



**APPEAL**  
*Integrated Planning Act 1997*

## BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

**Assessment Manager:** QPDB Pty Ltd  
**Concurrence Agency:** Toowoomba Regional Council  
**Site Address:** *withheld*—‘the subject site’  
**Applicant:** *withheld*

### Nature of Appeal

Appeal under Section 4.2.7(2)(b) of the *Integrated Planning Act 1997* (IPA) against the decision of QPDB Pty Ltd to approve with conditions an application for building works at ‘the subject site’.

**Date and Place of Hearing:** 11.00 am Wednesday 2 April 2008 at the Toowoomba City Hall, Ruthven Street, Toowoomba

**Tribunal:** Dr Peter Matthews      Chairperson

**Present:** Applicant  
Mr Alexander McIntyre      Greatway Patios (Builder)  
Mr Mark McKechnie      QPDB Pty Ltd (Certifier)  
Mr Grant Forde      QPDB Pty Ltd (Certifier)  
Mr Robert Orr      Toowoomba Regional Council Representative

### Decision

In accordance with Section 4.2.34 of IPA, the Tribunal **changes** the decision of QPDB Pty Ltd, dated 27 February 2008, to allow the following:-

1. A road boundary clearance to *withheld* of 200mm for an overall length of 5.7m to accommodate a roofline over the existing driveway as proposed on plans; and
2. The sides of the carport are **not** to be enclosed.

### Background

The existing single storey slab on ground house was built in the early 1990’s and at the time included a double garage as part of the house.

The current owner is planning to convert the double garage into habitable living space and erect a dutch gable double carport to the front left hand side of the property, 200mm setback from the front boundary and approximately 2.6m from the left hand side boundary.

The builder, Greatway Patios, made an application to QPDB Pty Ltd for an existing patio area to the rear of the property along with the carport mentioned herein which required a "Siting Variation" from the Toowoomba Regional Council.

Council, as a concurrence agency, refused the siting variation in its response dated 13 February 2008 and advised the reasons for the refusal as follows:-

- (a)  *Vehicular access four metres wide is available on the north eastern side of the property which negates Council's ability to grant approval for a carport within six metres of the street boundary as access and alternate siting are available on the property as an acceptable solution under the provisions of Part MP 1.2 of the Queensland Development Code; and*
- (b)  *The proposed location of the carport will:-*
- *Obstruct the outlook and views and be visually intrusive to the adjoining neighbours; and*
  - *The bulk of the structure will create a high visual impact on the streetscape.*
- (c)  *The proposed location of the structure does not meet the performance criteria P1 pf Part MP 1.2 of the Queensland Development Code.*

An appeal was lodged with the Registrar on 7 March 2008.

The Applicant identified a number of properties within the neighbourhood which had carports erected within the 6m front boundary clearance along with numerous photos and letters from adjoining neighbours.

### **Material Considered**

In coming to a decision, consideration was given to the following material:

1. 'Form 10 – Notice of Appeal' lodged with the Registrar on 7 March 2008 including grounds for appeal and correspondence accompanying the appeal.
2. Photographs of the subject property and existing neighbourhood streetscape.
3. Photographs of existing carports built within the 6m setback within the neighbourhood.
4. Verbal submissions from the applicant.
5. Verbal submissions from the council representative.
6. Written submissions from adjoining neighbours.
7. QPDB Pty Ltd Decision Notice Approval dated 27 February 2008 with Concurrence Agency Siting Variation Refusal dated 13 February 2008.
8. Greatway Patios Site plan and Stratco Outback construction details.
9. The *Building Act 1975*.
10. The *Building Regulation 2006*.
11. The Queensland Development Code Part MP 1.2.

12. The *Integrated Planning Act 1997*.

13. The Toowoomba Regional Council Planning Scheme 2003.

### **Findings of Fact**

'The subject site' is a 641m<sup>2</sup> residential block on a long street, located within a Mixed Housing Precinct as per the Toowoomba Planning Scheme 2003 and has a Council oval directly across from it.

