



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	95 - 10
Applicant:	Matthew and Kylie Patterson
Assessment Manager:	QPDB Pty Ltd
Concurrence Agency:	Toowoomba Regional Council (Council)
Site Address:	2 Bulloo Street, Glenvale, Toowoomba and described as Lot 139 On SP 176883 – the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of QPDB Pty Ltd to refuse a development for construction of a carport and covered area. The refusal of this part of the application was based on advice from Toowoomba Regional Council as Concurrence agency.

Date of hearing:	10:00am – Thursday 17 March 2011
Place of hearing:	The subject site - Toowoomba
Committee:	Mr Leo Blumkie – Chair

Present:	Mrs Kylie Patterson – Owner/Applicant Mr Bob Orr - Toowoomba Regional Council Mr Mark McKechnie – QPDB Pty Ltd Mr Grant Forde – QPDB Pty Ltd Mr Troy Gntz – adviser to applicant Mr Leo Blumkie – Committee Chair
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Decision:

The Committee, in accordance with section 564 of the SPA **changes** the decision of the Toowoomba Regional Council and approves the relaxation for a double carport and allows a setback of 2.4 metres to Sunset Drive subject to the following conditions:-

- The double carport measuring 6m x 5m being used as a carport; and
- The area of the carport within the 6m setback (ie 3.6 metres) always remaining 100% open; and
- The clearance (height from slab to underside steel frame) and location remains unchanged; and
- The roof of the carport is changed to a hip roof to the front portion. Development

- application to be amended and approval obtained before commencement of the work.
- A permanent hard-standing driveway to the carport with associated retaining wall is constructed to the satisfaction of Council; and
- The front of the property is landscaped to the satisfaction of Council. (Approval to be obtained before commencement of the landscaping).
- Development approval is obtained for the carport and covered area to the front of the class 1a dwelling.
- The above changes to be completed within three (3) months of the date of this decision unless otherwise extended by the Council before the expiry date. Application for extension to be made in writing and include reasons acceptable to Council.

Background

The Glenvale neighbourhood is a relatively new estate with a mixture of single and two storey class 1 buildings.

The site is a 657m² irregular shaped corner allotment located on the corner of Bulloo Street and Sunset Drive, Glenvale, Toowoomba.

The site is developed with an approved single storey class 1a building. The site has considerable slope from the rear to both street frontages. Cut and fill has been carried out to obtain a level platform for the slab.

A gable roofed entertainment area and skillion roof cover has been constructed on the front of the Class 1a building without a development approval.

In 2007 the owner made application to Council for a covered entertainment area to be constructed partly within the 6m setback of Sunset Drive. Council refused the application as it was assessed as an extension of the Class 1a dwelling.

Some time later, despite not having an approval, the owner allowed the roofed entertainment areas to be constructed by a relative.

An inspection of the property by a Council officer on the 30 August 2010 indicated the gabled roofed area was clearly being used as an outdoor entertainment area associated with the Class 1a dwelling. The photographs show BBQ table, refrigerator, BBQ, Gas heater, sound speakers etc.

The area is totally fenced with an approx 2m high timber fence – no gate is provided for vehicular access and there is no driveway for vehicular access.

On the 31 August 2010 Council issued a Show Cause Notice for the illegal structure requiring:-

1. Remove the Class 1a covered/patio area that is located within six (6) metres of the sunset Drive property boundary; and
2. Obtain a Development Approval for Building Work for the gabled roofed patio located more than six (6) metres from the Sunset drive property ; and
3. Obtain a Development Approval for Building Work for the Class 1a skillion covered /patio constructed along the front of the dwelling fronting Sunset Drive.

The Owner responded to the Show Cause Notice on the 24 September 2010, advising they had engaged a certifier to assist them in responding to the illegal structure. They were now calling the structure a carport and would be seeking a relaxation of the 6m Sunset Drive setback.

On the 28 September 2010 the owner made a development application to qpdp Pty Ltd for a Class 10a carport/covered area.

As concurrence agency response was required for the carport, the application was referred by the Certifier to Council on the 29 September 2010.

Council refused the application on the 8 October 2010, stating the use was clearly an entertainment area, not a carport. The reasons for the refusal were :-

1. The proposal is not in accordance with the acceptable solutions of the performance criteria of Part 1 of the Queensland Development Code, and
2. The proposed location of the structure at 2.4 metres from the Sunset drive property boundary is inconsistent with the setbacks of neighbouring buildings, and
3. The bulk of the structure will create a high visual impact on the streetscape being located on a bend in the street, and
4. Will obstruct the outlook and views of neighbouring residents, and
5. The location of the structure will compromise the reasonable visual amenity expectations of residents in the area, and
6. The bulk of the structure at 2.4 metres from the street boundary does not facilitate an acceptable streetscape.

On the 18 October 2010 Council advised that the provisions of the Show Cause Notice had not been complied with and issued an Enforcement Notice.

On the 2 November 2010 the Owner again responded to Council in relation to the illegal structure making reference to a number of matters in relation to the use as a carport.

On the 15 November 2010 Council responded requiring compliance with the Enforcement Notice as the area was clearly being used as an outdoor entertainment area.

An appeal was lodged with the Building and Development Committee Registry on 21 December 2010.

The Registrar advised Council on 24 January 2011 that an appeal had been lodged in relation to the refusal.

On 8 March 2011 the Registry advised Council, QPDB Pty Ltd and the Applicant that a Building and Development Committee had been established and Mr Leo Blumkie has been appointed as Chairperson.

On 8 March 2011 the Chairperson advised Council and QPDB Pty Ltd of the date, time and place for the hearing.

