



## Building and Development Dispute Resolution Committees—Decision

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### ***Sustainable Planning Act 2009***

<b>Appeal Number:</b>	<b>88 - 11</b>
<b>Applicant:</b>	Anthony Scott Griffiths
<b>Assessment Manager:</b>	Complete Residential Building Approvals
<b>Concurrence Agency:</b>	Toowoomba Regional Council (Council)
<b>Site Address:</b>	30 Friend Street, Harristown and described as Lot 28 on RP154199 (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 Complete Residential Building Approvals as the Assessment Manager to refuse a Development Application for alterations/additions (carport, garage and internal alterations) on the subject site. The refusal was based on advice from Council as the Concurrence Agency.

<b>Date of hearing:</b>	10:00am – Thursday 12 January 2012
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Mr Leo Blumkie - Chairperson Mr Bryan Payne – General Referee
<b>Present:</b>	Mr Anthony Griffiths and Mrs Wendy Griffiths - Applicant Ms Vanessa McIntosh - Council representative Ms Gabriel Woldp – Council observer Mr Ian Bielby – Complete Residential Building Approvals Mr Albert Dean – Observer

### **Decision:**

It was agreed at the beginning of the hearing by both the Council representative and Applicant that the appeal was now only about the location of the carport as the Applicant had agreed to:-

- locate the proposed garage a minimum distance of 1.5 metres from the Western boundary which the Council had no issues with this location.
- internal alterations would be assessed by the Assessment Manager.

After taking into account the above agreement the Building and Development Dispute Resolution Committee (Committee), in accordance with Section 564 of the SPA **changes** the decision of Council and directs the Assessment Manager to approve the application for a carport subject to the following conditions:-

- The carport has maximum dimensions of 6 metres wide and 6 metres deep and has a 650 mm setback from Friend Street to the outermost projection;
- Has 600 mm overhang to the east and west elevations;
- Has rendered brick piers approximately 1 metre high to the street elevation;
- Has 2100 mm clearance from floor to underside of roof frame;
- Has a hip roof facing the street boundary;
- Has ridge height no higher than the mid rail to the glazing above;
- Has a ridge line centred on the veranda post above;
- Has a roof pitch (about 17.5 degrees) to achieve the 2100 mm clearance and a ridge height described above;
- Remains 100% open on the front and both side elevations;
- Has roof water discharged to the satisfaction of Council;
- Has a new crossover constructed to Council standards and conditions;
- Has a non intrusive colour scheme; and
- Complies in all other respects with the Building Code of Australia (BCA) for a Class 10a Building.

## **Background**

The site is a 757 square metre rectangular shaped allotment with a 20.1 metre frontage to Friend Street, located in Harristown, Toowoomba.

The site is developed with a two storey Class 1a dwelling, a double carport (entertainment area) attached to the rear of the dwelling and a garage connected to the rear of the carport.

The site has an approximate 1.50 metre fall from the street boundary to the rear boundary.

It was noted a large gum tree and fire hydrant are located on the footpath to the eastern side of the property. The hydrant is located approximately 2.1 metres from the eastern boundary with the tree a further 2.2 metres west. One or both of these would require removal / relocation, presenting significant difficulties for construction of a driveway on the eastern side of the property.

The adjoining eastern property is developed with a single storey class 1a dwelling and has a 6 metre street setback and built approximately 900 mm from the subject property boundary to the wall line (i.e.) about 300mm to the outermost projection. The portion adjacent to the boundary appears to contain two (2) bedrooms.

The adjoining western property is developed with a single storey class 1 dwelling with a 6 metre street setback and 1.5 metre setback from the subject property boundary.

An application was lodged with Council on 31 August 2011 for a siting relaxation for a proposed shed and carport.

Council refused the application on 2 September 2011 and advised the Assessment Manager of the reasons for the refusal which were:

1. *The proposal is not in accordance with the acceptable solutions of the performance criteria of Part 1 of MP 1.2 of the Queensland Development Code (QDC).*
2. *Alternative siting is available on the property for the proposed shed to comply with Part 1.2*

*of the QDC.*

3. *Alternative siting is available on the property for the proposed carport to comply with Part 1.2 of the QDC.*
4. *The location of the proposed carport on a building line of 0.0 metres from the Friend Street property boundary will obstruct the outlook and views of the neighbouring residents.*
5. *The carport structure is seen as bulky and intrusive to the adjoining neighbours and streetscape.*
6. *The bulk of the carport will create a high visual to the streetscape.*
7. *The location of the proposed shed on a building line of 0.2 metres from the western boundary does not facilitate normal building maintenance.*
8. *The location of the proposed shed will create on a building line of 0.2 metres from the western property boundary will compromise the reasonable visual amenity expectations of the adjoining residents.*
9. *The combined proposed length along the western boundary of the existing structure and the proposed shed is seen as unsympathetic and will impact on expected amenity and privacy of residents on adjoining lots.*
10. *The location of the proposed shed on a building line of 0.2 metres.*
11. *The proposed road boundary setbacks are inconsistent with neighbouring buildings and structures.*
12. *There are insufficient grounds to justify approval of the proposed locations of the carport within the road boundary setback and the shed 0.2 metres from the western property boundary.*

Following Council's advice, the Assessment Manager refused the Development Application in their Decision Notice to the Applicant dated 3 October 2011.

An appeal was lodged by the Applicant with the Committee Registrar on 1 November 2011.

