



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-04-001**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Brisbane City Council

**Site Address:** 9 Senga Street Manly West

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**Nature of Appeal**

Appeal under Section 21 *Standard Building Regulation 1993* (SBR) against the decision of the Brisbane City Council in varying the application of Division 2 – Boundary clearances, as provided for under Part 12 of the *Queensland Development Code* (QDC), for a Garage to a detached house on land described as Lot 62 RP 222704, Parish of Tingalpa, situated at 9 Senga Street, Manly West.

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**Date and Place of Hearing:** 10.00 am on Tuesday 3 February, 2004  
At Department of Local Government and Planning  
Level 25 Mineral House  
41 George Street, Brisbane.

**Tribunal:** Dennis Leadbetter Referee

**Present:** Owner  
Joe McCormack Brisbane City Council

**Decision**

The decision of the Brisbane City Council as contained in its letter dated 18 December, 2003, reference DRS/BLD/A03-1248848, not to grant approval to permit the erection of extensions and alterations to a detached house within the road alignment setbacks is **set aside**.

The Garage may be erected within the road boundary setback with set backs to the road alignment of 400 mm to the outer most projection

## **Background**

The application was for permission to alter an existing single story detached house, by the erection of a double car Garage, within the 6 metre road boundary clearance.

The Brisbane City Council had refused the application, but, in its letter of refusal, indicated it would favourably consider an open carport in the same area.

## **Material Considered**

- 1 Appeal notice and grounds of appeal contained therein;
- 2 Drawings submitted to Brisbane City Council;
- 3 Letter from Brisbane City Council not to approve the Garage;
- 4 Verbal submissions by the Owner, explaining the reasons why the relaxation should be granted;
- 5 Verbal submission by Mr Joe McCormack, Brisbane City Council, explaining the reasons why the application should not be granted;
- 6 Alternative siting options put forward at the meeting by Mr Joe McCormack;
- 7 The Standard Building Regulation 1993; and
- 8 The Queensland Development Code (QDC) Part 12

## **Finding of Fact**

I made the following findings of fact:

1. The original application was lodged with the Brisbane City Council on 10 December 2003, and was incorrectly assessed under the SBR, which was amended on 14 November 2003. This appeal has been correctly assessed under the Queensland Development Code, Part 12.
2. The detached dwelling is of single storeys, slab on ground, brick construction with a tiled hip roof. The dwelling contains a two car garage, which is proposed to be converted into a rumpus room to accommodate a growing family and a replacement for the converted lock up car accommodation needs to be added.
3. A significant area of the site to the street frontage, immediately to the east of the driveway area, has existing mature landscaping.
4. There are no suitable alternative areas of the site to locate the rumpus room or garage, other than by the addition of a second storey, which the client indicated was not economically feasible, nor a desirable solution.

5. The site and surrounding areas are relatively flat.
6. There are existing carports located in the surrounding area within the front alignment setback.
7. The proposed extension has been designed to be sympathetic to the existing structure, in terms of materials, massing and roof lines.
8. The alternative siting proposed by the BCC representative at the hearing would:-
  - a. Necessitate the total removal of the existing mature landscaping, leaving minimal area available to the street scape for landscaping;
  - b. Reduce the natural light and ventilation to the existing living room, and block the prevailing north/north east breezes to the existing living areas;
  - c. Substantially reduce the areas available on the northern side of the site for recreational purposes
1. Part 12 QDC, sets out *Performance Criteria P1 – P8* in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each of the criteria for that application and that the development does not **unduly** conflict with the intent each of the *Performance Criteria*:-

#### **PERFORMANCE CRITERIA**

- P1** 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 *structures*; and
  - c. The outlook and views of neighbouring residents; and
  - d. Nuisance and safety to the public.

- P2** Buildings and *structures*-
- a. Provide adequate daylight and ventilation to *habitable* rooms; and
  - b. Allow adequate light and ventilation to *habitable* rooms of buildings on adjoining *lots*.

#### **ASSESSMENT AGAINST CRITERIA**

- a. The proposed structure is single storey, approximately 6 metres wide to the streetscape, and complies with the *acceptable solutions* for side alignment setback being 1.5 metres.
  - b. The adjoining properties are set back approx 6 metres from the street alignment.
  - c. The outlook from the adjoining neighbours on the western side, will be reduced partially by the proposed development, but only from the lower level and that obstruction will only be minimally worse compared to a 2 metre high fence which could be built on the alignment. Views from the upper level would not be impeded.
  - d. The development would not cause any nuisance or increase safety issued to the public.
- a. The proposed development will not change the daylight or ventilation to any habitable room to the dwelling on this site, as would the alternative siting suggested by the Brisbane City Council.
  - b. The proposed development will not

change the daylight or ventilation to any of the adjoining properties because of the orientation of the site.

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| <p><b>P3</b> Adequate open space is provided for recreational, service facilities and landscaping.</p>  | <p>The development is over the existing driveway and will not impact or change the available areas on site usable for recreation, maintenance or landscaping. The development maintains existing mature landscaping and lawn areas on site.</p>   |
| <p><b>P4</b> The <i>height</i> of a <i>building</i> is not to unduly-</p> <ul style="list-style-type: none"><li>a. Overshadow adjoining houses; and</li><li>b. Obstruct the outlook from adjoining lots</li></ul>   | <ul style="list-style-type: none"><li>a. The development is single storey, and because of aspect will not cause shadowing of adjoining site, particularly that to the west other than in the early morning.</li><li>b. The overall size and height will have little impact on the outlook from the adjoining lots because of existing mature landscaping.</li></ul> |
| <p><b>P5</b> Buildings are sited and designed to provide adequate visual privacy for neighbours.</p>  | <p>The siting of the proposed development will improve visual privacy to the adjoining property to the west and have no impact on the neighbour to the east.</p>  |
| <p><b>P6</b> The location of a <i>building</i> or <i>structure</i> facilitates normal <i>building</i> maintenance.</p>  | <p>The location of the development will allow adequate access for normal building maintenance.</p>  |
| <p><b>P7</b> The size and location of <i>structures</i> on corner sites provides for adequate sight lines.</p>  | <p>The site is not a corner site and this criteria is not applicable.</p>   |
| <p><b>P8</b> Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for-</p> <ul style="list-style-type: none"><li>a. The availability of public transport; and</li><li>b. The availability of on-street parking; and</li><li>c. The desirability of on-street parking in respect to the streetscape; and</li><li>d. The residents likelihood to have or need a vehicle.</li></ul> | <p>The development is to provide replacement secure carparking space for the existing secure two vehicle carparking space being converted to alternative use. The residents have two motor vehicles, and require secure storage for same.</p>   |

**Any other matter considered relevant.**

The proposal is to provide additional living space to accommodate a growing family and a secure two car accommodation principally within the existing foot print of the existing detached dwelling and the existing driveway.

The relationship of the proposed structure to the existing structure and streetscape is sympathetic and maintains the substantial area of mature landscaping to the streetscape, which will considerably reduce the impact of the proposed structure to the streetscape.

**Reason for the Decision**

Part 12 of the QDC provides **Performance Criteria** and some **Acceptable Solutions**, but allows the local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and considering the nature and use of the proposed structure and its siting on this allotment and the existing structures and their siting on the adjoining allotments, and after considering the minimal impact the Garage would have on the amenity and streetscape, the Tribunal found that there was reasonable grounds to vary the road alignment setback to allow the Garage to be constructed within the 6 metre road boundary set back to a minimum of 400 mm to the outer most projection.

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**Dennis Leadbetter**

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

**Building and Development**

**Tribunal Referee**

**Date: 11 February 2004**

## **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  
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