Material Considered

The material considered in arriving at this decision comprises:-

1. Form 10 – Notice of Appeal, drawings, extracts, photographs and correspondence accompanying the appeal lodged with the Registrar on 21 December 2010.
2. Concurrence agency response dated 8 October 2010.
3. Verbal submissions from the applicant and adviser at the hearing.
4. Verbal submissions from the Council representatives at the hearing.
5. Verbal submissions from the QPDB Pty Ltd at the hearing.
6. QDC MP 1.2 Design and Siting Standard for single detached housing - on lots 450m² and over.
7. *Building Act 1975.*
8. *Building Regulation 2006.*

9. SPA.

10. Building Code of Australia.

Findings of Fact

The Committee makes the following findings of fact:-

- The allotment is 657m² in area.
- The site is an irregular shaped corner block fronting both Bulloo Street and Sunset Drive.
- The site is developed with an approved single storey Class 1a building and a non-approved gable roofed structure to the front of the dwelling 3.6 metres within the Sunset Drive boundary setback and a skillion roofed covered area constructed along the front of the dwelling facing Sunset Drive.
- When investigated by Council on the 30 August 2010 the gable roofed structure was clearly being used as an outdoor entertainment area (refer photographic evidence) and was therefore an extension to the Class 1a dwelling.
- At the time the Show Cause Notice was issued no driveway or gate access was provided to the gable roofed structure.
- The applicant stated at the hearing that the gable structure (6m x 5m) was now only to be used as a carport and would now not be used as an outdoor entertainment area.
- The owner required a double carport to provide cover for current vehicles.
- MP 1.2 of the QDC is the applicable code for siting of single detached housing on lots over 450m².
- Under MP 1.2 buildings and structures sited within the 6m street setback require concurrence agency approval for any relaxation of the setback.
- The Council representative stated at the hearing that the designated street frontage was Sunset Drive.
- Under Table A1 of MP 1.2 the secondary street frontage would require a minimum setback of approximately 5 metres.
- The secondary street frontage is currently 8200mm to the outermost projection.
- Hence a single carport would be permitted fronting Bulloo Street under acceptable solutions of MP 1.2.
- This would not satisfy the specific needs of the owner who require a double carport.
- The council representative stated the preferred location for a double carport was facing the Sunset Drive frontage.
- Only one other single flat roofed carport was observed within the required 6m setback in the immediate neighbourhood. Council was unable to confirm whether it had an approval.

Reasons for the Decision

Council agreed to accept the statement made by the applicant at the hearing, ie that the structure would only be used as carport and on that basis Council was prepared to respond to the application for a relaxation to the setback for a double carport.

It should be noted that a single carport could have been provided to the Bulloo Street side of the

residence under acceptable solutions. The applicant required a double carport. Hence, the proposal is considered and approved as a double carport (ie 6m x 5m) and needs to be totally used as such.

Reference should be made to Building Newsflash number – 453.

Considering Councils reasons for the refusal the committees response is as follows:-

1 The proposal is not in accordance with the acceptable solutions of the performance criteria of Part 1 of the Queensland Development Code.

It is agreed the proposal does satisfy the acceptable solutions of the performance criteria of Part 1 of the QDC.

2 The proposed location of the structure at 2.4 metres from the Sunset drive property boundary is inconsistent with the setbacks of neighbouring buildings.

It is agreed the proposal is inconsistent with the setback of the neighbouring building, however since the Sunset Drive frontage is the Council preferred location for a double carport then it is not possible for the setback to be consistent with the 6m neighbour setback. Under the circumstances a 2.4 metre setback is considered reasonable.

3 The bulk of the structure will create a high visual impact on the streetscape being located on a bend in the street.

It is agreed the structure with a 2.4m setback particularly with a gable roof has a high visual impact on the streetscape.

Because of the slope of the land and the cut and fill of the site for the dwelling, the carport floor needs to be approximately 1200mm above footpath level. The underside of the steel frame is in line with fascia /gutter of the existing Class 1a dwelling. This is considered a minimum height (2200mm) for use as a carport.

In the committee's opinion, the roof of the carport does not need to be a gable. This adds to the bulk of the structure. The bulk of the structure can be reduced by changing the front portion of the roof to a hip roof.

4 Will obstruct the outlook and views of neighbouring residents.

It is agreed the structure will obstruct the outlook and views of the neighbouring residents. The obstruction is not considered unreasonable under the circumstances. In order assist in maintaining some views and outlook, the structure within the setback needs to remain 100% open.

5 The location of the structure will compromise the reasonable visual amenity expectations of residents in the area.

It is considered that the change to a hip roof will achieve reasonable visual amenity expectations of residents in the area (neighbourhood). This can be further improved by providing landscaping to the front of the property. Council needs to access and approve the landscaping.

6 The bulk of the structure at 2.4 metres from the street boundary does not facilitate an acceptable streetscape.

Under Item 3 above, the bulk of the structure has been addressed and with the change to a hip roof at the front of the carport and approved landscaping, it is considered the amended proposal will facilitate an acceptable streetscape.

Additional matters:

- For use as a carport a properly constructed (concrete or equivalent) driveway and associated retaining wall need to be constructed from the existing driveway.
- Development approval needs to be obtained for the amended carport and covered area.
- Time frames need to be established for the changes to be made as required by this decision. Three (3) months is considered a reasonable time frame. It is acknowledged this time may be extended by Council provided written application is made requesting an extension before the expiry date and acceptable reasons are provided to Council.
- The Committee believes that with the conditions imposed in the decision, the proposal satisfies the performance criteria as set out in the QDC MP 1.2 for a Class10a structure.
- Should the 6m x 5m structure revert to use as an outdoor entertainment area the Enforcement Notice should be re-issued by Council.

Leo Blumkie
Building and Development Committee Chair
Date: 24 March 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:

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