



## Building and Development Dispute Resolution Committees—Decision

---

### *Sustainable Planning Act 2009*

**Appeal Number:** 09 - 2010

**Applicant:** Mr Barry Ernest MacDonald

**Assessment Manager:** Brisbane City Council (Council)

**Concurrence Agency:**  
(if applicable)

**Site Address:** 144 Kingsley Terrace, Manly and described as Lot 479 on RP33018— the subject site

---

### **Appeal**

An appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Brisbane City Council to issue an Enforcement Notice, as Council reasonably believes that a carport has been erected without an effective development permit having been obtained.

---

**Date of hearing:** 10:30am Tuesday 4 May 2010

**Place of hearing:** Offices of the Department of Infrastructure and Planning, Level 5, 63 George Street, Brisbane

**Committee:** Leo Blumkie— Chair  
Richard Prout – General Referee (Not present at the hearing)

**Present:** Mr Barry Ernest MacDonald – Applicant  
Mr Steve Adams – Council Representative  
Ms Belinda McRae – Brisbane City Council  
Mr Mervyn Collings – Brisbane City Council

---

### **Decision:**

The Committee, in accordance with section 564 (2) (b) of the *Sustainable Planning Act 2009*, **changes** the requirements of the enforcement notice dated 7 January 2010 by **deleting** under the first "TAKE NOTICE" on page 2 of the Notice the following words and requirements:-

1. *Within 30 business days apply to Council for a development approval for a carport on a small lot; and*
2. *Within 90 ninety business days have a private building certifier engaged for the purposes of certifying the carport.*

**AND replacing them with the following words and requirements:-**

" that you are required to comply with the requirements of this Enforcement Notice within the specified time periods nominated below:

1. *Within 30 business days from the date of the Decision of the Building and Development Dispute Resolution Committees "Barry Macdonald v Brisbane City Council Appeal No 09/2010 " obtain an amended development approval for building work from a licensed building certifier for the purposes of certifying the modified carport, so as to be considered a single carport as described in the above mentioned Decision and satisfy the conditions contained in the Brisbane City Council "Siting Variation" Permit No BD 07232819610 dated 27 May 2010.*
2. *Within 90 business days from the date of the above mentioned Decision complete the alteration to the carport and obtain a complying Form 21 Final Inspection Certificate from a licensed building certifier."*

## **Background**

The subject site is a rectangular shaped block, 405m<sup>2</sup> in area, has a 10.058 metre frontage to Kingsley Terrace, Manly and is described as Lot 479 on RP33018.

The site is developed with a two-storey class 1 building (detached house) and a setback of 5 metres to the Kingsley Terrace boundary. A side boundary clearance of approximately 1300mm to the left hand side and 1000mm to the right hand side. Side boundary clearances do not allow for vehicle access to the rear.

The class 1 building includes a double parking area under the front of the building.

The applicant moved into the building in 1995. Since that time his family commitments have changed and he now requires an additional covered car-parking bay.

The site is located in a Low-Medium density residential area and is subject to the provisions of the Wynnum-Manly Neighbourhood plan as defined by the City Plan 2000.

A building approval was issued on 17 November 2008 by a certifier for the construction of a single carport measuring 3metres x approximately 5metres located immediately in front of the class 1 building and with a 100mm setback to the Kingsley Terrace frontage.

In order to maintain an unobstructed driveway to the double parking bay under the class 1 building, the single carport was designed to be supported on horizontal beams spanning the driveway. A "colorbond" sheeted skillion roof matching the class 1 building was positioned on the horizontal beams to the right-hand side of the lot, whilst still maintaining the required 1000mm side boundary clearance.

The carport was constructed with a truss roof spanning the driveway and half the truss was sheeted with "colorbond" roof sheeting. This was not in accordance with the approved drawings and constituted a double carport.

Subsequent to the completion of the structure the applicant attached shade cloth to the open top side of the trusses.

Following a complaint to Council, regarding the carport, and after Council's consultation with the certifier, the certifier rescinded the Form 21 Final Inspection Certificate on 26 June 2009 with the following statement:-

"Carport not constructed in accordance with approved plan (Note: it appears shade cloth added since inspection"  
Re inspection required....."

On 5 January 2010 a Council inspection of the premises revealed that no permit had been obtained for the as

constructed carport.

On 7 January 2010 Council issued an Enforcement Notice requiring the owner to apply for a development approval for a carport and engage a certifier for the purposes of certifying the carport.

An Appeal was lodged with the Registrar on 9 February 2010.

The Registrar advised the Council on 23 April 2010 that an appeal had been lodged in relation to the Enforcement Notice.

On 23 April 2010 the Registrar advised the Applicant, Certifier and Council that a Building and Development Dispute Resolution Committee has been established.

On 23 April 2010 the Building and Development Dispute Resolution Committee Chairperson advised the Council, Certifier and Applicant of the date, time and place for the hearing.

Under "Findings of fact" it is determined that the applicant is required to obtain a relaxation of the 3metre required street setback from the local government before any approval can be given by a certifier.

