



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

**Appeal number:** 3—09-097

**Applicant / appellant:** The Planning Place Pty Ltd

**Assessment manager / Respondent:** Crest Building Approvals

**Concurrence agency / Co-respondent:** Brisbane City Council (Council)

**Site address:** 4 Tweed Street, Ashgrove, and described as Lot 252 on RP 41621, — the subject site

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### Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision, dated 2 September 2009, of Council to include conditions to refuse an application relating to a proposed building structure (carport and roofed deck) to be constructed within the boundary setback requirements on the subject site.

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**Date of hearing:** 10.00 am — Tuesday, 9 February 2010

**Place of hearing:** The subject site

**Tribunal:** Georgina J Rogers — chair

**Present:** Mark & Darlene Burnett - Owners  
Ian Adams, The Planning Place — Applicant  
Ashley Everton, The Planning Place — Applicant  
Peter Bird, — Built Environment and Land Use Officer of Council — Concurrence agency / co-respondent

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### Decision:

The Tribunal, in accordance with section 4.2.34 of IPA **sets aside** the decision appealed against to refuse the development application for building works, namely a building structure (carport and roofed deck) within the required boundary setbacks as interpreted under the Queensland Development Code (QDC) MP1.2 along the corner road boundary alignments.

The Tribunal **directs** the assessment manager to re-assess the development application for building works subject to the following conditions:-

1. The carport is to be setback a minimum of 200mm to outermost projection from the Tweed Street road boundary alignment.

2. The roofed deck is to be setback a minimum of 2.0m to the outermost projection in the north-west corner of the deck and to be square to the house from the Tweed Street road boundary alignment.
3. The carport is not to be enclosed nor fenced at any time which could obstruct street visibility for safety purposes.
4. The roofed deck is not to be enclosed at any time.
5. The carport and roofed deck are constructed to match the existing dwelling in colour and materials.
6. Carport roof to have 5 degree roof pitch or less.
7. Carport is to be maximum 6.0m wide
8. Supports to deck and roof of deck to be maximum 100x100mm or as per structural engineer's design.
9. Amended plans to be submitted to the Brisbane City Council for viewing.

## **Background**

An on-site hearing was attended by the appellant and a representative of the Brisbane City Council. The Tribunal observed that the neighbourhood generally has very low traffic volume, however within the immediate vicinity is a State school. Buses access through and park in Tweed Street and it is reasonable to assume that there would be a significant amount of pedestrian and vehicle traffic and parking requirements during school peak times. Therefore traffic and pedestrian safety must be considered.

The neighbourhood is a well established suburban area with a mix of older, new and renovated residential dwellings. Within the immediate vicinity is a well established State school.

The site is irregular in shape with the corner lot fronting west to Tweed Street and north to Victoria Street. Victoria Street has a slightly higher traffic volume, but not significantly. There is a park opposite the site in Victoria Street. The existing vehicle access is via Tweed Street which has low traffic outside school hours. Tweed Street and the subject site rise moderately steeply from Victoria Street to the south of the site.

The site rises from Victoria Street to the north to the south. The existing vehicle access to the site is close to the Victoria and Tweed Street corner. It is not reasonable to relocate the existing vehicle access to the side as there is a power pole, on street parking and it would require substantial excavation of the site. It was therefore discussed that to retain the existing driveway in its current location would be the best outcome.

The following correspondence and documentation was reviewed and taken into consideration:-

- **9 February 2010** – Appeal hearing
- **17 December 2009** – The Planning Place – appeal decision of refusal issued by Crest Building Approvals
- **4 December 2009** – Building and Development Tribunals Appeal Notice – Form 10
- **1 December 2009** – Traffic Report
- **2 September 2009** – Brisbane City Council – concurrence agency letter directing refusal of the development application
- Plans and photographic documentation.

As a result of the assessment manager's refusal of the building development application (based on concurrence agency advice), the applicant chose to appeal the decision to the Building and Development Tribunals, by notice of appeal, received 17 December 2009.

