



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	01-15
Applicant:	Mr Barry Kirkwood
Assessment Manager:	Concept Building Approvals
Concurrence Agency: (if applicable)	Moreton Bay Regional Council (Council)
Site Address:	24 Mindi Court, Cashmere and described as Lot 20 on RP911201 subject site

Appeal

Under section 526 of the *Sustainable Planning Act 2009* (SPA), this appeal is against the decision of the Assessment Manager, at the direction of Moreton Bay Regional Council as the Concurrence Agency, to refuse a Development Application for building works for an already constructed open structure referred to as a carport.

Date and time of hearing:	13 th February 2015 – 10:00am	
Place of hearing:	24 Mindi Court, Cashmere	
Committee:	Ian Adams Peter Rourke	Chair Member
Present:	Barry Kirkwood Chris Trewin Tamara Scott Sigrid Pembroke	Applicant Council representative Council representative Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager; approves the Development Application C.B.A. 140055 for the approval of the Carport Structure subject to the following conditions:

- The Development Application is to accurately reflect the proposed use of the structure
- The part of the structure forward of the front post being removed
- The existing vegetation at the frontage of the site being retained; and
- The structure is to remain open and not be enclosed.

The Assessment Manager is directed to issue an amended decision notice in accordance with the Committees decision.

Background

On 22nd November 2014 the Assessment Manager was engaged to assess a Development Application (Application) for building work for an open structure (structure) on the subject site referred to in the Application as a carport. The building work had been completed prior to the issuing of a Development Permit.

The structure is a slim line, single skillion roof structure, that is already built and existing. It has a floor area of 47m². It is built approximately 1m from the front boundary and zero lot aligned to the side boundary. The structure has a length adjoining the side boundary of 13.1m and width of 3.5m. It has vegetation screening the carport when viewed from the street frontage.

In addition to the subject structure, the site is currently improved with a lowset dwelling positioned 6m from the road boundary and 3.5m from the eastern boundary. The neighbouring dwelling to the east is located approximately 7.5m from the road boundary and 3.2m from the side boundary adjoining the subject site.

The structure had been built within the front boundary clearances prescribed in Councils Detached House Code Table 6.1.15B Probable Solution PS1.1 (1) and the side boundary clearances prescribed in Performance Criteria P2 of the Queensland Development Code Part MP 1.2 (QDC MP1.2).

The Assessment Manager referred to Application to Moreton Bay Regional Council (Council) as Concurrence Agency.

On the 21st of November 2014, the Council directed the Assessment Manager to refuse the siting variation application for the proposed structure on the following grounds:

When in the built form Council finds that the structure in question will have a negative impact due to the following facts:

- 1. It adversely impacts on the existing and desired streetscape of the area.*
- 2. It is not in keeping with the desired character of the area.*
- 3. It is not consistent with the road boundary setbacks of the neighbouring structures.*
- 4. It is of a scale which adversely impacts the existing and desired streetscape of the area.*
- 5. It causes significant loss of amenity to the surrounding area as it affects the privacy of neighbouring buildings.*

On 9th December 2014, the Assessment Manager refused the Application in accordance with Council's response.

On 2nd January 2015 property owner lodged an appeal with the Building and Development Committee Registrar against the Assessment Manager's decision to refuse the Application.

Upon inspection of the subject site at the hearing, it became apparent to the Committee that the 'Carport' was not solely for the purpose of car accommodation. The applicant confirmed that the structure was to be used as a carport, open entertainment area and work space. The building work is therefore more appropriately described as an open structure.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Application for appeal/declaration lodged on 2 January 2015 and supporting documentation including Site Plan; Elevations (with photos); Form 15 Engineering Certificate and Engineering Plans;
2. Assessment Manager Decision Notice dated 9 December 2014;
3. Moreton Bay Regional Council Concurrence Agency response dated 21 November 2014;
4. Current Title Search, Registered Plan RP911201;
5. IDAS Forms 1 & 2;
6. Pine Rivers Planning Scheme Chapter 6 Part 1 Division 15 ‘Detached House Code’;
7. Queensland Development Code MP1.2 – Design and Siting Standards for Single Detached Housing – on lots 450m² and over (QDC MP 1.2);
8. Verbal representations from the Applicant and Council representatives at the hearing;
9. The *Building Act 1975* (BA) ;
10. The *Sustainable Planning Act 2009* (SPA)

