



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	20 - 12
Applicant:	Stuart & Maree Lloyd
Assessment Manager:	QPDB Pty Ltd
Concurrence Agency: (if applicable)	Toowoomba Regional Council
Site Address:	4 Nugent Crescent, Wilsonton, Toowoomba and described as Lot 31 on RP144917 the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by QPDB Pty Ltd to refuse a development application for alterations/additions (carport and dwelling extensions) on the subject site for any building works within a 6.0 metre setback from the road property boundary. The refusal was based on advice from Toowoomba Regional Council (Council) as the concurrence agency as Council reasonably believes that the development does not comply with provisions of MP1.2 of the Queensland Development Code (QDC).

Date of hearing:	10:30am – Thursday 26 July 2012
Place of hearing:	The subject site – 4 Nugent Crescent, Wilsonton, Toowoomba
Committee:	Mr Bryan Payne – Chair
Present:	Mr Stuart Lloyd and Mrs Maree Lloyd - Applicant Ms Vanessa McIntosh - Toowoomba Regional Council representative Mr Tony Hooiveld – Toowoomba Regional Council observer Mr Mark McKechnie – QPDB Pty Ltd representative Mr Grant Forde – QPDB Pty Ltd observer Mr Brian Hare – Observer (neighbour)

Decision:

It was agreed during the hearing by both parties that the appeal discussion would be only about the location of the carport. In relation to the patio, both parties have negotiated and agreed to the following:-

- the location of the proposed patio at a building road boundary setback to match that of the existing dwelling;
- this alignment was found to be approximately 5.6 metres to the outermost projection and 6.2 metres to the building wall and Council had no issue with this location;
- the vertical dimensions of the proposed patio to approximate those of the existing dwelling;
- this height was found to be approximately 2.4 metres off ground level to the underside of the eave at the front wall and 2.15 metres at its outermost point and Council and the Applicant had no issue with this approximate alignment; and
- inspections for the proposed patio construction would be undertaken by the Assessment Manager.

After taking into account the above agreement, the Committee, in accordance with Section 564 of the SPA, **changes** the decision of the Toowoomba Regional Council (Concurrence Agency) and **approves** the application for a carport subject to the following conditions:-

The carport:

- has a 2.6 metre minimum setback from the Nugent Crescent property boundary to the outermost projection;
- uses the existing vehicle crossover;
- has a nominal 2100mm clearance doorway to Nugent Crescent with a slimline roller security grille/shutter fitted;
- has a maximum 2700mm clearance roof height above the existing driveway at the outermost projection;
- has a roof profile facing Nugent Crescent with slim proportions as outlined in proprietary documents submitted with the original application for building approval;
- remains sufficiently open on the front and both side elevations to continue to be classified as an “open carport” as defined in the QDC;
- has a non-intrusive colour scheme;
- has roof stormwater runoff discharged to the street in accordance with Council standards or as otherwise approved by Council; and
- complies with all aspects of the Building Code of Australia (BCA) for a Class 10a building.

Background

The site is a rectangular shaped allotment of area approximately 750m² with the frontage to Nugent Crescent.

The site has a public access walkway immediately to the south, which leads from Nugent Crescent to an adjacent open park space and sporting ovals in McGregor Street.

The site is developed with a single storey Class 1a dwelling including an existing double garage and a patio connected to the rear of the dwelling. There is a small shed located at the rear of the allotment at its north-east corner.

The existing driveway is aligned to the existing garage location and is therefore offset, with approximately 3 metres clearance, to the southern boundary. Between the driveway and the southern fence is an existing bushy tree near the road alignment and a sewer manhole just to its east.

The adjoining properties are developed with single storey Class 1a dwellings with approximately 6.0 metre street setbacks.

Site dimensions supplied were a little lacking in clarity, however the exact location of the proposed construction was identified on site with the Applicant.

Although the carport is proposed as a lockable structure, both Council’s representative and the Assessment Manager concurred that the building would be considered an “open carport” as defined in the QDC.

