



## Building and Development Dispute Resolution Committees- Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	11-17
<b>Applicant:</b>	Glenn Reynolds
<b>Assessment</b>	Trevor Gerhardt
<b>Manager:</b>	Brisbane City Council (Council)
<b>Concurrence Agency:</b> (if applicable)	91 Yabba Street, Ascot, Brisbane Queensland 4007, and described as Lot3 on RP 33606 – the subject site
<b>Site Address:</b>	

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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 a Building Development Application at the direction of the Council as Concurrence Agency for matters related to the amenity and aesthetic impact of the building or structure.

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<b>Date and time of hearing:</b>	10.20 am, 19 May 2017
<b>Place of hearing:</b>	Room 1, Level 16 Mineral House, 41 George Street, Brisbane
<b>Hearing Committee:</b>	Caroline Treacy - Chair John Panaretos - Member Lauren Turner - Member James Dunstan - Member
<b>Present:</b>	Trevor Gerhardt - Assessment Manager Angus McKinnon - Observer (supporting Assessment Manager) Marcia Thompson - Brisbane City Council Callum Bennett - Brisbane City Council

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision made by Brisbane City Council, acting as concurrence agency, to direct that the Assessment Manager refuse the application.

## Background

### General

1. The appointed Assessment Manager for the project was engaged as the Private Certifier for alterations, additions and partial demolition of a Class 1(a) building.
2. The Queensland Building Construction Commission's (QBCC) licence search facility shows that Mr Gerhardt holds a Building Certifier Level 1 licence that is endorsed to issue building development approvals under the Building Act.
3. By decision of the Planning and Environment Court, *Brisbane City Council v Reynolds & Anor [2017] QPEC 12*, this appeal was remitted to the Registrar, for the Chief Executive to establish a reconstituted committee to rehear the appeal, which is limited to *'amenity and aesthetics issues, with an architect as chairperson'*. Thus the decision of the original Committee, dated 5 January 2017, was set aside.
4. The application for a Development Permit for Building Works was lodged with the Assessment Manager on 24 August 2016, and sought approval for partial demolition and alterations and additions to a Class 1(a) building. The application was referred to the Council as Concurrence Agency on or about the same date.
5. On or about 7 September 2016, the Council issued a Concurrence Agency response directing the Assessment Manager to refuse the application as the Council considered that the building work will:
  - a. *"have an extremely adverse effect on the amenity or likely amenity of the locality; or*
  - b. *be in extreme conflict with the character of the locality."*
6. Council also notified the Assessment Manager that the Applicant was required to obtain a development approval for the demolition component of the proposal.
7. On 9 September 2016, the Assessment Manager issued the Decision Notice refusing the application.
8. On 12 September 2016, the Applicant lodged a Form 10 Notice of Appeal with the Committees Registrar, against the decision of the Council.
9. In accordance with the abovementioned court order, the declarations sought by the Applicant are beyond the scope of this appeal. The issues to be considered are limited to only amenity and aesthetics.
10. On the date of the Committee's inspection of the premises, 12 May 2017, the proposed building work had been completed.

### Planning Framework

1. The applicable Planning Framework under Brisbane City Plan 2014 (City Plan) is summarised in the following:
2. The site is a standard sized Lot (i.e. not a 'Small Lot') zoned CR1 (Character Residential), in the Character Precinct of that zone and covered by the Traditional Building Character Overlay (TBCO).
3. The site is also in the Clayfield-Woolloowin District Neighbourhood Plan area, but the proposal was not considered by Council to conflict with the relevant Neighbourhood Plan Code or the Dwelling House Code (Paragraph 28 of Council's undated written submission forwarded to the Committee immediately prior to the hearing on 19 May 2017).
4. Under the Sustainable Planning Regulations 2009 (SPR), Schedule 7 Table 1 Item 17, and Table 1.7.4 of the City Plan, the application must be referred to Council as Concurrence Agency for an 'amenity and aesthetics' assessment, since the proposal fails to comply with Acceptable Outcomes of the TBC.

5. The bounds of Council's jurisdiction are established by the Regulations as follows:

*"The amenity and aesthetic impact of the building or structure if the building work is carried out"*

6. Pursuant to s32 of the Building Act, s.1.7.4 of City Plan declares "a single detached class 1(a)(i) building"... "in the Traditional Building Character Overlay"... that does not comply with the acceptable outcomes in the TBCO to have an extremely adverse effect on the amenity or likely amenity of the locality or be in extreme conflict with the character of the locality.

