



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>31 - 12</b>
<b>Applicant:</b>	James and Cathryn Bennett
<b>Assessment Manager:</b>	Building Certification Consultants
<b>Concurrence Agency:</b>	Brisbane City Council (Council)
<b>Site Address:</b>	79 Jean Street, Grange and described as Lot 9 on RP18768 — the subject site

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by the Assessment Manager to refuse a development application for new building works, namely for the construction of a new carport between the front boundary alignment and the existing dwelling. The refusal was based on the advice from the Concurrence Agency that the application was non compliant with the performance criteria of the Queensland Development Code (QDC) MP1.2 for the following reasons:

- 1. P1(a) The location of the illegally built carport is in conflict with the streetscape and adds unnecessary bulking to the streetscape.*
  - 2. The carport is approx 8 metres deep and can be reduced to a 6 metre deep carport and achieve a road OMP of approx 2 metres to reduce bulk.*
  - 3. The carport/garage as proposed requires City Plan assessment, as total width is over 6 metres.*
  - 4. P1(c) Increased road boundary OMP will increase safety to persons using the footway due to increased visibility of vehicle movement.*
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<b>Date of hearing:</b>	Thursday, 2 August 2012
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Georgina Rogers – Chair
<b>Present:</b>	James Bennett – Applicant Cathryn Bennett – Applicant Neil Oliveri, Building Certification Consultants Peter Bird, Building Officer, Brisbane City Council representative Ricky Hedrick, Building Officer, Brisbane City Council representative

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## **Decision:**

The Building and Development Dispute Resolution Committee (Committee) in accordance with section 564 of the SPA **sets aside** the decision and approves the siting variation for the Class 10(a) open carport subject to the following conditions:

1. Setback to the outermost projection of the now constructed open carport to the front road boundary alignment to be minimum 500mm.
2. Applicant to obtain all required development approvals for the construction of the existing open carport.
3. The open carport is not to be enclosed at any stage and is to remain open in accordance with the definition under the QDC MP 1.2.

## **Background**

The Applicants recently purchased the property in January 2012 and were given a set of plans for an enclosed garage to be constructed in the front north-west corner of the site. The Applicants engaged a builder to undertake the construction work of the carport. However, it appears that the Development Application for this work was never finalised and no approval was received prior to commencement and completion of the carport construction.

The Concurrence Agency on receipt of the application advised the Assessment Manager that the proposed design could not be approved as it did not comply with the Performance Criteria of the QDC MP1.2.

Subsequently an Appeal was lodged under the SPA to the Committee.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. Concurrence Agency decision dated 26 June 2012.
2. Assessment Manager memo to Committee dated 9 July 2012.
3. Assessment Manager decision notice dated 16 July 2012.
4. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 17 July 2012.
5. Assessment Manager decision notice dated 16 July 2012.
6. Assessment Manager memo to Committee dated 9 July 2012.
7. Plans dated 3 July 2012, Project number 07-216 WD-C 1-4, stamped "refused" and showing an open carport which has been constructed in its current location.
8. Plans for fully enclosed garage to be constructed in the location of the constructed open carport dated 13 April 2007, Project number 07-216 WD-A 1-4. This would appear to be plans which formed the basis of the decision made by the Concurrence Agency.
9. Photographic submissions of similar structures within the immediate neighbourhood and "Nearmap"

aerial photograph.

10. Verbal advice provided by the applicant, Assessment Manager and Concurrence Agency representatives.
11. QDC MP 1.2 Design and Siting Standard for single detached housing - on lots 450m<sup>2</sup> and over.
12. *Building Act 1975* (BA).
13. Building Regulation 2006.
14. SPA.
15. BCA.

## **Findings of Fact**

The Committee makes the following findings of fact:

The site is located in a quiet residential street in the established inner suburb of Grange in Brisbane. The neighbourhood is undergoing some urban renewal with upgrading of existing dwellings and construction of new residential housing. Within the area there are a number of carports being constructed to accommodate the increased use and accommodation of vehicles within the area.