It is understood the proposal would not result in the limit for site coverage being exceeded.

The siting variation for the proposed carport and patio was lodged with the Toowoomba Regional Council (Council) as concurrence agency. Council refused the application on 26 March 2012 as Council reasonably believes that the development does not comply with the provisions of MP1.2 of the QDC.

Following Council’s refusal, QPDB approved the Development Application in part with conditions for the portion of work within a 6.0 metre road boundary setback in their Decision Notice dated 18 May 2012.

An appeal was lodged by QPDB Pty Ltd, on behalf of the owner, with the Building and Development Committee Registry on 22 May 2012.

The Registrar advised Council and QPDB on 29 May 2012 that an appeal had been lodged in relation to the refusal and subsequently advised all parties of the date, time and place for the hearing.

Material Considered

The material considered in arriving at this decision comprises:-

1. Form 10 – Notice of Appeal, drawings, extracts and correspondence (including Council's refusal) accompanying the appeal, lodged with the Registrar on 22 May 2012.
2. Verbal submissions from the Applicant at the hearing.
3. Verbal submissions from the Council representative at the hearing.
4. Verbal submissions from the Assessment Manager at the hearing.
5. Photographs taken by the Applicant and forwarded to the Registry.
6. Correspondence from the nearest neighbour to the proposed works (6 Nugent Crescent – immediately to the south across the public walkway), advising no objection to the proposal..
7. Evidence provided on approved carports for lots in the general neighbourhood and those with unknown approval status.
8. QDC MP1.2 Design and Siting Standard for Single Detached Housing - on Lots 450m² and over.
9. *Building Act 1975* (BA).
10. Building Regulation 2006 (BR).
11. *Sustainable Planning Act 2009* (SPA).
12. Building Code of Australia (BCA).

Findings of Fact

The Committee makes the following findings of fact:-

- The site is a rectangular shaped allotment of area approximately 750m² with frontage to Nugent Crescent, located in Wilsonton, Toowoomba.
- The front portion of the allotment falls to the east, away from Nugent Crescent.
- The site is developed with a single storey Class 1a dwelling including an existing double garage and a patio connected to the rear of the dwelling. There is a small shed located at the rear of the allotment at its north-east corner and a rotary hoist in the centre of the back yard.
- The immediately adjoining properties are developed with single storey Class 1a dwellings with approximately 6.0 metre street setbacks.
- There are a large number of "open carports" within close proximity of the subject site. However, in most instances options for vehicular access to the rear of these allotments are limited.
- The neighbour immediately to the south across the public walkway has supplied a letter stating no objection to the proposed carport location and reaffirmed this view in person at the hearing. It is understood that the applicants have also received a similar letter from the neighbour immediately to the north.
- The rear of the site has been previously accessed by vehicles.
- The Applicant conducts a painting business and has regular need for a vehicle to carry trestles and the like when travelling to and from home. This vehicle is currently a larger utility-type vehicle, understood to be more suited to the purpose than the Applicant's previous vehicles.
- The Applicant has an additional personal vehicle.
- There is an additional family member living on the premises who also wishes to have close secured vehicle parking on the property and is currently using the existing garage for this purpose.
- The Applicant has a need for secure parking due to the high volume of pedestrian traffic along the walkway.

Reasons for the Decision

A. Alternative siting location

Part MP 1.2 of the QDC establishes the design and siting standards for single detached housing on lots 450m² and over. The Purpose of MP 1.2 of the Code is defined in the Code as follows:-

“To provide good residential design that promotes the efficient use of a lot, an acceptable amenity to residents and to facilitate off-street parking”.

The Committee believes it is necessary to define the meaning of the word “**efficient**” in the context of this stated purpose. After analysing a number of definitions in various dictionaries, it is believed “efficient” can be defined as per to mean:-

“Functioning in the best possible manner, well planned and achieves the intended purpose by utilising the available space in a cost effective manner, which achieves the best results for the applicant and immediate neighbours in the most effective way i.e. as functional as possible.”

