



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	27-16
Applicant:	Mr Raymond and Mrs Dorothy Vassallo
Assessment Manager:	Fastrack Building Certification
Concurrence Agency: (if applicable)	Moreton Bay Regional Council (Council)
Site Address:	143 Bestmann Road East, Sandstone Point described as Lot 89 on RP 863843 –the subject site

Appeal

The appeal has been lodged under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision of the Assessment Manager to refuse a Development Application (the Application) for a building approval for a carport.

Date and time of hearing:	9 September 2016 – 9:30am	
Place of hearing:	On the subject site	
Committee:	Mr Peter Rourke Ms Deanna Heinke	Chair Member
Present:	Mr and Mrs Vassallo Mr Chris Trewin Ms Melanie Marsellos Mr Alister Marr Mr Josh Legge	Applicant Council representative Council representative Assessment Manager representative Assessment Manager representative

Decision:

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager to refuse a Development Application for a class 10a building (carport), as detailed in Permit number 20160762. The Committee approves the Application subject to:

- The carport not exceeding 9 00 metres in length and not being located closer than 100 mm to the side boundary; and
- No slat screening being placed above the fence line for the full length of the carport; and
- The carport remaining open and never to be enclosed.
- Please note that this approval is to be treated as a Preliminary Approval in accordance with section 241 of the SPA and that the issue of a Development Permit is a matter for the Private Certifier following full assessment of the Application in accordance with the *Building Act 1975*.

Background

The subject site is located at 143 Bestmann Road East, Sandstone Point. The site is rectangular in shape, is 720 m² in area and rises sharply from the front boundary to the rear of the property.

The existing development on the site is a single storey dwelling house of brick construction with a concrete tiled roof. A class 10 shed is located at the rear of the property. The shed is 6.00 metres long and 4.00 metres wide. It is located 500 mm from the eastern side boundary and is approximately 6.00 metres from the end of the proposed carport.

A Development Application (Application) was submitted to the Assessment Manager for a building approval for construction of a 9.00 metre long, class 10a carport to be built 500 mm from the eastern side boundary. However, the documents submitted with the appeal application indicate the proposed carport is to be 10.00 metres long and built to within 100mm from the side boundary.

For the purposes of this appeal, it will be assumed that the proposed carport is to be 10 metres long and built within 100mm of the side boundary.

The proposed carport is to be used as a class 10a building for the housing of a boat and golf buggy. The design of the carport is open at both ends and along the long side adjacent to the side boundary. However, because the long side is within 500mm of the side boundary, it is deemed to be a closed side therefore it cannot be classified as an "open carport" because it is not open for at least one third of perimeter as required by MP1.2 of the Queensland Development Code (QDC MP1.2).

The proposed carport is also subject to the Dwelling House Code of Council's planning scheme. Table 9.3.1.4 of the planning scheme requires structures to be setback from side and rear boundaries in accordance with the requirements of QDC MP1.2.

The combined length of the carport and the existing shed would be 16.00 metres in length which means the Application could not be approved using the Acceptable Solutions of QDC MP1.2. In these circumstances, the Performance Criteria of QDC MP1.2 can be used to formulate a solution that will allow the Application to be approved otherwise than in accordance with the Acceptable Solutions of QDC MP1.2.

Performance Criteria P2 of QDC MP1.2 requires buildings and structures to be located so that they –

- provide adequate daylight and ventilation to *habitable* rooms;
- allow adequate light and ventilation to *habitable* rooms of *buildings* on adjoining *lots*; and
- do not adversely impact on the amenity and privacy of residents on adjoining *lots*.

On 12 May 2016, the Assessment Manager lodged a Concurrence agency referral application with the Council.

On 1 July 2016, Council advised the Assessment Manager that the Concurrence Application had been refused on the grounds that the carport will not satisfy Performance Criteria 2 (P2) of QDC MP 1.2 because it will not allow adequate light and ventilation to habitable rooms of buildings on adjoining lots and will adversely impact on the amenity and privacy of residents on adjoining lots. The Council did not offer any additional reasons for its decision.

In considering the Concurrence Application, Council took into account the undated written submission made by the Applicant's neighbour at 141 Bestmann Road East, who did not support the approval of the structure for similar reasons. Pursuant to section 287 (2) (b) of the *Sustainable Planning Act 2009* (SPA), Council directed the Assessment Manager to refuse the Application.

On 4 August 2016, the Assessment Manager issued a Decision Notice refusing the Application as directed by Council.

On 15 August 2016, the Applicant as the Property Owner, lodged an Application for Appeal – Form 10 with the Registrar of the Committees. A hearing was held on the subject site on Friday 9 September 2016 at 9.30am.

The neighbour's dwelling is a lowset brick building with a concrete tiled roof. Council records indicate that the building is located 1.50 metres from the boundary with the subject site measured to the outermost projection of the roof. The external wall is approximately 2.00 meters from the boundary. A timber paling fence 1.80 metre in height separates the two properties.

The overall height of the proposed carport is to be 3.00 metres above the exiting finished surface level and the roof is to have a minimal pitch (a flat roof). It is proposed that an aluminium slat privacy screen be placed horizontally along the length of the structure above the fence line.

The acceptable Solution A2 (d) of QDC MP 1.2 allows structures to be built within the prescribed boundary clearances nominated in A2 (a) and (b) of QDC MP1.2 where, among other things –

- the *height* of a part within the boundary clearance is not more than 4.5m and has a *mean height* of not more than 3.5m; and
- the total length of all *buildings* or parts, of any class, within the boundary clearance is not more than 9m along any one boundary; and
- the class 10a *buildings* or parts within the boundary clearance are located no closer than 1.5m to a required *window* in a *habitable* room of an adjoining dwelling.

