



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	39- 12
Applicant:	Jeffrey Vock
Assessment Manager:	CQ Building Certification Pty Ltd
Concurrence Agency: (if applicable)	Gladstone Regional Council (Council)
Site Address:	62 Katrina Boulevard, New Auckland described as Lot 219 on SP150270 - -- the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to decline in full a development application for a carport on the subject site. The decision was based on Concurrence Agency advice from Gladstone Regional Council who approved the application with conditions and it is one of the conditions that is being appealed.

Date of hearing:	10.00am 18 th December 2012
Place of hearing:	The subject site
Committee:	Trevor McCubbin– Chair
Present:	Jeffrey Vock – Applicant Tegin Schule – Council Representative Phil Bray – CQ building Certification Pty Ltd Kirk Story – Building Contractor – Lacarsha Const. Pty Ltd t/a Trueline

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside the decision appealed against** and approves the development application with the following conditions, noting that condition 4 of Council's approval dated 24 April 2012 has been removed;

1. Adequate precautions are to be undertaken to avoid the discharge of rainwater onto any adjoining property;
2. The carport is to remain open and unenclosed at all times;
3. Existing vegetation along the Katrina Boulevard is to be retained;

4. The carport's posts are to be constructed with bricks and rendered to match the existing fence;
5. The concurrency period for the boundary relaxation assessment is 6 months from the date of this approval.

Background

The Applicant submitted a development application (Application) to CQ Building Certification on the 12 January 2012 for a carport to be built at the front of his home. A request for a front boundary relaxation of 6 metres was submitted to the Gladstone Regional Council as Concurrency Agency.

The request was approved by the Council on 24th April 2012, subject to the following 6 conditions:

1. Adequate precautions are to be taken to avoid the discharge of rainwater onto any adjoining property.
2. The carport is to remain open and unenclosed at all times;
3. Existing vegetation along the Katrina Boulevard frontage is to be retained;
4. The carport is to be of gable roof design for aesthetics purposes;
5. The car port posts are to be constructed with bricks and rendered to match the existing fence;
6. The currency period for this boundary relaxation assessment is 6 months from the date of this approval.

The Applicant rejected condition 4 and the Assessment Manager subsequently advised the Applicant, in an amended Decision Notice dated the 1 August 2012, that the Application had been declined in full due to non compliance with the conditions imposed by the Concurrence Agency.

The Applicant lodged an appeal with the Committee on the 17 August 2012, within the statutory time period allowed under section 527 (2) of the SPA and a Committee hearing was held on the subject site at 10am on the 18 December 2012.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committee Registrar on the 17 August 2012.
2. Amended Decision Notice as issued by CQ Building Certification Pty Ltd advising that the development application No. 20120014 had been declined in full due to their refusal to comply with the conditions imposed by the Gladstone Regional Council as the Concurrence Agency.
3. Letter written by J Vock, as the Applicant in support of and supplementary to the application.
4. Gladstone Regional Council advice notice in response to the Applicant's request for boundary relaxation - Application number BR/1070/2012.
5. Photos of the home and the proposed designs together with alternative designs provided by the designer of the Carport.
6. Verbal submission of an Aesthetics report from the Gladstone Regional Council – provided to the Committee following the hearing.
7. Verbal submission from the Applicant at the hearing.
8. Verbal submission from the Council at the hearing.
9. Verbal submission from the designer/builder Lacarsha Const t/a Trueline at the hearing with respect to alternative designs.

10. The *Sustainable Planning Act 2009* (SPA)

11. The Queensland Development Code – Part MP1.2 (QDC MP 1.2)

Findings of Fact

The Committee makes the following findings of fact:

- The issue that is in dispute in this appeal is Condition 4 of Council's approval of the carport boundary relaxation: "*the Carport is to be of gable roof design for aesthetics purposes*"
- At the hearing, Council advised that the requirement for the above condition was based on a Council policy. The policy was provided at the Committee's request post hearing.
- The policy provided by Council was an extract from an Environmental Services Committee report dated 13 February 2002. Item 29 in the report states in part :

"REPORT BY MANAGER – ASSESSMENT & DEVELOPMENT RE: AMENITY & ASSESSMENT PROVISIONS OF THE STANDARD BUILDING REGULATIONS

Reporting on amenity and aesthetic provisions of the Standard Building Regulations 1993. Pursuant to s50 of the Standard Building Regulations 1993 Council declare that all development applications for 'any carport or garage located within 6 metres of a road boundary (amongst others) within the city must be assessed for the amenity and aesthetic impact of the work.'

- The above report was not a policy as advised by Council but rather a recommendation in a report.
- The Application for a boundary relaxation complies with all aspects of section MP1.2 of the Queensland Development Code (QDC MP 1.2) -Design and siting standard for single detached housing on lots 450m2:

In A(i)(a) in acceptable solutions for a dwelling, garage or a carport the minimum road setback is-

(i) 6m;

An alternative solution in A(i)(c) states:

For **open carports**, the minimum road setback may be less than required by A(i)(a) if-

(i) The aggregate perimeter dimension of walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the line of the supports) of that part of the carport within the same setback; and

(ii) there is no alternative on-site location for a 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 in 5.

- The Applicant provided the following reasons for not being able to comply with Council's condition 4:
 1. The existing house design does not lend itself to modifications incorporating an open carport. The Committee agreed with this assessment.
 2. The home would need a total redesign and modification of the structural components of the front of the home to be able to attach an open carport incorporating a gable roof.
 3. The alternative designs, which complied with the condition that the roof be a gable design, showed the finished carport would look worse aesthetically than the carport originally proposed. Council's representative at the hearing agreed with this assessment.
 4. The continued implementation of the council's condition 4 would lead to the Applicant being unable to proceed to construction due to the very grounds the council gave for

applying the condition in the first place, for aesthetics purposes.

- Towards the end of the hearing, Council advised they were prepared to withdraw condition 4.

Reasons for the Decision

The Application for a Class 10 carport within 6 metres of the front boundary complies with the requirements of QDC MP 1.2.

The Council's submission that their Aesthetics report include a requirement that any carport to be sited nearer than 6 metres to a front boundary is to be of a gable roof design for aesthetics purposes, was found to have no basis. The document they relied upon had no reference to any requirement that any such roof had to be of a gable design. The document was found to be a recommendation only. It referred to Section 50 of the *Standard Building Regulation 1993* which states under (1):

that a local government, by resolution, may declare, for a single detached class 1 buildings or class 10a buildings or structures, localities and forms of buildings and structures the local government considers –

- (a) may have an extremely adverse effect on the amenities or likely amenity of a locality; or*
- (b) may be in extreme conflict with the character of a locality.*

There was no evidence that a resolution to implement the report which included a gable roof design requirement had been undertaken by the Council.

The Committee decided that the design in the Application complied with all requirements of QDC MP 1.2 and was not in conflict with the requirements of Section 50 of the *Standard Building Regulation 1993* stated in Council's Aesthetics report.

Trevor R McCubbin
Building and Development Committee Chair
Date: 22 January 2013

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
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