## **Material Considered**

The material considered in arriving at this decision comprises:-

1. Form 10 – Notice of Appeal, drawings, extracts and correspondence (Council's refusal) accompanying the appeal lodged with the Registrar on 1 November 2011.
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 Committee Member (Mr Payne) and emailed to the Registry.
6. Correspondence from the neighbour situated at 32 Friend Street advising they have no objection to the proposal.
7. Evidence provided by Council on relaxations granted for lots identified by the Committee and Applicant in the neighbourhood.
8. Queensland Development Code (QDC) MP 1.2 Design and Siting Standard for single detached housing - on lots 450m<sup>2</sup> and over.
9. *Building Act 1975*. (BA)
10. *Building Regulation 2006* (BR).
11. SPA.
12. Building Code of Australia BCA.

## Findings of Fact

The Committee makes the following findings of fact:-

- The allotment is approximately 757 square metres in area.
- The allotment is a rectangular shaped block with a 20.1 metre frontage to Friend Street and is located at Harristown, Toowoomba.
- The site is developed with a two storey class 1a dwelling, carport (covered area) and a garage to the rear of the dwelling.
- The site has approximately 1.50 metre fall from the Friend Street frontage to the rear.
- Both neighbouring allotments have a 6000 mm setback from the Street frontage to the Outermost Projection (OMP).
- The eastern property development for reasons unknown to Council has a reduced side boundary setback (300 mm to OMP / 900 to wall line) to the boundary of the subject property.
- The neighbour situated at 32 Friend Street has provided written correspondence advising they have no objection to the proposal.
- Council granted a relaxation to the front boundary for a double carport at 34 Friend Street for a reduced setback. In this instance Council advised there was no alternative location for a double carport.
- Council granted a relaxation for a double carport at 29 Friend Street with a reduced setback. In this instance Council advised there was no alternative location for a double carport.
- Council granted a relaxation for a double carport at 6A Mackenzie Street, Toowoomba with reduced setback. In this instance the site had an alternative location however, the slope of the access to the alternate location was considered to be beyond reasonable.
- Council stated at the hearing had there been no alternate location for the carport they would be prepared to grant a relaxation to allow a 650 mm setback to the Friend Street boundary provided the carport had a hip roof facing the Friend Street frontage and a 2100 mm clearance from slab to underside of roof frame.
- The Applicant currently has at least 2 vehicles, boat, work trailer, camping trailer all of which he would like to store under cover. The Applicant also has a small refuse trailer currently stored in the open area along the eastern boundary at the rear of the site.
- The Applicant has a family member with a disability living on the premises who needs direct disability access to the downstairs living area. It is also desirable that visiting friends of this family member who themselves have disabilities have close, covered vehicle parking at the front of the property.

## Reasons for the Decision

(A) Alternative siting location

QDC MP 1.2 establishes amongst other things the design and siting standards for single detached housing on lots 450m<sup>2</sup> and over.

The Purpose of QDC MP 1.2 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**”. After analysing a number of definitions in various dictionaries “efficient” can be defined to mean:-

*“Functioning in the best possible manner, well planned and achieves the intended purpose by utilizing 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 with Council that the carport could be located at the rear of the property using one of the following options:-

- A Position the carport in the South/East corner.
- B Move the shed to the South/East corner and position the carport immediately behind the existing covered area i.e. in the position of the existing shed.
- C A tandem carport between the existing house and the Western boundary.

The Committee is of the opinion that options A and B would require most of the backyard and eastern side setback being used as a driveway. These options would not be cost effective nor an effective use of available space as stated within the purpose of QDC MP 1.2.

It is also not desirable to use the space on the eastern side as a driveway because of the existing setback (900 mm) of the neighbour. This could create a vehicle noise nuisance to the neighbour’s bedrooms and not satisfy the Performance Criteria P1 (d) of QDC MP 1.2 . Also the large gum tree and fire hydrant would interfere with a new driveway.

Option C would in the opinion of the Committee, not allow the movement of vehicles, trailers, boats, etc in an efficient effective manner.

(B) Assessment under QDC MP 1.2

The Council has refused the application as they believe the proposal is not in accordance with the acceptable solutions of Performance Criteria of Part 1 of QDC MP 1.2.

### *P1 Buildings and Structures*

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

The Committee agrees the proposal with a gable roof and zero setback from Friend Street tends to unduly dominate the streetscape.

Other options are available which satisfy the Applicant and Council where the carport could have a hip roof and be setback 650 mm from Friend Street and achieve the required parking space.

It was the opinion of the Committee that this change would minimise impact on the streetscape to Friend Street. The Council representative also agreed.

(b) *The road boundary setback of neighbouring buildings or structures.*

The immediate adjoining neighbours have 6 metre setbacks, however the second property located at 34 Friend Street has been granted a relaxation (zero setback) for a double gable roofed carport by Council. The modified proposal as described under Performance Criteria P1(a) of QDC MP 1.2 would therefore not be inappropriate after taking into account the setbacks of 34 Friend street and also 29 Friend Street.

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

Council agreed that the modified proposal did not unduly affect the outlook and views of neighbouring residents.

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

Council had no concerns regarding nuisance and safety to the public. Sight lines for traffic visibility for neighbouring residents were considered acceptable. Both adjoining properties access Friend Street from the opposite side of their allotment to the allotment in question.

## **Conclusion**

The Committee after taking into account the following items believe the conditions in the decision make the modified design satisfy the Performance Criteria of QDC MP 1.2:-

- dimensions, existing development and levels of the block;
- existing streetscape of neighbouring streets;
- previous variations granted by Council for setbacks to properties in the neighbourhood.
- existing setbacks of neighbouring properties;
- submissions from Council and its hearing representative, and
- submissions from the Applicant and Assessment Manager.

These conditions take into account the design of the existing house, the clearance required for vehicles, and the aesthetics of the overall design.

The proposal is required to satisfy all other requirements within the BA, BR and BCA.

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

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**Leo Blumkie**  
**Building and Development Committee Chair**  
**Date: 7 February 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 Local Government and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**