



## Building and Development Dispute Resolution Committees—Decision

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### Sustainable Planning Act 2009

<b>Appeal Number:</b>	54-12
<b>Applicant:</b>	Darren Otto
<b>Assessment Manager:</b>	QPDB Pty. Ltd. Building Certifiers
<b>Concurrence Agency:</b> (if applicable)	Toowoomba Regional Council (Council)
<b>Site Address:</b>	6 Page Court Kearneys Spring Toowoomba and described as Lot 13 on SP 170117 – the subject site

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Building Development Application about design and siting requirements of building work. The Assessment Manager was directed to refuse the application by Toowoomba Regional Council as the Concurrence Agency because it is not in accordance with the acceptable solutions of the Performance Criteria of Part MP1.2 A1(a)(i)1 of the Queensland Development Code (QDC).

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<b>Date of hearing:</b>	Friday 30 November 2012 10:00 AM
<b>Place of hearing:</b>	The subject site.
<b>Committee:</b>	David Kay– Chair
<b>Present:</b>	Darren Otto – Applicant and owner of the subject site. Cara Otto – Owner of the subject site. Mark McKechnie –Building certifier QPDD Pty. Ltd. Robert Orr – Toowoomba Regional Council representative

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### 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 dated 16 October 2012, and replaces it with the following decision:-

The Assessment Manager is directed to amend the Decision Notice if satisfied that the Application complies with the following:-

- The existing approved carport sited at the south east corner and 0.6m from the southern

side boundary of the subject site having a minimum setback of 0.0 m from the eastern road front boundary is permitted to be enclosed.

- The covered outdoor area sited at the north west corner having a minimum 0.6 m setback from the northern road boundary of the subject site.
- The enclosed carport and outdoor covered area garage otherwise being generally in accordance with the details shown on QPDB Decision notice dated 16 October 2012, pages numbered 24-26, 29 and 31-34.
- All other relevant building assessment provisions applicable to the Application.

## **Background**

The Applicant's submission to the Committee included the following:

- Initial advice sought by the owners indicated that the covered outdoor area did not require a building approval. This advice was not sought from the Assessment Manager.
- The covered outdoor area is located over an underground water tank and the area is unusable without the cover which also protects birds kept in this area.
- The covered structure was required to protect the ground from debris and leaves from large untrimmed trees on the neighbouring property.
- The carport enclosure was to protect and remove from view, items kept in the open carport after a theft of goods from the open carport.
- The enclosed carport is used for the storage of 2 boats.
- The new shed on the adjoining property also owned by the owners of 6 Page Court would be considered to be more likely to be the subject of a complaint. This building matches buildings on the subject site despite its size.
- The neighbours of No. 3, 4 and 7 Page Court have signed, or provided correspondence, indicating that they do not have concerns with the covered outdoor area or the carport enclosure.
- The subject site is looked after very well and the buildings and fences have complementary colour schemes.
- The owners are not aware of any complaints, and the carport enclosure and covered outdoor area are not an eyesore compared to some properties in the area.
- The appearance of a large shed on the opposite side of Page Court is similar in appearance to a large industrial building.

The Assessment Manager's submission to Committee included the following:

- The building work was constructed before the Assessment Manager became involved and the Application was made as a result of a Council Notice related to unapproved building work.
- The road frontage is in a cul-de-sac and has low traffic volumes.

The Council's submission to the Committee included the following:

- The reasons set out in the Concurrence Agency response dated 12 September 2012.
- Toowoomba Regional Council area is known as the "Garden City" and this is referenced in the planning scheme. This means that Council is particularly sensitive about the visual appearance from the street and does not support setbacks less than 6.0m.
- The QDC MP1.2 road boundary setback acceptable solution for an enclosed carport and an outdoor covered area for this site is 6.0 m.
- The QDC MP1.2 Part A1(c) gives a concession for an open carport that applies but there is an obligation for the design to comply with the QDC MP1.2. The existing carport was approved subject to the structure remaining open. Security required by the owners could be achieved by the use of lattice and also roller shutters that are open in appearance which will comply and still provide security.

- The Application resulted from a Council Notice related to unapproved building work.
- Council has been consistent in its application of the 6.0m road boundary setback and there are a limited number of garages approved within the 6.0m road boundary setback which Council believe have resulted from Building Development Dispute Resolution Committee decisions.
- Other garages within the 6.0m road boundary setback are likely to have not been approved.

