



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	3–09–082
Applicant:	Ulrich and Judy Krampera
Assessment Manager:	Mr Troy Ellerman for and behalf of Innovative Building Approvals
Concurrence Agency: (if applicable)	Brisbane City Council (Council)
Site Address:	23 Landsboro Avenue, Boondall, Queensland 4034 and described as Lot 399 on RP26050 – the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision by the assessment manager dated 29 September 2009, by the assessment manager to refuse a building development application relating to a new structure (open carport) within the required front property boundary setback. The refusal was based on Council's concurrence agency response issued on 28 September 2009.

Date of hearing:	9:00am - Monday, 7 th December 2009
Place of hearing:	The subject site
Tribunal:	Stan Spyrou – Chair John Panaretos – Member
Present:	Mr Ulrich Krampera – Owner & Applicant Mr Rob Dix – Brisbane City Council

Decision:

The Tribunal, in accordance with section 4.2.34(2)(c) of the IPA, **sets aside** the decision appealed against to refuse the development application for building works, namely a new building structure (open carport) within the front boundary setback; and replaces it with the following decision:-

The Tribunal, in accordance with section 4.2.34(1), **directs** the assessment manager to reassess the building development application subject to compliance with the following conditions:-

1. The carport is to be located in a position observing a clearance of not less than two (2) metres from the outermost projection of the carport to the front property alignment of the subject site to allow for suitable landscaping to soften the appearance of the proposed carport when viewed from the road.
2. The carport roof has colours to match the existing dwelling.
3. The carport is to remain open at all times – no roll-a-door or similar door/gate is to be installed.

4. All other relevant regulatory provisions applicable to the application for development approval for building work.

Background

The subject site contains an existing lowset dwelling located to the front of the subject site. An ample driveway access is currently constructed to the left (southern) side of the property providing access for large vehicles to the rear of the property and to the garage/shed structure located at the rear of the subject site.

The right (northern) side access to the property is not considered suitable for vehicle access due to clearance restrictions.

A garden is located between the rear of the dwelling and the front of the garage/shed located at the rear of the property.

This open area is also traversed by a sanitary sewer servicing the subject site and adjoining properties to the left (south) and right (north) of the subject site.

The property owner has informed the Tribunal he conducts a trucking business and requires the clear access to the rear of the property for access by the vehicles used in his trucking business.

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 Registrar on 22 October 2009.
2. Form 6 – Development Application Decision Notice prepared by Innovative Building Approvals and dated 29 September 2009 advising refusal of the application
3. Concurrence agency assessment under IPA for design and siting issued by Brisbane City Council and dated 28 September 2009, directing the assessment manager to refuse the application
4. Correspondence to the Tribunal from Ulrich and Judy Krampera dated 2 December 2009 containing "details surrounding application for carport at 23 Landsboro Avenue, Boondall" delivered to the Registrar by Judy Krampera on 2 December 2009 (marked as Exhibit 5)
5. Briefing note to the Tribunal prepared by Mr Rob Dix from Council dated 7 December 2009 (marked as Exhibit 2)
6. A4 drawing titled "3, 4 and 6M Hip Carport and Shelter – Detail Sheet 1" with reference number 2478-01 revision B prepared by MD Stevenson & Associates Consulting Engineers and prepared for Adro Garages (marked as Exhibit 1)
7. A4 sheet containing eight (8) colour photographs of carport structures on properties other than the subject site and with such carport structures erected entirely or partly within the required front property alignment setback (marked as Exhibit 3)
8. Colour photograph of proposed open carport provided by Judy Krampera and extracted from Adro Garages website (marked as Exhibit 4)
9. Colour photographs and property addresses for existing carport structures erected on properties other than the subject site provided by Judy Krampera with such carports or structures erected either entirely or partly within the required front property alignment setback (marked as Exhibit 6)
10. Verbal submissions from the parties at the hearing
11. IPA
12. The *Integrated Planning Regulation 1998*
13. The Queensland Development Code (QDC) Mandatory Part 1.2

