



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number: 3—09—027

Applicant: Lichua Bechara

Assessment Manager: Luke Jones

Concurrence Agency: Brisbane City Council
(if applicable)

Site Address: 40 Salstone Street, Kangaroo Point and described as Lot 4 & 5 on RP11415
—the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the Assessment Manager to refuse a development application for building works namely construction of a class 10a carport. The Assessment Managers' decision was based on the concurrence agency response.

Dates of hearings: 10.00 am — Thursday, 23 April 2009.
10.00 am — Monday, 18 May, 2009.

Place of hearing: The subject site

Tribunal: Jack Williamson — Chair
Allan Williams — Member

Present: First Hearing
Lichua Bechara — Applicant
Peter Bird — Council Representative
Brett Watson — Builder

Second Hearing
Lichua Bechara — Applicant
Peter Bird — Council Representative
Marie Francis — Neighbour

Withdrawn from appeal Luke Jones — Certifier

Decision:

The Tribunal, in accordance with section 4.2.34(2)(c) of IPA, **sets aside** the decision of the Assessment Manager dated 20 March 2009, to refuse the building development application in relation to the

concurrence agency response and directs the Assessment Manager to assess and decide the application, subject to the following related conditions:-

1. The minimum road setback for the proposed carport is to be three (3) metres; and
2. The road frontage of the carport roof is to be not wider than six (6) metres; and
3. The maximum depth of the carport is to be six (6) metres; and
4. The design of the carport is to be similar to the original design submitted for Development Approval; and
5. The carport roof sheeting is to be coloured to minimise glare to the neighbour.

Background

The Assessment Manager made an application to the Brisbane City Council for a Referral (Concurrence) Agency Response under IPA, for design and siting to raise the existing dwelling and the construction of a new carport under the *Queensland Development Code MP 1.2*.

In a letter dated 23 December 2008, the Brisbane City Council advised the Assessment Manager that approval was granted for the design and siting to raise the existing dwelling but approval was not granted for the design and siting of the proposed carport.

Based on the above carport decision the Assessment Manager advised the applicant on 20 March 2009 that he was directed by the Brisbane City Council to refuse the location of the carport in relation to property boundaries.

On 23 March 2009 the applicant lodged an appeal with the Building and Development Tribunal.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' received by the registrar on 27 March 2009.
2. Copies of plans showing the design for the raised existing dwelling and the design and location of the proposed carport.
3. Copy of the Brisbane City Council 'Siting Variation (Relaxation) Application Part 2 Neighbour's Statement' dated 18 December 2008 outlining the neighbour's concerns about the siting of the carport.
4. Copy of the letter dated 23 December 2008 from the Brisbane City Council to the Assessment Manager stating that approval had been granted for the design and siting to raise the existing dwelling but approval was not granted for the design and siting of the proposed carport.
5. Copy of the letter dated 20 March 2009 to the applicant advising that he was directed by the Brisbane City Council to refuse the location of the carport in relation to property boundaries.
6. Copy of the letter dated 1 April 2009 from the Assessment Manager to the Building and Development Tribunal stating that he wished to withdraw from the appeal in accordance with section 4.2.19 (4) of IPA.
7. Copy of email to the Building and Development Tribunal dated 27 April 2009 from the Assessment Manager concerning Heritage and Town Planning restrictions.
8. Copy of email to the Building and Development Tribunal dated 6 May 2009 from the Assessment Manager stating that the applicant is prepared to amend the width of the carport proposal to comply with exemption permitted by the *Residential Design – Character Code* of the *Brisbane City Plan 2000 – Volume 1*.
9. Copy of email dated 6 May 2009 from the applicant requesting the determination of the Building and Development Tribunal before he takes action to obtain legal advice concerning the neighbour's electricity service cable that crosses his property.
10. Verbal submissions from the applicant at both hearings.
11. Verbal submissions from the Council representative at both hearings.
12. Verbal submission from the neighbour at the second hearing.
13. IPA and the *Integrated Planning Regulation 1998*.

14. *Building Act 1975 (BA) and Building Regulation 2006*
15. *Queensland Development Code MP 1.2.*
16. *Residential Design – Character Code of the Brisbane City Plan 2000 – Volume 1.*
17. *Electricity Act 1994*
18. Service Clearance Table (8569-A4C) in the Energex Electricity Connection and Metering Manual.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The refusal by the Brisbane City Council to agree to the design and siting of the proposed carport was based on their assessment of the proposal using *Performance Criteria P.1 (a), (b), (c) & (d)* and *Acceptable Solutions A1(c) –(ii) (in part)* of the *Queensland Development Code MP 1.2.*
2. At the first hearing concern was raised about the possible implications of the carport being in an apparent heritage area and the possible restrictions due to the neighbour's electricity service cable crossing the applicant's site. It was agreed to adjourn the hearing to obtain advice concerning the heritage issue and to enable the applicant to obtain legal advice concerning the possible relocation of the neighbour's electricity service cable.
3. Based on advice supplied by the Assessment Manager, the original width of the carport did not comply with the exemption permitted by the *Residential Design – Character Code of the Brisbane City Plan 2000 – Volume 1.* On 6 May 2009 the applicant agreed to reduce the width of the carport to comply with the exemption provision in the above document.
4. On 6 May 2009 the applicant requested the determination of the Building and Development Tribunal be given before he seeks legal advice concerning the neighbour's electricity service cable. To ensure that all parties were aware of the relevant facts obtained since the first meeting and to see if an agreement acceptable to all parties could be obtained a second hearing on site was arranged.
5. The determination was a result of an agreement that was obtained at the second hearing and agreed by the applicant, the Council representative and the neighbour.

Reasons for the Decision

1. The location of the carport three metres from the street boundary was to provide easy and reasonable weather protection to the ground floor entrance for the applicant's elderly parent who will be living with the applicant. This location agrees with the set back of the majority of the old dwellings on that side of the street.
2. The recommendation of a town planner contacted by the Chair of the Tribunal was that it would be desirable for the three metre set back in the street to be applied in this situation to retain the pre-war character of the street.
3. The width of the carport roof was reduced from 6.5 metres to 6 metres to comply with the exemption given by *Residential Design – Character Code of the Brisbane City Plan 2000 – Volume 1.*
4. It was understood that the building would remain a carport and will not be provided with a garage door or converted into a garage.
5. As the carport is on the northern side of the site the roof sheeting should be coloured to minimise glare to the neighbour.
6. At the second hearing it was apparent that the neighbour's electricity service would not be relocated in

the near future. Therefore, the Decision is based on the applicant obtaining the approval from Energex that the minimum aerial service clearances required by Energex from the neighbour's overhead cable to the carport roof can be achieved with the location of the carport in accordance with the Service Clearance Table (8569-A4C) in the Energex Electricity Connection and Metering Manual.

Jack Williamson
Building and Development Tribunal Chair
Date: 9 June 2009

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:

The Registrar of Building and Development Tribunals
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