The street also comprises mixed residential and a large Mitre 10 store approximately 500m away. 'The subject site' has an existing driveway and a fence to the western side boundary right through to the front boundary. A number of properties within the neighbourhood have carports located in close proximity to the front boundary and a number with up to 2m high fences.

The applicant is employed by *withheld* as a water tanker truck driver and was unable to attend the hearing due to work commitments. As part of his employment, but not part of his job description, he is required to bring the water tanker truck home to be housed on site for emergency purposes and is called out any time during the night. This truck is normally parked on site in the front eastern side of the property blocking access to the rear of the property.

The applicants have erected a covered patio area to the rear of the property and plan to install a pool adjacent to this area and to the rear of property in the future. The owners have four children who currently use the rear of the property for play area. There is also a garden shed erected to the north eastern rear corner of the property.

Council based its decision on there being enough area to the north eastern rear corner to erect a carport in front of the existing garden shed. The applicant also stated that if the carport was erected in this location to the rear it would negate their ability to install a pool, be too close to the existing patio area and be a risk to the safety of their children.

The immediate neighbour on the north eastern side has advised in writing that they have no objection to the proposed carport being erected to the front of the site. However, they stated that if the carport is to be erected on the north eastern side boundary of the site it will be intrusive. The western neighbour has also provided a written submission with no objection to the proposed carport to the front of the site.

### **Reasons for the Decision**

Toowoomba Regional Council in its reasons for the decision state:-

#### **Item (a & c)**

- (a) *Vehicular access four metres wide is available on the north eastern side of the property which negates Council's ability to grant approval for a carport within six metres of the street boundary as access and alternate siting are available on the property as an acceptable solution under the provisions of Part MP 1.2 of the Queensland Development Code;*
- (c) *The proposed location of the structure does not meet the performance criteria P1 of Part MP 1.2 of the Queensland Development Code.*

The **Performance Criteria** of buildings and structures under the QDC Part MP 1.2 P1 is as follows:  
“The location of a building or *structure* facilitates an acceptable streetscape, appropriate for –

- the bulk of the building or *structure*; and
- the road boundary setbacks of neighbouring buildings or *structure*; and
- the outlook and views of neighbouring residents; and
- nuisance and safety to the public.”

(QDC, Part MP 1.2-Design & Siting Standard for Single Detached Housing, P1, p6)

The Tribunal agrees it would be possible to comply with the QDC and provide a complying driveway down the side of the house and construct a carport or garage in the rear of the property, however this would mean reversing back up the driveway or creating a turn around area at the rear of the property which is not possible in this location. This would also mean almost the whole of the area to the side and rear of the house would be garage/driveway. It would be located in close proximity to the existing outdoor area and impractical to fence around to protect their children. It would also prevent the owners installing a pool in this future location – therefore not desirable or practical.

There are a number of existing carports in similar locations along the street and surrounding neighbourhood, therefore the Tribunal believes this structure facilitates an acceptable streetscape in relation to setbacks of neighbouring buildings or structures.

The Tribunal believes the proposed carport in close proximity to the front boundary is a more desirable and practical solution.

**Item (b)**

*(b) The proposed location of the carport will:-*

- a. Obstruct the outlook and views and be visually intrusive to the adjoining neighbours, and*
- b. The bulk of the structure will create a high visual impact on the streetscape.*

Both neighbours have stated in written correspondence that they do not object and believe they will not be impacted by the proposed carport being erected.

The Tribunal believes the proposed carport will **not** dominate the streetscape and will preserve the amenity of adjacent dwellings having regard to:-

- building character and appearance;
- views and vistas; and
- building massing and scale as seen from neighbouring premises.

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**Dr Peter Matthews**  
**Building and Development Tribunal Chairperson**  
**Date: 16 April 2008**

## **Appeal Rights**

Section 4.1.37. of the IPA 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  
Department of Infrastructure and Planning  
PO Box 15009  
City East QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**