The Committee agrees that access to the rear of the allotment is available along the southern boundary and that the carport could realistically be located at the rear of the property.

A number of options appear available, including:-

1. Position the carport in the south-east corner.
2. Position the carport in the north-east corner, immediately in front of the existing shed.
3. A tandem carport between the existing house and the southern boundary.

The Committee is of the opinion options (1) and (2) would require most of the limited available area of the existing back yard and southern side setback to be used as driveway, vehicle manoeuvring area and carport. In addition, there is so little room available in the back yard for vehicle manoeuvring, drivers would probably be required to reverse all the way through to Nugent Crescent, including negotiating a tight “S” bend at the south-western corner of the house to access the existing driveway. Realigning the driveway would require removal of the existing tree, construction around the existing sewer manhole and over the sewer main.

While it may be possible to locate at least one vehicle under cover at the southern end of the house, there are similar issues with access and the vehicle parked in this location would regularly block access to the rear for any other vehicle.

In the opinion of the Committee, these options would not be effective – i.e. not an effective use of available space as required by the “Purpose” of MP 1.2.

B. Assessment under Part MP 1.2 of the QDC.

Council has directed the application be refused on the basis that it was considered that the proposal is not in accordance with the Acceptable Solutions for the Performance Criteria of Part MP1.2.

The Committee’s assessment of compliance with the Performance Criteria P1 (a), (b), (c), (d) is as follows:

P1 Acceptable streetscape

(a) The bulk of the building

The Committee believes the proposal for an open carport with 2.6 metre setback from Nugent Crescent will not unduly dominate the streetscape. This assessment takes into account the surrounding vegetation and the orientation of the adjoining roadway in a “U” shape, such that it would be difficult to obtain a clear view of the proposed structure from anywhere other than the immediate adjacent section of street.

If the proposal were not approved, it is likely the Applicant's larger work vehicle would continue to be parked in the same location as the proposed structure, which has been sized to suit this vehicle.

(b) The road boundary setback of neighbouring buildings

The buildings on immediate adjoining neighbouring allotments have 6.0 metre setbacks, however the predominance of open carports within this setback in the general neighbourhood means that the proposed construction would not look out of place, even if these carports have been approved in position due to dwellings being constructed with no allowance for vehicle access to the rear.

(c) The outlook and views of neighbouring residents

Neighbouring residents to the north and south have expressed their opinion that the proposal would not unduly effect their outlook and views, with one neighbour attending the hearing in support of the Applicant.

Due to the alignment of Nugent Crescent, there are only two (2) neighbours on the opposite side of the street to the subject site. Both of these dwellings have their frontage at 90 degrees away from the site and both have high timber paling fences along the street boundary, obscuring any potential view of the proposed structure. The dwelling to the north also has substantial vegetation obscuring this view.

(d) Nuisance and safety to the public

There appears to be no concerns regarding nuisance and safety to the public. The proposal would in fact result in safer vehicle parking for the Applicant than the current situation where the work vehicle has to be left unsecured at the front of the premises alongside the public walkway which is accessible at all hours.

Sight lines for traffic visibility for neighbouring residents and the motoring public are unaffected by the proposal.

Conclusion

Therefore the Committee is of the view that the conditions in the decision ensure the finished construction satisfies the Purpose and Performance Criteria of MP 1.2 of the QDC.

These conditions take into account the design of the existing dwelling, clearances required for manoeuvring of vehicles, amenity of the streetscape in the vicinity and the aesthetics of the finished overall construction.

The proposed development is required to satisfy all other requirements required by Queensland Building Law.

The Committee wishes to congratulate all parties for the positive and co-operative manner in which they approached the hearing process and conducted themselves during the hearing.

Bryan Payne
Building and Development Dispute Resolution Committee Chair
Date: 27 August 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
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