It was suggested that the existing 6.00metre shed could be moved a distance away from the side boundary so that it satisfied the Acceptable Solutions of QDC MP1.2. By moving the shed and reducing the length of the proposed carport to 9.00metres, the carport would satisfy A2 (d) of QDC MP1.2 and the Assessment Manager could approve the Application.

A2 (d) of QDC MP1.2 does not place any restriction on the manner in which the structure is constructed or on the materials used. It would be allowable for a 3.50metre high brick wall, 9.00metres long to be constructed up to the side boundary.

The Applicant did not consider relocation of the existing shed a viable option. The cost of doing so would be considerable and in their opinion, would have an even greater impact on the adjoining property owners if a more significant structure was built within the limits of A2 (d) of QDC MP1.2.

Material Considered

The material considered in arriving at this decision comprises:

- Form 10 – Application for appeal/declaration (Form 10) and accompanying supporting documentation lodged with the Committees Registry on 15 August 2016.
- Form 6 – Assessment Manager's Decision Notice dated 4 August 2016 including:

- Moreton Bay Regional Council Concurrence Agency response dated 1 July 2016
- Three dimensional drawings of the proposed carport and site plan prepared by Lifestyle Patios undated and unreferenced.
- The undated written submission from the adjoining neighbour at 141 Bestmann Road East
- The Applicants submission including photographs dated 10 August 2016
- Moreton Bay Regional Council Planning Scheme
- Queensland Development Code MP1.2 – Design and Siting Standards for Single Detached Housing – on lots 450m² and over (QDC MP1.2)
- The *Building Act 1975* (BA)
- *The Sustainable Planning Act 2009* (SPA).

Findings of Fact

The Committee makes the following findings of fact:

1. Under the BA s.33(2), the relevant provisions of Council's Dwelling House Code are alternative siting standards for the side boundary clearances. These are contained in SAO3 and Table 9.3.1.4 of the Code. The Council is a Concurrence Agency for the purposes of assessing an Alternative Solution of the provisions. The alternative siting standards of the planning scheme requires structures to be setback from side and rear boundaries in accordance with the requirements of QDC MP1. 2.
2. The side and rear boundary clearance requirements for a class 10a structure are contained in Acceptable Solution A2 of QDC MP1.2. The minimum side boundary clearance required for a structure of the size of the proposed carport is 1.50metres under A2 (a) of QDCMP1.2. However, subsection A2 (d) of QDC MP1.2 allows class 10a structures to be built up to the side boundary provided -
 - the *height* of a part within the boundary clearance is not more than 4.5m and has a *mean height* of not more than 3.5m; and
 - the total length of all *buildings* or parts, of any class, within the boundary clearance is not more than 9.0m along any one boundary; and
 - the class 10a *buildings* or parts within the boundary clearance are located no closer than 1.50m to a required *window* in a *habitable* room of an adjoining dwelling.
3. The total length of all structures within the side boundary clearances, consisting of the proposed 10.00 metre carport and the existing 6.00 metre shed, will be 16 metres.
4. Because the proposed carport exceeds the limitations specified in A2 of QDC MP1.2, the Application must be assessed against the Performance Criteria of QDC MP1.2.
5. Under Section 14 of the BA, building work complies with a relevant performance requirement only if it achieves a relevant building solution for the requirement. A relevant building solution is achieved for a performance requirement only by—
 - if the code is the QDC—the relevant acceptable solution under the QDC for the performance requirement; or formulating an alternative solution that—
 - complies with the performance requirement; or
 - is shown to be at least equivalent to the relevant requirement; or

- a combination of paragraphs (i) and (ii)
6. A written submission was received by the Committee from the neighbouring property owner of 141 Bestmann Road East. The submission did not support the construction of the proposed carport on the grounds that it would block the light to the rooms opposite the carport; would restrict airflow; and that in the event of heavy rain, runoff from the carport would enter the neighbour's property. Further, the submission alleged that the house would be devalued as a result of the proposal due to the resulting darkness and lack of airflow into the rooms located opposite the carport.
7. At the appeal hearing, the issue about whether the carport would compromise the light, ventilation and airflow to the neighbouring dwelling was discussed.

Reasons for the Decision

- The proposed carport will be at least 1.50metres from habitable rooms in the adjoining dwelling.
- The total length of the proposed carport and existing shed will exceed the 9.00metres specified in A2 (d) of QDC MP1.2. However, the existing shed is located in the rear corner of the subject site and is detached from the proposed carport by a distance of approximately 6.00metres.
- Given the above, the Committee is of the view the proposed carport will not have significant impact on the light and ventilation, privacy or amenity of the neighbouring dwelling at 141 Bestmann Road East.
- The cost and difficulty associated with moving the existing shed so that the proposed carport complies with A2 of QDC MP1.2 cannot be justified. To do so would not provide an improved outcome, and may result in a building being constructed on the boundary with a greater negative impact on the neighbouring property.
- The proposed carport will be a maximum of 3.00metres high and is required to be a maximum of 9.00meters long. It will be predominantly open with a flat-pitched roof as shown on the 3 dimensional drawings included with the appeal documentation.

The Committee is of the view that the proposed carport, subject to the below conditions, will satisfy the Performance Requirements of P2 of QDC MP1.2 by providing an outcome that is at least equivalent to a structure permitted by the Acceptable Solutions of A2 (d) of MP1.2.

- The proposed carport will be a maximum of 3.00metres high and will not exceed 9 00 metres in length and will not being located closer than 100mm to the side boundary; and
- There will be no slat screening placed above the fence line for the full length of the carport; and
- The carport will remain open and is never to be enclosed.

Peter Rourke
Building and Development Committee Chair
Date: 19 September 2016

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:

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