



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number: 22 - 001

Appellant: Andrew John Lonsdale

**Respondent
(Assessment Manager):** Tony English of *tcert Building Certification*

**Co-respondent
(Concurrence Agency):** Brisbane City Council

Site Address: 11 Waitara Street Chermside West and described as Lot 89 RP100958—the subject site.

Appeal:

Appeal made under Section 229 and Schedule 1, section 1, Table 1, Item 1(a) of the *Planning Act 2016* against the refusal of a Development Application by the Brisbane City Council, as Referral Agency for the proposed open carport, in addition to the previously supported open carport within the road boundary setback along Waitara Street, Chermside West.

Tribunal: Mr. Markus Pye – Chair
Dr. Christopher Robertson – Member

Decision:

The Development Tribunal (Tribunal) in accordance with section 254(2)(c) of the *Planning Act 2016* (PA2016) replaces the decision of the Respondent dated 17 January 2022 with a decision that the development application be approved in accordance with the proposed redesign as described in the PDF document named "00 Site Plan and Elevations (amended 3-3-22).pdf" forwarded by email to Brisbane City Council (BCC) by the Registrar on Thursday, 3 March 2022 at 10:04am (subject to any further conditions the assessment manager may impose so as to ensure compliance with the building assessment provisions).

Background:

1. On the 11 January 2022, the BCC (as the Referral Agency) informed the Assessment Manager, Mr English of tCert Building Certification (tCert) that he was directed to refuse the application for a carport within the Waitara Street road boundary road setback on the grounds that the proposal was “*considered to be contrary to the purpose of the Queensland Development Code (QDC).*” On the 17 January 2022, the Assessment Manager informed the Applicant of the refusal by BCC.
2. On Monday, 28 February, 2022 2:37 pm and prior to any hearing, Brisbane City Council, “*having considered the grounds of the appeal and the particulars of the proposed development*”, instigated a suggested redesign (by email) through the Registrar outlining the variations to the original design with required updated drawings which would be an Acceptable Solution.
3. On Thursday, 3 March, 2022 the Appellant agreed to the redesign being drawing contained in a PDF document with the file name “00 Site Plan and Elevations (amended 3-3-22).pdf” and it was forwarded via email to BCC and other parties including the Assessment Manager by the Registrar.
4. On Tuesday, 8 March 2022 4:39 PM BCC thanked relevant parties for updated plans which were considered “acceptable”. However, BCC just wanted clarification of roof falls, which should have no bearing on the outcome.

Jurisdiction:

The Tribunal has jurisdiction for this appeal under *Planning Act 2016* (PA), Section 229(1)(a)(i) and of Schedule 1, sections 1(1) and 1 (2)(g) and Table 1, Item 1(a).

Decision framework:

It is noted that:

- the onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA),
- the Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (s. 253(4) of the PA),
- the Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings), and
- the Tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

(2) The Tribunal must decide the appeal by—

(a) confirming the decision; or

(b) changing the decision; or

(c) replacing the decision with another decision; or

(d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time being: at the end of the appeal period to this decision;

Material Considered:

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' attaching Grounds for Appeal lodged with the Tribunals Registrar on 31 January 2022.
2. Qld Development Code (QDC). *MP 1.2 – Design and Siting Standard for Single Detached Housing*. Located at: https://www.epw.qld.gov.au/data/assets/pdf_file/0012/4305/mp1-2.pdf. Accessed 24 April, 2022.
3. *The Planning Act 2016* (Qld), (PA)
4. Decision Notice from Assessment Manager dated 17th January, 2022 incorporating BCC concurrence agency direction to refuse the application.
5. Redesign plan noted as- 00 Site Plan and Elevations (amended 3-3-22)
6. Email correspondence from Hubert Toś, BCC officer to Registrar dated:
 - a. Monday, 28 February, 2022 2:37 PM
 - b. Tuesday, 8 March, 2022 4:39 PM
 - c. Thursday, 17 March, 2022 3:35 PM
 - d. Friday, 18 March, 2022 10:50 AM
7. Email correspondence from Registrar to Hubert Toś, dated:
 - a. Thursday, 3 March, 2022 10:04 AM
 - b. Wednesday, 9 March, 2022 12:52 PM
 - c. Thursday, 17 March, 2022 3:45 PM
8. Email correspondence from Registrar to Appellant and Assessment Manager dated:
 - a. Tuesday, 8 March, 2022 5:00 PM
9. Email correspondence from Assessment Manager to Registrar dated:
 - a. Wednesday, 9 March 2022 11:51 AM

Findings of Fact:

On Monday, 28 February, 2022 2:37 PM, having considered the grounds of the appeal and the particulars of the proposed development, BCC was prepared to withdraw its objections to the siting variation subject to changes and additional information.

On Tuesday, 8 March, 2022 4:39 PM, BCC thanked relevant parties for updated plans in response to BCC email dated 28 February 2022 being - 00 Site Plan and Elevations (amended 3-3-22) which were considered "acceptable" by the Council's officer apart from a clarification regarding roof falls.

On Friday, 18 March, 2022 10:50 AM subsequently BCC took the position, regarding withdrawing the appeal to move forward with the BCC approval, stating, "*If the appeal is withdrawn and the Development Tribunal does not make a decision on the siting variation, the council original referral agency response would still stand*".

Reasons for the Decision:

The reasons the Tribunal has made this decision are as follows.

That the changes proposed and accepted by the Referral Agency, namely,

- The width of the carport is reduced to 3.0m;
- The front setback is increased by relocating the proposed carport closer to the existing dwelling to match the building separation between the existing carport and the dwelling house (600mm to the eaves);
- Updated plans are provided indicating the changes described in points 1 and 2 (above), and include complete (four) elevations of the proposed carport.

as changed, is an Acceptable Solution having regard to the relevant QDC provisions under *MP 1.2 – Design and Siting Standard for Single Detached Housing*: “Performance Criteria”: P1, P2, P3 and P6).

The Tribunal understands that the Appellant lodged a ‘Notice of Withdrawal of Appeal’ in the Registry on or about 18 March, 2022. This was apparently done in the belief that the revised proposal had been agreed to by the Council and there was no further utility in progressing the appeal. However, the Council subsequently indicated that without a formal decision by the Tribunal changing the decision under appeal that decision would remain in place, despite any agreement about the amended design.

The Tribunal is of the view that, in circumstances like this, a purported withdrawal of an appeal by an appellant does not affect the Tribunal’s entitlement and obligation to decide the appeal by one of the means identified in section 254(2)(a) – (d) of the *Planning Act 2016*. This is particularly so where it appears that neither the Respondent (assessment manager) nor the Co-respondent (referral agency – Council) has given any notice expressly agreeing to the withdrawal of the appeal. Furthermore, the Tribunal understands that the Appellant, in an email dated 22 April 2022, requested the Registry to disregard the ‘Notice of Withdrawal of Appeal’ and to treat it as wholly revoked.

In response to Council’s concerns regarding roof falls, this concern does not impact on the decision to approve the amended design.



Markus Pye

Development Tribunal Chair

Date: 23 May 2022

Appeal Rights:

Schedule 1, Table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries:

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833

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