



**Building and Development Tribunals**  
**Queensland Government**

Department of **Local Government, Planning,  
Sport and Recreation**

**APPEAL**  
*Integrated Planning Act 1997*

**File No 03-05-031**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Brisbane City Council

**Site Address:** *withheld* – “the subject site”

**Applicant:** *withheld*

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**Nature of Appeal**

Appeal under Section 21 of the *Standard Building Regulation 1993* and Sections 4.2.34 (2) (b) of the *Integrated Planning Act 1997* against the decision of Brisbane City Council NOT to vary the siting requirements for a proposed carport and triple garage to be erected on land situated at “the subject site”.

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**Date and Place of Hearing:** 10.30am. on Wednesday 15<sup>th</sup> June 2005.

**Tribunal:** Peter John Nelson

**Present:** *withheld* – Applicant  
*withheld* – Husband of applicant  
*withheld* – Architect for applicant  
Graham Nunn – Building Certifier  
Kevin McLeish – Brisbane City Council  
Greg Kranz – Brisbane City Council  
Robert Kingford – Brisbane City Council

**Decision:**

The decision of the Brisbane City Council as contained in its letter of refusal dated 6<sup>th</sup> June 2005, is **SET ASIDE**, and the following decision replaces the decision set aside :-

The position of the proposed carport as shown on the plans submitted with the appeal showing a set back of 500mm from the front boundary and a three car garage with a set back of 1.5 metres to the nearest point of the rear boundary, is **ALLOWED**, and all other Council conditions as stipulated in their letter of refusal dated 6<sup>th</sup> June 2005 are to apply.

## **Background**

The architect advised that before he began his designs he contacted Brisbane City Council to ascertain the position of Council in respect to the rear boundary of the property as it also has a street frontage – to *withheld* Street. He was told that this was a rear boundary and a setback of 1.5 metres was required under Council’s codes from both the rear boundary and the side boundary. The proposed open carport was not an issue. This claim by the architect was not disputed by the Council officers present at the Tribunal hearing, but they maintained their position that, in their opinion, the rear boundary should be treated as a street frontage.

It was on the basis of the information given by Council at the time the architect inquired, that the architect prepared the plans.

On lodging, Council took the view that Princess St. was a street boundary and that a 6 metre setback was required.

The Appellant lodged an application to Brisbane City Council for boundary relaxation in respect to this matter.

The Council decided that they would accept a reduced setback to 4.5 metres in respect to the garage, but refuse the 1.5 metre setback proposed. The Council had no issue with the siting of the carport, but as the two structures were linked to the same application the refusal covered both structures.

Council stated that the main reason for their refusal of the application was because they took the view that *withheld* Street was a street frontage under their interpretation of the Town Plan. They did not regard the rear boundary of the property as being a rear boundary under the Town Plan. On this basis they felt that the set back should be 6 metres (Street boundary set back) and not the 1.5 metres required for a rear boundary set back.

Council also raised an issue of extra noise being created as the carport roof was to become an extension of the available yard space.

## **Material Considered**

1. Appeal documentation.
2. Plans numbers 658-06, 658-04, 658-01, 658-02, 658-03, 658-07, 658-08658-09, 658-05. prepared by *withheld* - Architect, all issue 26.4.05 BA.
3. Verbal submission from Brisbane City Council officers.
4. Verbal submissions from the appellant and her representatives.
5. On site inspection.
6. Amenity of the surrounding area.
7. The Queensland Development Code.

## **Findings of Fact**

I made the following findings of fact:-

1. The property at “the subject site” has frontage to *withheld* Street and a rear access to *withheld* Street.
2. The property has a regular fall from *withheld* Street to *withheld* Street of several metres.
3. Brisbane City Council had no issue with the siting of the carport structure providing it was not enclosed and that access was in accordance with Council’s regulations and codes.
4. The Appellant’s Architect acted in good faith after seeking an opinion from Council in respect to the rear boundary setbacks. This claim by the architect was not disputed by the Council officers present.

5. The section of *withheld* Street at the rear of this and adjacent properties is for access to properties only. No residences face onto *withheld* Street in this area.
6. The footpath at the rear of the property is much wider than usual 4 metre width found in the area.
7. The property next door has an enclosed carport on the street boundary. Council indicated that they are taking action about this structure.
8. On the opposite side of *withheld* Street a dwelling is set back 1.5 metres from the boundary and a garage is also setback well within the 6 metre boundary. The property adjoining this property has a garage that is also close to the street boundary.
9. The original application was lodged with Brisbane City Council on the 17<sup>th</sup> May, 2005 as a fast track application, for a *Siting Variation (Relaxation) Application* form issued by Brisbane City Council and was assessed under *The Standard Building Regulation 1993 – section 20*. On the 12<sup>th</sup> November, 2003 the *Standard Building Regulation 1993* was amended to adopt the *Queensland Development Code*. This appeal has been re-assessed under Part 12 of the *Queensland Development Code*.