Both parties agreed that:

- the hearing be adjourned to enable the applicant to make application to the local government for a relaxation of the required 3 metre street setback for a single carport.
- The applicant be given 10 business days to make application for the relaxation.

The adjournment of the hearing was confirmed to both parties by correspondence from the chair of the committee dated 6 May 2010.

The Applicant advised the Registrar that a siting variation application was lodged with Brisbane City Council on 20 May 2010.

The Council decision on the relaxation application was received by the Registrar on 27 May 2010.

The applicant confirmed verbally to the Registrar on 1 June 2010 that he had no issues with regard to the relaxation. Hence no need to reconvene the hearing.

As the decision granted a relaxation for a 100mm setback to the street boundary, the existing carport needs to be modified to comply with the original approval, i.e. a skillion roof single carport supported on horizontal beams with a 100mm minimum setback to the street boundary.

Documentation needs to be prepared showing the modifications required to the existing carport to make it, without doubt, a single carport.

### **Material Considered**

The material considered in arriving at this decision comprises:

- 'Form 10 – Notice of Appeal' and grounds for appeal, drawings, extracts and correspondence accompanying the appeal lodged with the Registrar on 9 February 2010.
- Enforcement Notice issued by the Assessment Manager dated 7 January 2010.
- Verbal submissions from the applicant at the hearing.
- Verbal submissions from the Council representatives at the hearing.
- Correspondence emailed to the Registrar on the 4 May 2010 outlining other persons who have an interest in the appeal.
- Photographs of additional carports existing within the immediately neighbourhood.

- Advice that a siting variation application was lodged with Brisbane City Council on 20 May 2010.
- Siting Variation Permit dated 27 May 2010.
- Verbal advice to the Registrar that the applicant had no issues with the Brisbane City Council permit.
- Residential Design - Small Lot Code.
- Queensland Development Code (QDC) Mandatory Part (MP) 1.1 Design and Siting for single detached housing - on lots under 450m2.
- Schedule 7 of the *Sustainable Planning Regulation 2009*.
- *Building Act 1975*.
- *Building Regulation 2006*.
- *Integrated Planning Act 1997*.
- *Sustainable Planning Act 2009*.
- Building Code of Australia.

## Findings of Fact

The Committee makes the following findings of fact:

- The site is located in a Low-Medium density residential area and is subject to the provisions of the Wynnum Manly Neighbourhood plan as defined by City Plan 2000.
- Under the Residential Design - Small Lot Code - one carport with a maximum depth of 6m and maximum width of 3m excluding eaves is permitted, however under the NOTE: 'such carports are still subject to the provisions of the building regulation'.
- A carport is assessable building work against the *Building Act 1975*.
- The Building Regulation calls up the Queensland Development Code, which includes MP 1.1 - Design and Siting for single detached Housing - on lots under 450m2.
- The subject site is 405m2 in area.
- A carport is defined in MP 1.1 as a Class 10a building, other than a garage, providing covered vehicle parking.
- Under acceptable solutions the minimum road setback for a carport is as defined in Table A1(a) of MP 1.1
- Under Table A1 the minimum frontage setback for an "Access place and Access street" is 3 metres.
- The Council representative considered Kingsley Terrace to be an "Access place and Access Street"
- Hence the proposal does not satisfy the acceptable solutions of MP 1.1.
- Schedule 7 of the Sustainable Planning Regulations states that if the QDC part 1.1 applies to the building work (which it does) and the proposal does not include an acceptable solution for a relevant performance criteria (which it does not) then the proposal needs to be referred to the local government (as a concurrence agency) to determine if the proposal complies with the performance criteria.
- The certifier had no authority to approve the carport without first obtaining the local government's approval for the siting of the carport within the required 3 metre street setback.
- The Brisbane City Council granted a variation to allow a minimum 100mm street setback on 27 May 2010.

## Reasons for the Decision

A covered roof area of 3 metres by approximately 5 metres is considered to be a single carport. It satisfies acceptable solution A8 (B) of MP 1.1 of the QDC.

Under the particular circumstances of the site and the need to maintain an unobstructed driveway to the double parking spaces under the Class 1 dwelling, it is considered reasonable to support the proposed carport on beams which span the driveway as shown in the original approval.

The changes to the proposal, during construction, namely to use a truss gable roof frame and sheet only one side could be determined under the BCA definition of a building or structure to be a 5.5metre wide structure. This would not satisfy the Small Lot Code under the City Plan nor be permitted under MP1.1 as it would exceed an elevation frontage of 5 metres which is greater than 50% of the frontage of the site.

Both parties agreed at the hearing that a "colorbond" sheeted skillion roof of dimensions 3 metres wide by approximately 5 metres deep supported on horizontal beams spanning the driveway would be considered a single carport.

As the local government granted a relaxation of the street setback on the 27 May 2010 to allow a minimum setback of 100mm the owner needs to prepare documentation to modify the structure to that which was approved under the original approval, i.e. a single carport, and obtain a new development approval.

**Leo Blumkie**  
**Chair**  
**Building and Development Committee**  
**Date: 9 June 2010**

## **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 Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**