



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number:	3—09—026
Applicant:	Rod Grieve
Assessment Manager:	Mark McKechnie for and on behalf of QPDB Pty Ltd
Concurrence Agency: (if applicable)	Toowoomba Regional Council 'Council'
Site Address:	10-12 South Street, Toowoomba and described as Lot 10-11 on RP99171 — the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse in part a Development Application about design and siting requirements of building work. The building work is for a proposed carport approximately 2.4m – 3.5m in height and sited 3.25m from the road boundary. The proposed building work does not comply with the Acceptable Solution of the Queensland Development Code (QDC) MP1.2 Part A1 (a) (i) and was assessed under Performance Criteria P1 of the QDC MP1.2.

Date of hearing:	9:00am — Monday, 6 April 2009
Place of hearing:	Toowoomba City Hall
Tribunal:	David Kay — Chair
Present:	Rod Grieve — Applicant / Builder Mark McKechnie — Assessment Manager Grant Ford — QPDB Pty Ltd Representative Robert Orr — Council Representative Sonny Liyou — Observer (cadet building certifier)

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (c) of the IPA, **sets aside** the decision of the Assessment Manager dated 26 February 2009, 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 having a minimum road setback of 4.25m and being reduced in length from 7.0m to 6.0m.

2. The elevations otherwise being generally in accordance with the details shown on floor and site plan QPDB Pty Ltd Approval No. 0900006 page 14 of 15.
3. All other relevant building assessment provisions applicable to the Building Development Application.

Background

Applicant's submission to the Tribunal

The Applicant submitted reasons in the documents lodged with the appeal application which included:-

- The proposed carport will be obscured by landscaping and a large tree when viewed from the west and a 2.0m high block wall fence when viewed from the east. The bulk of the proposed open carport is minimal when compared to the bulk of the existing dwelling and facilitates an acceptable streetscape.
- The carport is consistent with the existing streetscape with a carport to the east having a reduced setback.
- The proposed carport will not obstruct the outlook and views of the surrounding properties and adjacent property owners have signed a letter agreeing to the proposed carport location.
- The proposed carport will not cause a nuisance or be of a safety concern to the public.

Council's submission to the Tribunal

The Council's representative submitted reasons for the refusal which included:-

- The existing allotment is not constrained in and there are alternative areas on the site that can be used for a carport. This also means that the QDC MP1.2 Part A1(c) giving a concession for an open carport does not apply and there is an obligation to design to comply with the QDC MP1.2.
- The QDC MP1.2 road boundary setback acceptable solution for a carport for this site is 6.0m.
- The Toowoomba Regional Council being known as the "Garden City" and this is referenced in the planning scheme. This means that Council is particularly sensitive about the visual appearance from the street and does not support setbacks less than 6.0m.
- The existing carport on the adjoining lot to the west is setback 6.0m.
- The existing carport on the lot to the east with a setback of 1.5m was approved by a building certifier using QDC MP1.2 Part A1(c) as tanks obstructed access to the remainder of the site. These tanks were erected after show cause and enforcement notices were issued for this carport due to non compliance with the QDC MP 1.2 siting requirements.

Material Considered

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal' lodged with the Registrar on 26 March 2009;
- Material submitted by the Applicant accompanying the Notice of Appeal;
- Decision Notice from the Assessment Manager dated 26 February 2009;
- Concurrence Agency Response from Council, dated 28 January 2009, on siting matters under QDC MP1.2.
- 'Form 8 – Notice of Election' received from Council 2 April 2009;
- Verbal submissions from the Applicant at the hearing;
- Verbal submission from the Assessment Manager at the hearing;
- Verbal submissions from the Council Representative at the hearing;
- The IPA;
- The Integrated Planning Regulation 1998;
- The *Building Act 1975* (BA);
- The Building Regulation 2006 (BR);
- The QDC MP1.2 – Design and Siting Standard for Single Detached Housing – on lots 450m² and over; and
- Neighbouring owners agreement and nearby residents letter advising they have no objection.