7. In this case, the relevant provisions of the Code are as follows:

<p><b>P02</b> Development for a garage does not dominate the street frontage or gardens and complements the traditional setting of <u>dwelling</u> houses constructed in 1946 or earlier nearby in the street.</p>	<p><b>A02.1</b> Development for a garage is set back from any road alignment in a position similar to garages located on sites of dwelling houses constructed in 1946 or earlier located nearby in the street.</p>
	<p><b>A02.2</b> Development for a garage is integrated into any <u>dwelling</u> house such that it does not dominate the composition of the house or dominate the streetscape. Refer to <u>Figure a</u>.</p> <p><small>Note – Not applicable to a dwelling house on a rear access lot.</small></p>
<p><b>P04</b> Development has a building form which complements the traditional building form and traditional elements, detailing and materials of a <u>dwelling</u> house constructed in 1946 or earlier nearby in the street.</p>	<p><b>A04.4</b> Development for a <u>dwelling</u> house does not provide for the ground storey to project forward of the upper floor verandah or balcony structure.</p>

**Elements of Building Work Subject to Appeal**

1. Despite agreement between parties that certain Building Work was Exempt Development under the City Plan, the parties remained in disagreement on the precise extent and components of Building Work considered Exempt and thus not subject to this appeal.
2. In particular, Council contends that, although raising and building under an existing house is Exempt Building Work, the exemption does not apply to works "which extend further than the core of the existing house". (Paragraph 26. of Council's undated written submission). Consequently, the portion of building work directly under the 'original' front and side verandah is within the scope of this appeal.
3. Further, Council contends that, pursuant to s.83 of the Building Act 1975 (BA), any work not Exempt Development under the City Plan, is subject to a Development Application for Preliminary Approval, which is a prerequisite to the issue of a Development Permit for Building Works by the Assessment Manager.

4. Council's verbal submissions raised, as a "secondary issue", the failure to restore the front verandah, arguing that although the alterations were probably undertaken prior to the current owner purchasing the house, the original house would have had an L-shaped verandah facing the street and side.
5. On the other hand, the Assessment Manager argues that, since the City Plan does not define the 'core of the house', and the historical enclosing of the front verandah has resulted in no verandah currently, the ground level building work directly below it, is Exempt.
6. Consequently, the Assessment Manager, on behalf of the applicant, argues that the building work in dispute, and the scope of the appeal, is limited to the double garage and the front plane of a third garage extending to the side boundary, which projects forward of the house facade.

### **Submissions Relating to Scope of Appeal**

1. The Assessment Manager submitted that s1.7.4 of the City Plan operated in such a way as to preclude assessment of the proposal against the City Plan Codes for the purposes of amenity and aesthetics assessment, due to the exclusions established by s282(3)(b) of the SPA.
2. The Council confirmed in response that their refusal was based on s282(3)(b) of the SPA and that the TBCO was referenced as part of the 'building assessment provisions', including items relating to Siting.
3. The Assessment Manager submitted and referenced examples of sites with garages and carports forward of the front setback of their respective houses in the area.
4. The Assessment Manager also referenced items 19, 20 and 21 from Schedule 7, Table 1 of the SPR additional to item 17 which relate to matters that included siting rather than amenity and aesthetics.
5. Council determined that an inappropriate building form is/was proposed in relation to the new lower level planned forward of the existing house vs other traditional character houses in the same street and cites the associated relevance as "nearby"
6. The Concurrent Agency stated their two specific non-consistencies with Codes and suitability in relation to an appropriate Amenity and Aesthetics design solution, being:
  - a) Building forward of the existing house
  - b) The dominance of garages

### **Material Considered**

The material considered in arriving at this decision comprises:

1. Grounds of Appeal letter from the Assessment Manager to the Committees Registrar dated 9 September 2016, including correspondence accompanying the appeal and Concurrence Agency advice dated 7 September 2016.
2. Planning and Environment Court order: *Brisbane City Council v Reynolds & Anor* [2017] OPEC 12.