## **Material Considered**

The material considered in arriving at this decision comprises:

- 'Form 10 – Appeal Notice ', grounds for appeal lodged with the Committee Registrar on 5 November 2012.
- Material submitted by the Applicant accompanying the Notice of Appeal.
- Decision Notice from the Assessment Manager dated 16 October 2012.
- Concurrence Agency Response from Council, dated 12 September 2012 on siting matters under QDC MP1.2.
- Verbal submissions from the Applicant; Assessment Manager and Council representative at the hearing;
- The *Sustainable Planning Act 2009* (SPA).
- The Sustainable Planning Regulation 2009 (SPR).
- The *Building Act 1975* (BA).
- The Building Regulation 2006 (BR.);
- The Queensland Development Code MP1.2 –Design and Siting Standard for Single Detached Housing - on lots 450m2 and over (QDC MP1.2);and
- Correspondence from nearby residents advising they have no objection to the structures.

## **Findings of Fact**

The Committee makes the following findings of fact:

- This appeal relates to the road front boundary clearance for the enclosure of an existing carport and a covered outdoor area.
- An application for a Concurrence Agency response was made to Council by the Assessment Manager as a result of a Council Notice related to unapproved building work.
- The Council directed the Assessment Manager to refuse the Application for the enclosed carport and covered outdoor area sited within the road front boundary clearances.
- The Assessment Manager issued a Decision Notice to the Applicant dated 16 October 2012.
- The appeal to the Committee was lodged within the required time.
- The road front boundary setback of the enclosed carport and covered outdoor area for this site does not comply with the QDC MP1.2 Acceptable Solution Part A1 (a) which requires a 6.0 m road front boundary clearance.
- The Performance Criterion P1 of the QDC MP1.2 contains the performance requirements for the assessment of the Application.

## **Reasons for the Decision**

The relevant siting requirements are set out in QDC MP1.2. These are building assessment provisions for the purposes of section 30 of the BA.

The enclosed carport and covered outdoor area do not comply with the QDC MP1.2 Acceptable

Solution A1(a)(i) requiring a 6.0 m setback from the road front boundary.

The setback of adjoining dwellings and buildings are not less than 6.0 m and accordingly reduced road boundary setbacks allowed under QDC MDP1.2 Acceptable Solution A1(a)(ii) are not applicable.

The use of QDC MP1.2 Acceptable Solution A1(b) for corner lots has been considered. The site has the appearance of a corner lot being located at a 90 degree curve in the road. The lot would have an average depth of 20m if the road frontage of the site facing east is considered to be a secondary road frontage. The reduced front boundary setback allowed for a building less than 3.5 m in height in this case would be 4.7 m. The enclosed carport located along this frontage has a road boundary setback of 0.0 m. Therefore this part of the QDC is not applicable even if the relevant section of Page Court was considered to be a secondary road frontage.

The building work the subject of this development application is for the enclosure of an open carport and a covered outdoor area. Accordingly QDC MP1.2 Acceptable Solution A1(c) which applies to an open carport is not applicable.

The enclosure of the existing carport and the covered outdoor area both being located within the 6.0 m road boundary setback do not satisfy the Acceptable Solution A1 and accordingly must be considered under Performance Criteria P1. The relevant Performance Criterion of QDC MP1.2 is as follows:-

*“P1 –The location of a building facilitates an acceptable streetscape appropriate for - the bulk of the building or structure; and the road boundary setbacks of neighbouring buildings or structures; and the outlook and views of neighbouring residents; and nuisance and safety to the public.”*

#### **Covered outdoor area located in the northwest corner of the site.**

##### **Bulk of the building or structure**

The covered outdoor area is 4.0 m long, 3.6m wide, 2.4m in height at the eaves and approximately 3.4m in height at the ridge. There is an existing 1.8 – 2.0 m high fence along the northern front boundary returning along the western side boundary adjacent to No. 4 Page Court. Adjacent to the western side boundary is a row of high trees forming a visual screen along this boundary.

It is the opinion of the Committee that the existing front and side boundary fences and row of trees have a significant visual bulk on their own. The visible area of the roof of the covered outdoor area above the fence blends into the roof outline of the existing dwelling..

##### **Building character and appearance**

The covered outdoor area has the appearance of a single storey building. The character of existing dwellings in the street is predominantly lowset single storey dwellings. There is a long single storey building having the appearance of large shed opposite the subject site and visible from Page Court.

