It will be approximately 3.5m in height measured to the top of the ridge. The structure will be covered with metal roof sheeting.

Acceptable solution A2 (a) (i) of QDC MP1.2 requires a building or structure less than 4.5m in height to be located at least 1.5m from a side boundary. There are concessions in A2 (c) (ii) and A2 (d) of QDC MP1.2, which allow certain structures to be placed on the boundary but those concessions do not apply where the proposed use is for entertainment or recreational purposes.

In this case, the structure is to be used for food preparation and to provide protection to an outdoor BBQ and benches. In the Committee's opinion, it would fall into the category of being used for "recreational purposes".

To satisfy Acceptable Solution A2 of QDC MP1.2, the building work must be set back at least 1.5m from the side and rear boundaries or alternatively, be shown to comply with the relevant Performance Criteria of QDC MP1.2 before the Assessment Manager can approve the Application. The Council can only undertake assessment against Performance criterion P2 of MP1.2 of the QDC.

On 27 November 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 Acceptable Solution A2 and Performance Criterion P2 of QDC MP1.2.

Performance Criterion P2 requires building and structures:

- (a) Provide adequate daylight and ventilation to habitable rooms; and
- (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.

It was agreed by all parties at the hearing that the only element of Performance Criterion P2 relevant to the appeal is P2 (c).

The reasons given by Council for its advice are that:

- The location of the covered area on the side boundary will adversely impact on the privacy on the adjoining lot by promoting gatherings alongside the side boundary.
- The location of the cooking facilities on the boundary will affect the amenity of the neighbour with the creation of smoke, which could reduce the neighbour's enjoyment of their back yard..
- Sufficient vacant land area is located in the immediate area allowing for the covered area to be relocated 1.5m from the side boundary achieving compliance with A2 of MP1.2 of the QDC.

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 20 January 2014 and an amended Notice lodged on 24 January 2014.
2. Queensland Development Code Part MP1.2 – Design and siting standards for single detached housing – on lots greater than 450m² (QDC MP1.2)
3. *Sustainable Planning Act 2009* (SPA)
4. *Building Act 1975* (BA)

5. The Concurrence Agency response for design and siting dated 27/11/13,
6. Letter from the neighbours at number 9 Bonville Court indicating they have no objections to the placement of the structure in the proposed location
7. 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.
- Because the land area exceeds 450m², QDC MP1.2 applies to the site.
- It is proposed that the building work for the structure, measured to the top of the roof from the adjacent finished surface level, will be approximately 3.5m in height. It is also proposed that the structure be built up to the adjoining lot boundary with number 9 Bonville Court. The application for building work is subject to Concurrence Agency advice because the structure is within the 1.5m boundary clearance prescribed under QDC MP1.2.
- The only Performance Criterion of QDC MP1.2 relevant to the appeal is P2 (c).

Reasons for the Decision

- The only property affected by the proposed structure is 9 Bonville Court which is located adjacent to the subject site and proposed structure.
- The property owners of 9 Bonville Court have given their support to the proposal.
- The dimensions of the proposed structure are such that it is unlikely to be used for large gatherings. It has been designed as a covered area to enable food preparation to take place and to provide protection from inclement weather when the BBQ is being used.
- The smoke nuisance that Council refers to exists even if the structure is not built.
- There are other areas on the site to accommodate the proposed structure. However, these areas are adjacent to more than one property and the structure is likely to have a greater impact on the amenity of the area if placed there.
- The proposed structure is located adjacent to a back yard area between the house and a garage on 9 Bonville Court. It is also well clear (approximately 7.0m) of any openings in the external walls of any buildings on 9 Bonville Court so it will have less impact on the amenity or privacy of the neighbours than it would if located elsewhere on the site.
- The structure is detached from the house and not an extension of the house so usage is likely to be infrequent.
- The structure complies with Performance Criterion P2 (c) of QDC MP 1.2 in its proposed location.

Peter Rourke
Building and Development Committee Chair
Date: 13 February 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