## **Material considered**

The material considered in arriving at this decision comprises:

1. Form 10 – 'Notice of appeal' and grounds for appeal received 17 December 2009.
2. Decision notice from the assessment manager advising that the concurrence agency directed refusal of the development application, dated 4 December 2009.
3. Site plan, plans and elevations of the building structure (carport and roofed deck over).
4. Verbal submissions from the applicant and reasons for building structures (carport and roofed deck) to be located in its proposed location over the existing vehicle driveway access to the site.
5. Verbal submissions from the assessment manager, including reasons why the building structure (carport and roofed deck) should be modified.
6. Letter of support from an adjoining neighbour.
7. IPA.
8. *Building Act 1975 (BA)*.
9. *The Building Regulation 2006*.
10. The Queensland Development Code (QDC).

## Findings of Fact

The Tribunal makes the following findings of fact:

1. It was determined that the owners applied for a building approval for a new carport to be constructed over their existing driveway. The existing driveway is located within the Tweed and Victoria Street corner 6.0m x 6.0m sight line requirements.
2. It was determined that the construction of an open carport with minimal sized support columns and low pitched roof would not significantly impact on the sight lines as the site rises from Victoria Street frontage to the rear.
3. The site is a corner site, corner Victoria and Tweed Streets.
4. The site is greater than 450m<sup>2</sup> (being 473 m<sup>2</sup>) hence QDC MP1.2 – 'Design and siting standard for lots 450m<sup>2</sup> and over' applies.
5. The average depth of the site is less than 24m. Amended plans were received and reviewed.

## Reasons for the Decision

Part MP1.2 of the QDC sets out Performance Criteria (P1 - P8) in relation to design and siting of buildings and structures which a local government must consider and be satisfied that the application meets the intent of each criterion for that application. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria:-

### **P1. The location of a *building or structure* facilitates an acceptable streetscape, appropriate for –**

#### ***(a) the bulk of the building or structure***

The bulk of the proposed carport with roofed deck over is not in consistent with the bulk of the existing dwelling on the site, and the immediate neighbourhood. To assist in reducing the perceived bulk of the proposed carport and roofed deck it is required that the roofed deck be setback minimum 2.0m in the north-west corner of the site from the Tweed Street alignment and is to be square to the existing dwelling, not the road frontage.

#### ***(b) the road boundary setbacks of neighbouring buildings or structure***

The road boundary setback of neighbouring buildings and structures will not be impacted by the proposed new carport and roofed deck over. The proposed building structure is to be near the north-

west corner of the site near the corners of the street Victoria and Tweed. This location is further from existing neighbourhood dwellings.

***(c) the outlook and views of neighbouring residents***

The outlook and views of the neighbouring residents will have minimal impact from the proposed new building structure (carport and roofed deck over). This is further reduced by the reduction in size of the roofed deck and maintaining a minimal roof pitch over the carport.

***(d) nuisance and safety to the public.***

The proposed building structure (carport and roofed deck over) will have minimal contribution to the nuisance and safety of the public. The roofed deck is to be setback minimum 2.0m from the Tweed Street road boundary alignment and the carport is over the existing vehicle access driveway.

The carport is to remain open with no fencing, garage doors or the like to obstruct vision. The supports to the carport and roofed deck are to be minimum structurally required (nominally 100x100mm) and the roof to have a minimum pitched roof, preferably colorbond or similar to match the existing dwelling colours. These requirements are in place to maintain visibility through the site for pedestrians and vehicles external to the site and similar for those accessing the site.

***A1 – Corner Lots***

***There is no alternative on-site location for a carport.***

The site is irregular in shape, 473m<sup>2</sup> in area, on a moderate slope and is a corner location. The existing dwelling has been constructed with the existing driveway access located near the corner of the site.

It is not feasible to relocate the driveway and associated onsite parking further up Tweed Street as it is obstructed by a power pole and on street parking essential for school traffic.

Therefore the best location for the driveway is to remain where it is and provide a carport which is open and has minimal impact on street visibility. A traffic report has been provided which addresses these issues.

1. Based on the above facts it is considered that the appeal is upheld with conditions. The decision held in this application is separate to any other applications which may be made over the property at this time or in the future.
2. The QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
3. In assessing the criteria from this part of the Code in relation to the building structure (carport with roofed deck) in its current location and height the Tribunal found that there were grounds to allow for the proposed structure to be allowed with minor setback and design modifications.

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**Georgina Rogers**  
**Building and Development Tribunal Chair**  
**Date: 31 March 2010**

## **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  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
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