It is the opinion of the Committee that the outdoor covered area is consistent with the character and appearance of the area.

##### **Road boundary setbacks of neighbouring buildings or structure**

The building setbacks along the street are generally 6.0 m and consideration of this matter in isolation would not support a reduction of the front boundary setback.

### Outlook and views of neighbouring residents

The adjacent dwelling to the west at 4 Page Court is a lowset dwelling and the large trees on this property together with the side boundary fence, provide a screen for the covered outdoor area on the subject site.

It is the opinion of the Committee that the outlook and views of the adjacent residents would not be adversely affected. Letters of no objection have been provided from the owner of 4 Page Court and a number of other residents in the street.

In consideration of the streetscape, the matter raised by the Council warrants consideration in preserving the intent of the character of the "Garden City". This represents another reason to limit any intrusion into the 6.0m road boundary setback.

It is the opinion of the Committee that the existing fences along the frontage and trees significantly obscure the outdoor covered area for the character of the area to be maintained.

### Nuisance and safety to the public

There is no vehicle accommodation and vehicle access is not required for the covered outdoor area. Visibility for road and pedestrian safety will not be affected by the as a result of the outdoor covered area location.

It is the Committee's view that the outdoor covered area facilitates an acceptable streetscape appropriate for the bulk of the building or structure, the road boundary setbacks of neighbouring buildings, the outlook and views of neighbouring residents, and does not result in nuisance and safety to the public

### **Enclosure of existing carport in the south east corner of the site.**

#### Bulk of the building or structure

The enclosed carport is 6.0 m long, 6.1m wide, 3.3m in height at the eaves and approximately 3.6m in height at the ridge. There is an existing 1.8 m high fence along the eastern front boundary returning along the southern side boundary adjacent to No. 8 Page Court. On the site of No. 8 Page Court adjacent to the southern side boundary of the subject site is a large steel framed building from approximately 4.5 m to 7.5 m in height.

It is the opinion of the Committee that the bulk of the existing large steel framed building on 8 Page Court dominates the locality and any potential impact of the enclosed carport on the subject site would be negated by this large steel frame building.

#### Building character and appearance

The enclosed carport has the appearance of a single storey building. The character of existing dwellings in the street is predominantly lowset single storey dwellings. There is a long single storey building having the appearance of large shed opposite the subject site and visible from Page Court.

It is the opinion of the Committee that the enclosed carport is consistent with the character and appearance of the area.

#### Road boundary setbacks of neighbouring buildings or structure

The building setbacks along the street are generally 6.0m and consideration of this matter in

isolation would not support a reduction of the front boundary setback.

Outlook and views of neighbouring residents

The adjacent property to the south contains the large steel framed building and is owned by the owners of the subject site. A letter of no objection has been provided from the owners of No. 7 Page Court who could be considered to be the most affected being opposite the subject site.

In consideration of the streetscape, the matter raised by the Council warrants consideration in preserving the intent of the character of the "Garden City". It is considered that the view, when looking south down the Page Court cul-de-sac, would potentially present a view of the front of buildings across the streetscape and not present a view of a street with a continuity of buildings having a 6.0m road front boundary setbacks.

It is the opinion of the Committee that the outlook and views of the adjacent residents would not be adversely affected when compared with the construction of an allowable open carport.

Nuisance and safety to the public

The use of this site for vehicle access and visibility will not be any further affected with the enclosed carport location compared to an unenclosed carport.

The existing 1.8m high front boundary fence would be the significant feature that would affect safety to the public from vehicles exiting the site. This fence is allowed under the QDC MP1.2. The geometrical arrangement of the front boundary of the subject site, being at right angles to the road front boundary of No. 8 Page Court, and also being the head of the cul-de-sac, limits the amount of vehicle and pedestrian traffic passing the site.

It is the opinion of the Committee that the location of an enclosed carport (or garage) constrained by fencing on either sides along the front boundary facilitates an acceptable streetscape such that it does not create a nuisance and does not adversely affect the safety of the public.

It is the Committee's view that the enclosed carport building facilitates an acceptable streetscape appropriate for the bulk of the building or structure, the road boundary setbacks of neighbouring buildings, the outlook and views of neighbouring residents and does not result in nuisance and safety to the public."

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David Kay  
**Building and Development Committee Chair**  
**Date:** 10 December 2012

## **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  
PO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**