



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	48 - 10
<b>Applicant:</b>	Rusell Allan Campbell
<b>Assessment Manager:</b>	qpdb Pty Ltd
<b>Concurrence Agency:</b> (if applicable)	Toowoomba Regional Council (Council)
<b>Site Address:</b>	14 Jakirralee Court, Middle Ridge and described as Lot 11 on RP 844590—the subject site

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the assessment manager to refuse in part a development application about design and siting requirements of building work.

The building work is for a proposed garage with a gable end approximately 2.4 – 3.6m in height and sited on the road boundary. The proposed building work does not comply with the Acceptable Solution of the Queensland Development Code (QDC) MP1.2 Part A1(a)(i) and was assessed under Performance Criteria P1 of the QDC MP1.2 .

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<b>Date of hearing:</b>	9:00 AM - Friday 30 July 2010
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	David Kay – Chair
<b>Present:</b>	Rusell Campbell – Appellant Judy Campbell – Appellant Rob Orr – Council Vanessa McIntosh – Council Mark McKechnie – qpdb Pty Ltd Grant Ford – qpdb Pty Ltd

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### Decision:

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of the assessment manager dated 21 June 2010, and replaces it with the following decision:-

The assessment manager is **directed** to amend the building development application decision notice to comply with the following conditions:-

1. The garage will have a minimum setback of 0.2m from the road front boundary.
2. The western elevation facing Jakirralee Court being altered from a gable end roof as shown on the drawings to a hip roof.
3. The garage otherwise being generally in accordance with the details shown on Draftit Drawings Numbered 1002-01/1, 02/1, 03/1 dated 7/4/2010.
4. This also includes the two rainwater tanks each 1.58m in diameter and 1.8m high located within the 6.0m front road boundary setback.
5. All other relevant building assessment provisions applicable to the Building Development Application.

## **Background**

### *Applicant's submission to the Committee*

The applicant submitted reasons in the documents lodged with the appeal which included:-

- the acceptable solutions is only one way of satisfying the siting requirements.
- there are similar garages built to the front boundary in the Toowoomba area.
- the proposed garage will be obscured by landscaping and a 1.8m high fences along both side and front boundaries, the bulk of the proposed garage is minimal and facilitates an acceptable streetscape.
- the garage would be no different in appearance to an open carport which is allowable and would be consistent with the existing streetscape with a carport.
- the proposed garage will not obstruct the outlook and views of the surrounding properties and nearby property owners have signed letters agreeing to the proposed garage location.
- the proposed garage will not cause a nuisance or be of a safety concern to the public.
- since the Council changed the use of the park area to the rear and the construction of a nearby shopping centre there has been an increase in pedestrian traffic through the adjacent park and also an increase in undesirable activities in the locality resulting in an increased need for security, hence a garage is preferred to an open carport.

### *Council's submission to the Committee*

The Council's representatives submitted reasons for the refusal which included:-

- the Toowoomba Regional Council is known as the "Garden City" and this is referenced in the planning scheme. This means that Council is particularly sensitive about the visual appearance from the street and does not support setbacks less than 6.0m.
- the QDC MP1.2 road boundary setback acceptable solution for a carport for this site is 6.0m
- the QDC MP1.2 Part A1(c) gives a concession for an open carport that applies and there is an obligation to design to comply with the QDC MP1.2. There are also roller shutters that are open in appearance that will comply and still provide security.
- in response to the applicant's submission regarding existing garages in the Toowoomba area the Council regulations allowed carports up to the front boundary without any need for a dispensation until 2003. It is thought that almost all of the enclosed garages may not be approved to be enclosed.

### *Assessment manager's submission to the Committee*

- the application was presented to the certifier to make a decision to allow an appeal to be made in relation to the concurrence agency conditions.
- the application also included two rainwater tanks and the decision should also clarify if these are to be approved for siting even though they do not require a development permit.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice ' grounds for appeal accompanying the application lodged with the Registrar on 23 June 2010;
2. Material submitted by the applicant accompanying the application;
3. Decision notice from the assessment manager dated 21 June 2010;
4. Concurrence agency response from Council dated 11 February 2010;
5. Verbal submissions from the applicant at the hearing;
6. Verbal submission from the assessment manager at the hearing;
7. Verbal submissions from the Council representative at the hearing;
8. The SPA;
9. The *Sustainable Planning Regulation 2009* (SPR);
10. The *Building Act 1975* (BA);
11. The *Building Regulation 2006* (BR);
12. The QDC MP1.2 –Design and Siting Standard for Single Detached Housing - on lots 450m2 and over (QDC MP1.2);and
13. Letters from nearby residents advising they have no objections.