Findings of Fact

The Tribunal makes the following findings of fact:

- An application for a concurrence agency response was made to Council by the Assessment Manager.
- The Council directed the Assessment Manager to refuse the application for the garage road front boundary clearance.
- The Assessment Manager issued a Decision Notice to the Applicant, dated 26 February 2009.
- The appeal to a Building and Development Tribunal was lodged within the required time.
- The Tribunal has jurisdiction to hear and decide the appeal.
- This appeal relates only to the road front boundary clearance for the carport.
- The road front boundary setback of the carport proposed for this subject site does not comply with the QDC MP1.2 Acceptable Solution Part A1 (a) which requires a 6.0m road front boundary clearance.
- The Performance Criteria P1 of the QDC MP1.2 contains the performance requirements for the assessment of the application.

Reasons for the Decision

The relevant siting requirements are set out in QDC MP1.2. These are building assessment provisions for the purposes of section 30 of the BA.

The proposed carport does not comply with the QDC MP1.2 Acceptable Solution A1 (a) requiring a 6.0m setback from the road front boundary.

The carport located on 8 South Street appears to have been incorrectly assessed by a building certifier as there is alternative car parking available on this site comprising a 3 bay garage facing Rowbotham Street. This should not be considered in any of the reasons used in making this decision.

QDC MP1.2 Acceptable Solution A1 (a) (ii) is not applicable to the subject site as it specifically refers to the setbacks of adjacent dwellings and does not make reference to garages, carports or structures. Therefore, in considering the adjacent setbacks, only the dwelling setbacks should be considered and both of these are at least 6.0m.

The related relevant Performance Criterion of QDC MP1.2 is as follows:-

- “P1 – The location of a building facilitates an acceptable streetscape appropriate for -*
- a) the bulk of the building or structure; and*
 - b) the road boundary setbacks of neighbouring buildings or structures; and*
 - c) the outlook and views of neighbouring residents; and*
 - d) nuisance and safety to the public.”*

Bulk of the building or structure

The proposed carport is between 2.4m to 3.6m in height. When considering the fall of the land the height of the top of the roof of the carport will be approximately 3.0m above the road front boundary level. There is an existing 2.0m high block fence along the front boundary and also returning on the eastern side of the driveway to the dwelling. By limiting the length of the carport, to approximately 6.0m and requiring a setback of 4.25m, it is the Tribunal opinion that the location of a building facilitates an acceptable streetscape appropriate for the bulk of the building.

Building character and appearance

The proposed carport has the appearance of a single storey building and does not extend beyond the alignment of the current building. The character of existing dwellings in the street is a mix of highset two storey and lowset single storey dwellings. The proposed carport and other work shown on the plans is consistent with the character and appearance of the area.

Road boundary setbacks of neighbouring buildings or structure

The building setbacks along the street are generally 6.0m and consideration of this matter in isolation would not support a reduction of the front boundary setback.

Outlook and views of neighbouring residents

The adjacent dwelling to the east is a highset dwelling elevated above the subject site and is well removed from the common side boundary. The adjacent dwelling to the west is a lowset dwelling but is screened from this property by trees and bushes and is well removed from the proposed carport location. It is the opinion of the Tribunal that the outlook and views of the adjacent residents would not be adversely affected. Letters of no objection have been provided.

The view from neighbouring residents opposite the subject site is currently a highset building. In consideration of the streetscape the matter raised by Council warrant consideration in preserving the intent of the character of the "Garden City". This represents another reason to limit any intrusion into the 6.0m road boundary setback and further adds to support a setback of more than the 3.25m proposed. The proposed building work will present a similar outlook from the neighbouring premises opposite. The portion of the proposed building work within the 6.0m front boundary setback is lowset. It is the opinion of the Tribunal that the location of a building with a 4.25m setback facilitates an acceptable streetscape appropriate for the outlook and views of neighbouring residents.

Nuisance and safety to the public

The use of the subject site for vehicle access and visibility will not be affected with the proposed carport location. The existing 2.0m high front boundary fence would be the significant feature that would affect safety to the public from vehicles exiting the subject site. This fence is allowed under the QDC MP1.2. It is the opinion of the Tribunal that the location of a building with a 4.25m setback facilitates an acceptable streetscape appropriate in that it does not create a nuisance and does not adversely affect the safety of the public.

It is the Tribunal's opinion that the proposed carport with a road front boundary setback of 4.25m satisfies the relevant Performance Criteria P1 of the QDC MP1.2 when considering all of the matters requiring consideration in combination.

David Kay
Building and Development Tribunal Chair
Date: 21 April 2009

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:

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