Findings of Fact

The Tribunal makes the following findings of fact:

1. The subject site contains an existing older style lowset dwelling which has undergone some recent renovations and upgrades.
2. The subject site contains an existing garage/shed located a substantial distance behind the existing dwelling and at the rear of the property.
3. There is an existing approximately 4.2m wide access path to the left (south) of the existing dwelling providing access to the rear of the subject site.
4. The setback of the existing dwelling from the right (north) side property boundary does not facilitate vehicle access.
5. The open space between the rear of the existing dwelling and the front of the garage/shed contains a garden and is traversed by a sanitary sewer serving the adjoining properties.
6. The subject site can be described as flat and with good visibility for vehicles entering and exiting the site.
7. The proposal is for construction of an open carport approximately 6m wide, 6m long and 3m high to the pitching point of the roof. The colour of the carport roof and fascia/gutter is proposed to match that of the existing dwelling. The carport is proposed to have a hip roof to match the existing dwelling.
8. The carport is proposed to be located within the required 6m front boundary setback and with access to be provided from the existing access driveway thereby permitting vehicles using the carport to enter and exit the site in a forward gear. The proposed front property alignment setback for the carport is to be 1.0m.
9. The proposed carport is to be constructed behind the existing approximately 1.2m high fence located at the front property alignment of the subject site.
10. The proposed carport is not to be enclosed.
11. The applicants, through their building certifier, applied for a siting variation to allow the proposed carport to be built within the front boundary setback. Council, as the concurrence agency, refused the variation and directed the building certifier to refuse the application through its concurrence agency response dated 28 September 2009.
12. The applicants, on page two of their correspondence to the Tribunal dated 2 December 2009, state *"we have obtained relaxation certificates from both neighbours and they did not have a problem with the positioning of the carport in the front yard. It, in no way, interfered with their lifestyle"*.
13. The applicants, on page three of their correspondence to the Tribunal dated 2 December 2009, expressed their concern that suggested alternative locations of the proposed carport at the rear of the property presented an increased risk to personal safety particularly outside daylight hours.
14. Council's direction to refuse the application is based on its assessment and opinion that there is an ample 4.2m wide driveway to the rear of the property, where a carport can be erected in a position that would comply with the requirements of the QDC.
15. Brisbane City Council's direction to refuse the application is based on alleged non-compliance with QDC MP1.1 and MP1.2 (performance criteria P1, P2, P3 and P6).
16. The applicants advised that they have considered the alternative location suggested by Council but have rejected it on the grounds that a carport in this location would restrict access to the rear of the subject site.

Based on assessment of these facts, it is the Tribunal's decision to set aside the decision notice being appealed against and direct the assessment manager to reassess the building development application subject to compliance with the following conditions:-

1. The carport is to be located in a position observing a clearance of not less than two (2) metre from the outermost projection of the carport to the front property alignment of the subject site to allow for suitable landscaping to soften the appearance of the proposed carport when viewed from the road

2. The carport roof has colours to match the existing dwelling.
3. The carport is to remain open at all times – no roll-a-door or similar door/gate is to be installed.
4. All other relevant regulatory provisions applicable to the application for development approval for building work

Reasons for the Decision

1. The proposal will have minimal visual impact on neighbours. The neighbours who would potentially be most affected have given their consent to the proposal. The visual impact will be reduced by the increased setback of two (2) metres from the front property alignment and the provision of suitable landscaping in this location to soften the appearance of the carport when viewed from the road.
2. The design, proposed finish and colour scheme of the carport is to match the existing dwelling.
3. Alternative locations for the carport within the subject property do not appear to be suitable for the effective use of the property.
4. The proposed location of the carport represents a significantly reduced personal safety risk for dwelling occupants than alternative locations at the rear of the subject property.

Stan Spyrou
Building and Development Tribunal Chair
Date: 25 March 2010

Appeal Rights

Section 4.1.37 of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248