



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	23- 13
Applicant:	Steven Robert Shedden
Assessment Manager:	Logan City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	18 Newburn St Hillcrest, and described as Lot 525 on RP 164915 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against a partial refusal of a Request for a Negotiated Decision Notice to delete conditions of approval of for Development Permit for Building Work for a Class 10a structure.

Date of hearing:	Thursday the 8 th of August, 2013
Place of hearing:	The subject site
Committee:	John Panaretos – Chair Mark Baker - Member
Present:	Steven Shedden – Applicant Murray Lane – Co-ordinator, Planning Appeals, Logan City Council Tonnia Plail – Senior Planning Officer, Logan City Council Vicous Botes – Planning Officer, Logan City Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA:

a) ***Changes the decision*** appealed against by modifying Condition 3.2 as follows:

3.2 Ensure the carport is not enclosed at any time, except for the two roller doors located at the front, and the southern (side) wall.

AND

b) ***Confirms*** the decision of Council with respect to Conditions 3.3 and 3.4.

Background

The Applicant applied for and received approval for a double carport and awning sited within the prescribed front and side boundary setbacks of the subject site.

As the proposed structures did not comply with the provisions of the planning scheme code, both in matters of size and setbacks, an application was made to the Council for planning approval. This was approved on 25 May 2012 (BWAP/73/2012). Subsequently building work was approved by Metropolitan Certification Services on 31 May 2012 (Application #6707; BW/1729/2012) presumably relying on the Council's planning assessment of BW/73/2012 as concurrence advice for the siting variation.

The approval for Building Work contained Condition 11 which stated in full the acceptable solution contained in A1(c)(i) of Part MP1.2 of the Queensland Development Code (QDC MP1.2). The approval also incorporated by reference Council's related approval BWAP/73/2012 which included two relevant conditions:

- Condition 1.4 – *undertake development generally in accordance with approved plans of the unenclosed carport and awning; and*
- Condition 2.1 – *ensure the carport and awning are not enclosed at any time.*

The Applicant contends that, due to an apparent failure in the transmittal of the conditions of the BW/73/2012 approval to the Applicant, the Applicant proceeded to enclose the carport and awning structure with masonry walls and garage doors to create a 3 car garage. The Applicant was the victim of theft at about that time and required greater security for his property and business. As a result of enforcement action taken by, and discussions with, Council officers the Applicant lodged a subsequent Code Application (BWAP/249/2012) to have the now non-compliant structure retrospectively approved as a *garage*.

Council approved the Application, but describing the structure as a *carport* and awning. The approval was issued subject to conditions, three of which were not acceptable to the applicant and are detailed below:

- ▶ **3.2** *Ensure the carport is not enclosed at any time, except for the two roller doors located at the front.*
- ▶ **3.3** *Remove the awning, brick walls and roller door under the awning, as made in red on the approved plans within three (3) months of the approval.*
- ▶ **3.4** *Provide boundary fencing to the remainder of the road boundary matching the existing 1.8m high fence, as made in red on the approved plans.*

In approving the Application subject to these conditions, Council was giving a limited concession: the installation of two roller doors to the covered car spaces to afford some level of security to the Applicant.

However, the Applicant lodged a Request for a Negotiated Decision Notice to have these three conditions deleted. Council made a further concession, partially approving the request, allowing the awning to remain and limiting the fencing requirement to the length of boundary abutting the awning. The Applicant, being dissatisfied with the amended conditions of the Negotiated Decision Notice which would necessitate the demolition of 19.3 lineal metres of rendered masonry wall, appealed against the decision to the Building and Development Committee.

Consequently, the Committee is now asked to adjudicate on the difference in impact between an enclosed three bay garage, as constructed by the Applicant, and an open three bay carport, fitted with two garage doors and partially enclosed by a fence 1.8m high, as approved by Council.

The Council contends that the demolition is required in order for the development to satisfy the performance criteria and specific outcomes contained in the planning scheme. These assessment criteria encompass a range of matters including building bulk, streetscape character, public safety and the expectations of residents.

The Applicant responds by contending that the conditions in question are inappropriate for the following reasons:

- The structure can not be categorized as a carport, but a garage;
- The difference between the existing structure and that approved by the Council is minimal and has no material impact on the outcomes identified in the assessment criteria. To substantiate this, the Applicant relies on calculations showing a minor difference of 3% in wall area between the existing structure and that approved by Council;
- No safety concerns exist since
 - a) nothing in the relevant codes prevents a solid fence on a side boundary from extending to the front alignment of the property; and
 - b) the side boundary wall has been built to appropriate fire standards;
- The Applicant has been the subject of discrimination and victimization from Council;
- The Applicant cites many examples of similar situations within the suburb of Hillcrest where garages are built within 6 metres of front alignments, whether approved or not by Council.
- Sufficient mitigating circumstances exist due to security concerns, the failure of Council to notify conditions of the original approval, the building now exists in the form for which approval is sought and the order for demolition is unreasonable.