### **Reasons for the Decision**

1. The Council has no siting issues with the proposed carport structure – subject to the usual conditions of public health, drainage, access slope and privacy.
2. *withheld* Street is used as vehicle access to the properties in the immediate vicinity. No residences front to *withheld* Street in this area.
3. The design of the three car garage has an offset door to give some articulation to the front elevation of the proposed garage to *withheld* Street.
4. The roof of the garage is proposed to support lawn and create an extension of the available yard space.
5. I was informed that due to lack of garaging facilities, up to 10 cars are parked in this part of the Street overnight and on weekends.
6. Existing development in the adjoining property, and properties across the street, are all well within the 6 metre setback Council seeks to impose.
8. I drove around the immediate area to ascertain the effect these structures would have on the amenity of the area if they were erected in the positions close to the boundaries. I am of the opinion that the proposed development would not affect the amenity of the area.

In reaching this decision the Tribunal considered the performance criteria established in the *Queensland Development Code*. The opinion of the Tribunal, in satisfying the performance criteria, is documented as follows -

*P1 The location of a building or structure facilitates an acceptable streetscape appropriate for (a) the bulk of the building or structure -*

The proposed triple garage is set at street level and burrows back into the site for its length to enable the roof of the garage to be used as an extension of the available yard space. The bulk of the building is hidden within the site and in my opinion creates an acceptable streetscape within the existing neighbourhood.

*(b) The road boundary setbacks of neighbouring buildings or structures -*

The adjoining property has an enclosed carport to the *withheld* Street frontage and buildings on the opposite side of *withheld* Street are setback 1.5 metres from the Street boundary. The residences on these properties face to other streets. *withheld* Street in this section provides access only to these properties. It is noted that if this boundary were regarded as a rear boundary, then a setback of 1.5 metres is the required setback under the *Brisbane City Town Plan*.

*(c) The outlook and views of neighbouring resident -*

The proposed building does not obstruct the views of neighbouring residences.

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

The building does not create a nuisance or safety hazard. The driveway access is controlled by the conditions of Brisbane City Council to prevent a trip hazard. The Council conditions in relation to the driveways still apply to this decision.

*P2 Building and structures –*

*(a) Provide adequate daylight and ventilation to habitable rooms -*

The garage is not a habitable room.

*(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots –*

The proposed garage will have no effect on buildings on adjoining lots.

*P3 Adequate open space is provided for recreation, service facilities and landscaping.*

The proposed garage provides an increase in the useable yard area for recreational purposes. The service facilities are not altered. It is noted that the footpath to *withheld* Street is about 6 metres wide.

*P4 The height of the building is not to unduly -*

*(a) overshadow adjoining houses.*

The proposed building is set into the landscape and has no effect on adjoining premises.

*(b) Obstruct the outlook from adjoining lots.*

The proposed building has no effect on adjoining lots.

*P5 Buildings are sited and designed to provide adequate visual privacy for neighbours.*

The proposed building does not interfere with visual privacy for neighbours.

*P6 The location of the building or structure facilitates normal building maintenance.*

The proposed building does not interfere with normal building maintenance.

*P7 The size and location of structures on corner sites provide for adequate sight lines.*

The proposed building is not on a corner site.

*P8 Sufficient space for on-site car parking to satisfy the projected needs of residences and visitors, appropriate for :-*

- (a) the availability of public transport; and*
- (b) the availability of on-street car parking; and*
- (c) the desirability of on-street parking in respect to the streetscape; and*
- (d) the residents likelihood to have or need a vehicle.*

The proposed building will reduce the current problems in this section of the street in relation to car parking facilities.

In the opinion of the Tribunal, after taking into account the particular circumstances of the site, the effect on the neighbours and the neighbourhood, the siting of the three car garage 1.5 metres from the rear and side boundaries, as established under the acceptable solutions of the *Queensland Development Code*, is allowed..

Hence, the Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, changes the decision of the Brisbane City Council, dated 6<sup>th</sup> June, 2005 and grants a relaxation to allow the proposed carport and three car garage to be sited in accordance with the plans which are identified in this appeal.

All other conditions required by Brisbane City Council will still apply.

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**PETER JOHN NELSON**  
**Building and Development Tribunal**  
**Date: 24 June 2005**

## **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  
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