



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-08-006**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

**Assessment Manager:** The Certification Professionals

**Concurrence Agency:** Brisbane City 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* against the decision of The Certification Professionals, based on a concurrence agency response from Brisbane City Council, pursuant to Section 9(a), Schedule 2, Table 1 of the *Integrated Planning Regulation 1998*, to refuse an application for a street alignment setback relaxation to the road frontage to the subject site, for the purposes of erecting a carport.

**Date and Place of Hearing:** 10.30 am on Thursday 28 February, 2008  
at Brisbane City Council Brisbane North Regional Office  
960 Gympie Road, Chermside.

**Tribunal:** Dennis Leadbetter                      Chairperson  
Ernie Harvey                                      General Referee

**Present:** Applicant’s representative  
Nicole Watts                                      Brisbane City Council

### **Decision**

The Tribunal **confirms** the appeal by the applicant and **sets aside** the decision of The Certification Professionals, dated 8 February 2008, to refuse the building development application and replaces it with the following decision:-

#### **The building development application is approved subject to:-**

1. The proposed class 1 with associated class 10 building, as indicated on revised drawing numbered 06472, sheet 1a, 1b, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 14 of 16, as prepared by Cyber Drafting + Design, dated 29.2.08, may be erected in the location indicated on those drawings with a minimum boundary clearance to the carport section to the road boundary of 2m, measured to the outermost projection.

2. The Appellant shall obtain all necessary approvals as appropriate before proceeding with the construction of the proposed class 1 and associated class 10 building, including but not limited to building approval.

### **Background**

The proposal was for the development on the site of a new dwelling and associated motor vehicle accommodation, which was positioned to within 300mm of the road boundary. Council refused the variation to the boundary clearance to the carport on the grounds that there were alternative positions available on site and that it would be in conflict with the streetscape.

Council's planning scheme allows for a road boundary setback of 6m.

The requirements of the Queensland Development Code (QDC) Part 12, under performance criteria P8 requires the provision of sufficient space on site for carparking to satisfy the projected needs of residents and visitors, appropriate for-

- (a) the availability of public transport; and*
- (b) the availability of on-street 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 QDC provides, as an acceptable solution, the provision of at least two vehicle parking spaces on-site, but does not place an upper limit on the amount of parking that is provided.

The QDC also provides for the reduction of the 6m minimum road setback for open carports where-

*(ii) there is no alternative on-site location for the garage or carport that*

- (A) complies with A(i)(a); and*
- (B) will allow vehicular access having a minimum width of 2.5m; and*
- (C) has a maximum gradient of 1:5.*

While there is access to the south eastern side of the house that meets the above access requirements, the appellant has specific health requirements necessitating single level access for his disabled spouse.

After considerable discussion at the hearing, and considering the material presented by the Appellant, including details of adjoining developments, the Tribunal decided to adjourn the hearing and allow the appellant to submit revised drawings to the Tribunal providing a road alignment setback of 2m measured to the outer most projection to the carport portion of the dwelling.

### **Material Considered**

1. 'Form 10 – Notice of Appeal' and grounds of appeal contained therein;
2. 'Form 18 – Notice of Election' provided to the Registrar 16 January 2008 from Brisbane City Council;

3. Drawings and photographs submitted with the appeal;
4. Letter from Brisbane City Council dated 21 January 2008, granting a siting variation of 5.74m for the dwelling, but not to grant a siting variation for the carport;
5. Verbal submissions from the owner at the hearing;
6. Verbal submissions from Brisbane City Council's representatives at the hearing;
7. The *Integrated Planning Act 1997*;
8. The *Integrated Planning Regulation 1998*;
9. The Queensland Development Code (QDC) Part 12; and
10. Revised drawings submitted by the appellant providing a road setback of 2m to the carport section of the dwelling.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

- That the site was a greenfield site, and the carport was part of a total detached dwelling development;
- The site had a slope from the road to the rear;
- There was potential to modify the proposed development to allow for a road set back to the carport section of the development, in keeping with those existing on the surrounding properties;
- That there was a significant number of similarly reduced front alignment setbacks for carports and garages located on the immediately adjoining properties, and those on the opposite side of *withheld*;
- The appellant was prepared to investigate and make suitable changes to provide a set back in keeping with those existing on adjoining properties, and Council indicated they were unaware of the existing streetscape and agreed that such a setback would not, contrary to their decision, be detrimental to the streetscape;
- There was a reasonable need to provide carparking facility on the same level as the main residence for medical grounds.

There is no further concurrence agency requirements.

### **Reason for the Decision**

Part 12 of the QDC provides **Performance Criteria** and an **Acceptable Solution**, but allows the local government to vary the application of siting requirements to take account of alternative solutions.

In assessing the criteria from this part of the Code the Tribunal considered the nature and use of the proposed structure and its siting on this allotment, and also the developments existing and possible on adjoining sites.

The development on several neighbouring sites in the same street as the subject site had carports and enclosed garages built up to the alignment or within a distance comparable to the new position submitted by the appellant on the revised drawings. The Tribunal considers the reduced road alignment setback being sought would have little additional impact on the locality, because of the structures size, the fact that it is open and the nature of surrounding properties.

The Tribunal found there were reasonable grounds to vary the street alignment setback of 6m provided in Council's planning scheme and considered that 2m from the road alignment, would be consistent with other developments in the immediate neighbourhood, and would not set a precedent nor be detrimental to the streetscape.

### **General Comments**

The Tribunal found it difficult in this instance to accept the concurrency agency response of Council that the development *would be in conflict with the existing streetscape*, as at least four immediate neighbouring properties had similar structures within the 6m road alignment setback. It would seem that Council's process of determination of applications is fundamentally flawed, as it is evident that a site inspection, or at a minimum a review of aerial photographs of the area to determine some status of current developments, is not carried out as part of the determination of applications.

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**Dennis Leadbetter**

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

**Building and Development Tribunal Chairperson**

**Date: 2 April 2008**

## **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:

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