The existing dwelling is two storeys with no provision on the ground floor for the accommodation of any vehicles. A significant number of residences in the neighbourhood are two storey and while traditionally the lower storey was open and sometimes provided car accommodation, some of these have now been converted to two storey living areas, often exclusive of car accommodation.

The site is approximately 607 square metres in size and has a frontage greater than 15 metre (m). From the site inspection and as indicated on the plans, there does not appear to be any other location on the site which could be considered more appropriate for the location of the carport. Access for vehicles to the rear of the site, is not available.

The site fronts Jean Street to the west and gradually rises at the rear to the east. Jean Street falls to the north across the front of the site.

The street has been landscaped to provide traffic calming and reduce traffic speed. This has also significantly reduced the amount of on-street carparking. The Applicants advised that outside work hours and on weekends the on-street parking is fully used and this has caused difficulty in being able to park their cars on the street outside their residence. Given there is available space on site to provide off-street carparking to meet their needs, the owners decided it was a logical decision. The on site carparking provided them with vehicle security, is close access to their residence and has helped relieve some of the on-street carparking congestion.

The carport as constructed is 5.8m wide excluding overhangs. The highest point of the carport is approximately 5.8m at the ridge. The ceiling height closest to the driveway entrance is approximately 3.2m, and reduces as the driveway rises rapidly onto the site. The carport has a gable roof, similar to, but with a lower pitch than the existing dwelling.

The Concurrence Agency suggested that a flat roof instead of the gable roof would reduce the bulk of the structure and thereby reduce the visible impact on the neighbourhood. From an aesthetic view, a flat roof on the carport would have a significant visual impact on the neighbourhood as it would be out of context and contrast to the existing, older, pitched roof dwellings in the surrounding area.

## Reasons for the Decision

### 1. QDC MP 1.2 (Design and siting standard for single detached housing – on lots 450m2 and over)

MP 1.2 of the QDC sets out Performance Criteria (P1) in relation to siting requirements which a Concurrence Agency must consider and be satisfied that the application meets the intent of each criterion. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria:-

***P1 – The location of a building or structure facilitates an acceptable streetscape, appropriate for -***

#### ***(a) The bulk of the building or structure***

From the plans and photographs provided and on-site inspection, the open carport which has been constructed, does not significantly increase the bulk of the existing dwelling and facilitates an acceptable streetscape.

The open carport has been located between the front boundary alignment and the existing dwelling. A new concrete driveway and crossover has been constructed to access the carport. The driveway rises steeply onto the site, then flattens out for the remainder of the carport. The higher part of the carport, as noted by the Concurrence Agency, occurs within the initial 1m entrance onto the site.

The carport was viewed from the street in relation to the rising of the land to the east, falling of the street to the north, surrounding two storey dwellings, street trees and landscaping. When taken into the context of the neighbourhood the bulk of the carport does not appear significant. The carport is to be setback 500mm to its outermost projection from the front alignment to ensure minimal impact on the neighbourhood is maintained.

A number of similar carports have been constructed within the neighbourhood. These vary in height, location and roof style and are similar in bulk and character to the carport constructed on site.

#### ***(b) Road boundary setbacks of neighbouring buildings or structures***

Within the neighbourhood there have been a significant number of extensions and additions which include carports constructed up to the front boundary alignment. Overall the carport does not have a significant impact on the streetscape.

The carport does not affect the daylight or ventilation of any adjacent or adjoining habitable rooms.

The reduced setback is consistent with current developments in the surrounding neighbourhood. Therefore the carport road boundary setback is similar to that in the neighbourhood.

#### ***(c) The outlook and views of neighbouring residents***

The outlook and views of the neighbouring residents do not appear to be significantly affected by the carport.

The carport does not adversely impact on the amenity or privacy of adjoining residents, or those within the immediate neighbourhood.

***(d) Nuisance and safety to public***

The carport should not impact on the safety of the public nor provide any potential nuisance to the neighbourhood. The open carport allows adequate visibility for both driver and pedestrians.

2. The QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The Concurrence Agency is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.

Based on the above, it is the Committees decision that the siting variation be approved.

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**Georgina Rogers**  
**Building and Development Committee Chair**  
**Date: 12 September 2012**

## **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  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**