



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	31 - 2011
Applicant:	AAA Garages & Carports
Assessment Manager:	ABC Certification Pty Ltd
Concurrence Agency: (if applicable)	Brisbane City Council
Site Address:	26 Grant Street Hendra and described as Lot 1 on RP 183883 – the subject site

Appeal

Appeal under Section 541 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by ABC Certification Pty Ltd as the assessment manager to refuse a building development application for a carport. The refusal was based on advice from Brisbane City Council as the concurrence agency. Brisbane City Council reasonably believes the siting of the proposed works would be in conflict with and not comply with the Queensland Development Code performance criteria (MP 1.2; P1, P2, P3 and P6).

Date of hearing:	Thursday 7 July 2011 at 9:30am
Place of hearing:	Building Codes Queensland, 5/63 George St Brisbane
Committee:	Dennis Leadbetter – Chair Natalie Rayment – General Referee
Present:	Mark Beerling – AAA Garages & Carports (Applicant) Martti Koskinen – ABC Certification Pty Ltd Anthony Fairchild – Brisbane City Council

Decision:

The Committee, in accordance with section 564 of the SPA, **sets aside** the decision of ABC Certification Pty Ltd dated 22 March 2011, to refuse the building development application based on a concurrence agency refusal dated 22 March 2011, and replaces it with the following decision –

The Assessment Manager, in accordance with section 564 of SPA, is **directed** to decide the development application for building works shown on the drawings submitted with the appeal, with no concurrence agency requirements.

Background

The proposal submitted to the Assessment Manager was for two carports, one carport along the side boundary and an open carport in the road boundary setback.

The concurrence agency, allowed the siting variation for the carport along the side boundary and refused the open carport in the road boundary setback, on the grounds that:

“the proposed design and siting variation for the carport situated 1.20m from the front boundary does not comply with the QDC performance criteria for the following reasons as specified in the Queensland Design Code MP1.2; Design and Siting of Buildings & Structures P1 (a) (b) (c) and A1 (c) (ii).

1. *P.1 The location of a building or structure facilitates an acceptable streetscape, appropriate for –
 - a) The bulk of the building or structure; and
 - b) The road boundary setbacks of neighbouring buildings or structure; and
 - c) The outlook and views of neighbouring residents.*
2. *A1 (c) (ii) There is no alternative on-site location for the garage / carport that –
 - (B) will allow vehicular access having a minimum width of 2.5 m”.*

Having been directed to refuse the application by the concurrence agency, the Assessment Manager refused the building development application for the carport within the road boundary setback.

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 Registrar on 7 April 2011;
2. Drawings submitted with the appeal, including Site Plan and Elevations;
3. Verbal submissions from those attending the hearing;
4. SPA;
5. The Queensland Development Code (QDC) Part MP 1.2;
6. The Residential Design – Character Code of the Brisbane City Plan 2000;
7. The existing Development Approval for Stables over the land;
8. Siting Variation Express Publication of Brisbane City Council, June 2011.

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is an 814 m² lot comprising a detached house with two existing vehicular crossovers and a large cleared back yard;
2. The subject site is located in the Demolition Control Precinct of the Brisbane City Plan 2000 and also within an identified Stables Area;
3. A development permit for material change of use and preliminary approval for the building works was issued on 5 March 2008 for Stables across the rear and side of the property. The approval has a relevant period of 4 years and therefore remains current. If the approval for the Stables proceeded, the site has alternative locations for a carport and would therefore not comply with QDC Acceptable Solution A1(c)(ii). However, it is understood the owner does not intend to take up that approval;
4. In June 2011, Brisbane City Council published a document entitled Siting Variation Express, providing concurrence agency advice on the design and siting for single detached dwellings (class 1a) and associated class 10 buildings and structures in Brisbane. Page 2 of the publication states that *“Siting Variation Express is a quick application process that allows applicants to self assess their proposal against Council’s eligibility and design and siting criteria. Siting Variation Express can only be used for selected types of building and structures. It is an alternative to Council’s standard siting variation assessment processes, which cater to more complex applications”*.

5. The proposal meets the building type, eligibility criteria and design and siting requirements to achieve the Siting Variation Express process established by Brisbane City Council in June 2011 as:
- a) Eligible building types include Class 10a buildings, which includes open carports; and
 - b) The proposal meets Part A "*Eligibility Checklist*" as:
 - The site is not a corner lot;
 - The site is not a small lot (having an area over 450m² and a frontage width over 15 m);
 - The site is not a heritage place;
 - There are no known easements affecting the location of the proposed works and this was not raised by the Brisbane City Council as an issue;
 - The works are not within a waterway corridor;
 - The works do not affect any protected vegetation;
 - The site does not have a covenant or building location plan; and
 - The works would be exempt from planning approval in accordance with the Residential Design – Character Code as the works comprise an open carport, with a maximum total width of 6 m located between the building and the front boundary (as listed in section 1 of the Residential Design – Character Code); and
 - c) The proposal meets Part B "*Design and Siting Checklist*" as it is an open carport where:
 - Having a maximum height of 3.5 m (the proposed height is 2.2 m);
 - Having a maximum dimension of 6 m x 6 m measured post to post (the proposed dimensions are a 5.355m x 6.14m and comply with a maximum dimension of 6m x 6 m post to post);
 - With a maximum overhang of 0.9 m (the overhangs do not exceed 0.9 m);
 - Seeking a minimum setback of 0.2m (the proposed setback is approximately 1.2 m); and
 - The gradient of the driveway across the footway will comply with Council's requirements (the crossover exists and the land is generally level).

Reasons for the Decision

The Committee recognises the location of the site within an identified Stable area under the Brisbane City Plan 2000 and the need for the appellant to be able to safely and securely house both vehicles and horse floats. Also, there is an approval over the site for Stables which, if utilised, would mean that there was no alternative on-site location for a garage or carport.

The Committee also recognises that, while the Siting Variation Express publication issued in June 2011 was not in place at the time of the decision of the concurrence agency, and so quite correctly did not need to be considered, the concurrence agency's decision to refuse the siting variation is now inconsistent with their publication. The option is therefore now available to the applicant to re-lodge the application under the new Siting Variation Express method, which would be subsequently approved.

In determining this appeal, the Committee believes that the Performance Criteria P1 of QDC MP 1.2 is relevant to this appeal.

The specific criteria of P1 are that the location of the building or structure 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.

The proposal achieves P1 in that the proposed building works facilitate an acceptable streetscape, appropriate for:

- The bulk of the building, being an open carport only;
- The road boundary setbacks of neighbouring buildings as the proposed carport is well setback from the side boundaries and the road boundary setback of 1.2 metres is appropriate for the open nature of the building work proposed; and
- The proposal is unlikely to adversely impact on the outlook and views of neighbouring residents or create a nuisance or safety issue.

Dennis Leadbetter
Chair
Building and Development Committee
Date: 18 July 2011

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:

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