## **Findings of Fact**

The Committee makes the following findings of fact:

- An application for a concurrence agency response was made to Council by the assessment manager.
- Council directed the assessment manager to refuse the application to vary the road front boundary clearance.
- The assessment manager issued a decision notice to the applicant, dated 21 June 2010.
- The appeal to a Building and Development Dispute Resolution Committee was lodged within the required time.
- The Committee has jurisdiction to hear and decide the appeal.
- This appeal relates to the road front boundary clearance for the garage and two rainwater tanks.
- The road front boundary setback of the garage proposed for this site does not comply with the QDC MP1.2 Acceptable Solution Part A1 (a) which requires a 6.0 metre road front boundary clearance.
- The Performance Criterion P1 of the QDC MP1.2 contains the performance requirements for the assessment of the application.

## **Reasons for the Decision**

The relevant siting requirements are set out in QDC MP1.2. These are building assessment provisions for the purposes of section 30 of the BA.

The proposed garage and rainwater tanks do not comply with the QDC MP1.2 Acceptable Solution A1(a)

requiring a 6.0m setback from the road front boundary and a height of less than 1.0m within the 6.0m setback for the rainwater tanks.

An open carport can be located at the front of the site complying with QDC MP1.2 Acceptable Solution A1(c) as there is no alternative on site location for a garage or carport due to the construction of a swimming pool in the front yard of the property. There is no restriction on the construction of the open carport in respect of the roof height and a gable end roof line could be constructed.

QDC MP1.2 Acceptable Solution A1 (a) (ii) is not applicable to this site as it specifically refers to the setbacks of adjacent dwellings and does not make reference to garages, carports or structures. Therefore in considering the adjacent setbacks, only the dwelling setbacks should be considered and this should be 6.0m.

The related relevant Performance Criterion of QDC MP1.2 is as follows:-

*“P1 –The location of a building facilitates an acceptable streetscape appropriate for -*  
a) *the bulk of the building or structure; and*  
b) *the road boundary setbacks of neighbouring buildings or structures; and*  
c) *the outlook and views of neighbouring residents; and*  
d) *nuisance and safety to the public.”*

#### *Bulk of the building or structure*

The proposed garage is between 2.4m to 3.6m in height. There is an existing 1.8 m high fence along the front boundary and also returning on the northern and southern side boundaries to the line of the dwelling. An open carport with a gable roof having a height of 3.6 m at the ridge could be constructed to the road front boundary. This would give the same bulk effect as the proposed garage.

By limiting the height of the proposed garage to approximately 2.4m and requiring a hip roof it is the opinion of the Committee that the location of a building facilitates an acceptable streetscape appropriate for the bulk of the building.

The height of the two rainwater tanks will be less than the allowable 2.0m fence height and this also facilitates an acceptable streetscape appropriate for the bulk of the structures.

#### *Building character and appearance*

The proposed garage has the appearance of a single storey building and would not extend beyond the alignment of any allowable carport. The character of existing dwellings in the street is predominantly lowset single storey dwellings. The proposed garage and other work shown on the plans is consistent with the character and appearance of the area.

#### *Road boundary setbacks of neighbouring buildings or structure*

The building setbacks along the street are generally 6 metres and consideration of this matter in isolation would not support a reduction of the front boundary setback.

#### *Outlook and views of neighbouring residents*

The adjacent dwelling to the north is a lowset dwelling. The adjacent property to the south is park and is screened from this property by a fence, trees and bushes. It is the opinion of the Committee that the outlook and views of the adjacent residents would not be adversely affected when compared with the construction of an allowable open carport. Letters of no objection have been provided from a number of residents in the street.

In consideration of the streetscape the matter raised by the Toowoomba Regional Council warrants

consideration in preserving the intent of the character of the “Garden City”. This represents another reason to limit any intrusion into the 6.0m road boundary setback and further adds to support the reduction of height of the garage by requiring a hip roof instead of a gable roof for an allowable open carport.

The proposed building work will present a similar outlook from the neighbouring premises opposite. The portion of the proposed building work within the 6.0 metre front boundary setback is lowset. It is the opinion of the Committee that the proposed location of the building with a hip roof facilitates an acceptable streetscape appropriate for the outlook and views of neighbouring residents.

*Nuisance and safety to the public*

The use of this site for vehicle access and visibility will not be affected with the proposed carport location.

The existing 1.8m high front boundary fence would be the significant feature that would affect safety to the public from vehicles exiting the site. This fence is allowed under the QDC MP1.2. It is the opinion of the Committee that the location of a garage or an open carport constrained by fencing on either sides along the front boundary facilitates an acceptable streetscape appropriate such that it does not create a nuisance and does not adversely affect the safety of the public.

It is the Committee’s view that the proposed garage with a hip roof having a height of approximately 2.4m and a setback of 0.2m to allow for projections such as gutters, when compared to an open carport with a gable roof varying in height from 2.4m to 3.6m satisfies the relevant Performance Criterion P1 of the QDC MP1.2 when all of the matters are considered in combination.

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**David Kay**  
**Building and Development Committee Chair**  
**Date: 18 August 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**