3. Submissions from both parties including that from Council made prior to the appeal hearing on 19 May 2017 including the following extract:

*"...30. The proposed garage is considered to dominate the street frontage and garden setting of the house and is not considered to be complementary to the traditional setting of dwelling houses constructed in 1946 or earlier nearby in the street (P02 of the Traditional Building Character (Design) Overlay Code). In particular, the proposed triple garage and storage area, at approximately 10.4m in width is greater than half of the total width of the existing house on the site, which is approximately 12.8m in width, and greater than half of the total proposed width of the house (approximately 17.7m)."*

*31. The street presents as a fairly strong character streetscape with numerous nearby traditional building character houses remaining in what is considered to be a well preserved and relatively unaltered state with strong front garden settings. It is noted that there are some houses in the street which include non-original car ports or garages, however, these present as subordinate to the traditional character houses or detached buildings and do not have a substantial impact to the scale and setting of the house.*

*32. It's further considered that the garage, located forward of the core of the house, in a partial integrated format diminishes the garden setting and is not similar to the location of garages located on sites of dwelling houses constructed in or before 1946 nearby in the street.*

*33. The proposed ground level extends beyond the core the house above and results in a building form which is not considered to complement the traditional building form of dwelling houses constructed nearby in the street in or before 1946 (P04 of the Traditional Building Character (Design) Overlay Code). In particular, the house lacks an integrated or attached lightweight verandah and the ground level extends forward of the core of the existing pre-1946 house on the upper level..."*

4. Submissions made at appeal hearing on 19 May 2017.
5. The Brisbane City Plan 2014 (City Plan);
6. The Sustainable Planning Act 2009 (SPA);
7. The Sustainable Planning Regulation 2009 (SPR)
8. The Building Act 1975(BA).
9. The Building Regulation 2006 (BR)

## **Findings of Fact**

The Committee makes the following findings of fact:

1. The role of the Committee is limited to deciding whether those parts of the building work subject to appeal have:
  - a) an extremely adverse effect on the amenity, or likely amenity of the locality, or
  - b) are in extreme conflict with the character of the locality
2. SPR Schedule 7, Table 1, Item 17 invokes the jurisdiction of Council as a 'concurrence agency' for the purposes of SPA and the BA
3. Codes as referenced in Table 1.7.4 of the City Plan – Traditional Building Character (Design) Code, Dwelling House Code and the Clayfield-Woolloowin Neighbourhood Plan Code – apply to assessment of the building development application<sup>1</sup>.
4. Those parts of the building work subject to assessment under Council's referral agency jurisdiction are the three garages.
5. The enclosing of the under-croft of the original verandah is not considered to have an extremely adverse effect on the amenity of the locality, nor is it in extreme conflict with

the character of the locality. The question of whether it requires a separate development approval is not within the scope of this appeal.

6. The enclosure of the front verandah is not a matter subject to this appeal and thus beyond the scope of the Committee's deliberations.
7. The proposal does not conflict with the Acceptable Outcomes of the Dwelling House Code or the Clayfield-Woolloowin Neighbourhood Plan Code.

## **Reasons for the Decision**

1. The Application does not meet the Acceptable Outcomes of the TBC under the City Plan.
2. The Committee finds the building work to be in extreme conflict with the character of the locality
3. The TBCO nominates Performance Outcome P02 which requires a development for a garage to not dominate the street frontage or gardens. The design proposed includes a very wide garage structure both roofed and enclosed, which together dominate the street frontage and gardens.
4. Acceptable Outcome A02.1 of the TBCO proposes that any garage be set back from the road alignment in a similar position to other 1946 or earlier dwellings of a similar age and context. Contrary to this requirement, the design proposed projects forward of the residential footprint.
5. Acceptable Outcome A02.2 of the TBCO proposes that any garage be integrated into the house to not dominate the streetscape. The design proposes a very wide garage structure both roofed and enclosed to the street, as well as extends the footprint of the garage forward of the perimeter of the house and the level of the floor area above. (Refer to 'Figure A' of the Code for examples displaying similar streetscape dominating character.) The proposed design results in domination of the garage to the street frontage.
6. The purpose of the TBCO is to assist in determining the suitability of the development in the Traditional Building Character Overlay.
7. The Committee considers that suitability of the proposal is determined by a compatible form, scale and detail. The Committee does not consider that the design proposal offers a compatible solution, particularly in its:
  - a) form - due to garage width, bulk and proximity of the front wall forward of the existing residence; and
  - b) scale – of the garages in relation to the rest of the house; and
  - c) detail - inconsistent character of architectural detail.
8. The materials are similar in nature and therefore considered sufficiently in context with the existing house and the surrounding street. Suitability of this component is not sufficient to constitute an appropriate design in relation to the TBCO.

**Caroline Treacy**  
**Chair**  
**Building and Development Committee**  
**Date: 26 October 2017**

1. Gerhardt v Brisbane City Council [2015] OPEC 34. [10]

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## 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 Housing and Public Works  
GPO Box 2457  
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