Findings of Fact

The Committee makes the following findings of fact:

- The structure is a slim line, single skillion roof structure, that is already built and existing. It has a floor area of 47m². It is built approximately 1m from the front boundary and zero lot aligned to the side boundary. The structure has a length adjoining the side boundary of 13.1m and width of 3.5m. It has vegetation screening the carport when viewed from the street frontage.
- Under the Building Act 1975 s.33(2), the Concurrence Agency has alternative siting standards for road boundary clearances. These are contained in the Pine Rivers Planning Scheme Chapter 6 Part 1 Division 15 “Detached House Code”.
- The Detached House Code Table 6.1.15B Probable Solution PS1.1 (1) requires a minimum road boundary setback of 6m.
- The structure is not consistent with the road boundary setbacks of the neighbouring structures. Given the cross-slope across the site the part of the structure forward of the house frontage is more pronounced.
- The side and rear boundary clearance requirements for the structure are contained in Acceptable Solution A2 of QDC MP 1.2. The minimum side boundary clearance required for a structure of this size is 1.5m.
- The Concurrence Agency provided verbal representations at the hearing that it had received complaints about the building work however, no comments or submissions were received by the Committee from any other affected parties.

Reasons for the Decision

The Committee did not find the reasons for refusal identified in the Decision Notice issued by the Assessment Manager to be sufficient to warrant refusal of the Development Application.

Open structures such as carports and covered entertainment areas is a building form often found, and often forms, part of a residential area. These types of structures do not compromise achieving

the sought character and outcome for the area. The Pine Rivers Plan identifies the Residential Overall Outcome of the Urban Locality as:

“A diversity of housing options and accommodation types, densities and residential allotment sizes are developed in appropriate locations within the Urban Locality to cater for the accommodation needs of residents through each stage of their lives.”

Given the placement and sizing of the adjoining house windows the structure will not lead to a significant loss of privacy for the adjoining neighbours.

Removal of the roof overhang of the structure, (i.e., to the front post of the open structure approximately 2m will reduce the inconsistency of the front setback and reduce any adverse visual impact associated with the height and close proximity of the structure to the street frontage.

The siting of the structure with the partial removal of the roof overhang is still a variation to the probable solution of the building setbacks requirement of the Pine Rivers Plan - Detached House Code. However the dominance of the structure will be reduced if it is conditioned to retain the existing vegetation at the frontage of the site and for the structure to remain open and not enclosed.

Agreement was reached with all parties at the hearing that removal of part of the structure - that part forward of the front post would reduce the impact of the structure on the streetscape and would be acceptable to the Applicant and the Council.

Given the existing established vegetation and the open nature of the structure, the Committee formed the opinion that the structure, with the removal of part of the overhang from the front boundary to the first post would:

- not adversely impact on the existing and desired streetscape of the area;
- be consistent with the desired character of the area;
- not be of a scale that would adversely impact the existing and desired streetscape of the area;
- not cause significant loss of amenity to the surrounding area;
- better reflect the road boundary setbacks of the neighbouring structures; and,
- not lead to a significant loss of privacy for the adjoining landowner.

It was the general consensus that with appropriate conditions imposed on the approval for the structure Performance Criteria P2 of QDC MP1.2 and Specific Outcome SO1 of Table 6.1.15B of the Detached House Code contained in the Pine Rivers Plan would be achieved.

Ian Adams
Building and Development Committee Chair
Date: 9.3.15

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 Housing and Public Works
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Brisbane QLD 4001
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