The Applicant has offered to install potted plants to the side boundary to soften the view of the structure.

Material Considered

The material considered in arriving at this decision comprises:

1. BWAP Application BWAP/73/2012 including IDAS Forms 1 and 6, received by Logan City Council on 5 April 2012
2. BWAP/73/2012 Development Application Checklist dated 5 April 2012
3. Delegate Assessment Report dated 12 April 2012
4. Development Permit #7791450/Pollock:Pollock dated 24 May 2012
5. Decision Notice BWAP/73/2012 dated 25 May 2012
6. Decision Notice for Development Application Number 6707 for Building Work for a Class 10a Carport dated 31 May 2013
7. BWAP Application BWAP/249/2012 including IDAS Forms 1 and 6, received by Logan City Council on 30 November 2012 to convert a 'carport' into a 'garage'
8. Delegate Assessment Report dated 28 March 2013
9. Request for a Negotiated Decision Notice dated 25 April 2013
10. Negotiated Delegate Assessment Report dated 5 June 2013
11. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 2 July 2013.
12. Negotiated Decision Notice BWAP/249/2012 dated 5 June 2013 and Development Permit #8410061/BOTESV:BOTESV issued by Logan City Council dated 6 June 2013
13. Written submission, incorporating attachments, by Steven Shedden emailed to the Registrar on 23

July 2013

14. Email exchange between Steven Shedden and officers of Logan City Council generally between January and May 2013
15. Written submissions from neighbours of the subject site lodged with the Registrar by Logan City Council on 7 August 2013
16. Written submission, incorporating attachments, by Logan City Council submitted to the Registrar on 16 August 2013
17. Statement from Steven Shedden regarding compliance of the structure with BCA requirements submitted to the Registrar on 21 August 2013.

Findings of Fact

The Committee makes the following findings of fact:

1. Development on the subject site is regulated by the Logan Planning Scheme, Residential 600 Zone;
2. In combination with the Residential Locality and Zones Code, the proposed development requires a Code Application for alternatives to the Acceptable Solutions of the *Design and Siting Standards* of the *Queensland Development Code* (QDC) Part MP1.2 since the site is larger than 450sqm;
3. Development Permit for Building Work (Application #6706; BWAP/1729/2012) along with standard conditions, dated 31 May 2012, was received by the applicant as attested to in Appendix 7 of the document "Response to Council Submission Received 16 August 2013", with Condition 11 stating:
If a carport is located within 6 metres of a road boundary then the aggregate perimeter dimension of the walls, solid screens, and supports located within the setback must not exceed 15% of the total perimeter dimension (along the line of supports) of that part of the carport within the same setback.
4. The Applicant also requests an order be made reimbursing the Application fee and the reasonable costs of defending this case.
5. The 3% figure includes errors of calculation and an assumption of a 2m fence height. To the extent one may rely on a quantitative figure, the correct calculation is approximately 14%, taking into account the lower fence height of 1.8m stipulated by Council and the area of gable;
6. No distinction is made between a *carport* and a *garage* in the planning scheme, but any structure positioned within 6 metres of the front alignment and 1.5 metres of the side boundary is assessable against the Performance Criteria of the Queensland Development Code (QDC) Part MP1.2 and the Residential Locality and Zones Code of the planning scheme;
7. Examples of other garages cited by the Applicant are invariably two door garages, not three, and are generally not flush with the front alignment but range in setback from 1 metre up to approximately 4 metres. There is agreement that certain cited examples may not be approved.

Reasons for the Decision

1. The Applicant's assertions regarding Council's treatment of him should be pursued in other appropriate forums and do not bear on the Committee's decision.
2. The Applicant has tendered evidence that approval for Building Work (Application #6707 along with appended conditions, including Condition 11), dated 31 May 2012, was received from the building certifier on or about the date of approval. Condition 11 categorically states that a maximum of 15% of the perimeter of the relevant structure may be enclosed.
3. The change in the visual appearance of the structure resulting from the conditions in question is approximately 14%, not 3% as calculated by the Applicant, and thus a material and appreciable

change.

4. Three garage doors in the streetscape, with full enclosure, no transparent openings and little articulation all contribute to excessive bulk.
5. The appearance of the structure is not consistent with examples cited by the Applicant, nor appropriate to the existing and planned character of the area.
6. A structure of this form and bulk is not consistent with the reasonable expectations of residents of the area.
7. The southern (side) wall of the structure is not highly visible and does not impact on the streetscape.
8. It is not within the Committee's jurisdiction to make orders with respect to appeal costs.

John Panaretos
Building and Development Committee Chair
Date: 5 September 2013

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:

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