



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	87 - 10
Applicant:	Steel Form Structures
Assessment Manager:	D.B.R. Building Certification Pty Ltd
Concurrence Agency:	Redland City Council
Site Address:	2 June Parade, Lamb Island and described as Lot 92 on RP127423 – the subject site

Appeal

Appeal under section 541 of the *Sustainable Planning Act 2009* (SPA) against the decision dated 8 December 2010, as the development permit with conditions. The appeal is on the grounds that the Council, as the concurrence agency, refused an application relating to a proposed building structure (covered walkway) to be constructed within the required front road boundary setback, on the subject site.

Date of hearing:	1.30pm Tuesday, 8 March 2011
Place of hearing:	The subject site
Committee:	Georgina Rogers – Chair Jennifer Hutcheon – Referee
Present:	Noel Walker - Owner Valerie Walker - Owner Brian Gillan – Applicant (Steel Form Structures) Cynthia Lawes – Redland City Council (concurrence agency)

Decision:

The Committee, in accordance with section 564 of SPA sets **aside** the decision appealed against to refuse the development application of building works, namely a building structure (covered walkway) within the required front road boundary setback.

The Committee, **directs** the assessment manager to **re-assess** the development application for building works (covered walkway), subject to compliance with the following conditions:-

1. *Submission for amended plans by applicant to Committee and Council to include the following items as discussed at the on-site hearing:*
2. *A curved roof structure linking the front door of the dwelling to the approved carport, with the following dimensions:*
 - *5.3m across the facade;*
 - *3.2m from the house facade;*
 - *A minimum setback to the front boundary of 1.5m;*
 - *A maximum height of 3.8m to the top of the curve of the structure;*
 - *Provision of an 'unroofed void' between the building and covered walkway; and*
3. *A solid roof over the dwelling entrance, extending a maximum of:*
 - *3.2m from the house facade;*
 - *1.9m across the facade, centred upon the dwelling entrance; and*
4. *A covered walkway between the dwelling entrance and carport, with the following dimensions:*
 - *A minimum setback to the front boundary of 1.5m;*
 - *A maximum width of 1.5m;*
 - *A minimum setback of 1.5m to the house facade for an unroofed void;*
 - *A maximum height of 3.8m to the top of the curve of the structure; and*
5. *Retention of existing vegetation along the front boundary and adjoining the house.*

Background

The Committee conducted an on-site hearing and the opportunity was taken to view the existing dwelling and intended location of the proposed building structure (covered walkway).

The site is located at 2 June Parade, Lamb Island, and has an area of 519m². The existing dwelling is two storeys and is setback approximately 4.5m from the front property alignment. The site faces north and the location of the proposed covered walkway would be across the front of the existing dwelling. It is noted that the site does not have a front fence; however, the boundary is delineated by garden beds and planting.

The application subject of this appeal involved a carport structure within the front setback (which was approved), and two building structures (which were refused). It is noted that the appeal was made with respect to only one of the two refused patio structures – the covered walkway. At the request of the applicant, it was accepted by all parties at the hearing that the proposed structure was a covered walkway, linking the front door of the dwelling to the approved carport structure.

The proposed covered walkway extends approximately 3.3 metres into the 6m setback stipulated as an Acceptable Solution A1 under Part 7 Division 5 of the Redlands Planning Scheme. The Acceptable Solution (Table 1) requires that a domestic outbuilding on a lot between 500-850m² be setback a minimum of 6m. In addition, the Acceptable Solution requires that the combined area of domestic outbuildings not exceed 45m². The proposed structures (carport and two patios) have a combined area of 55m². The application was therefore subject to referral to Redland City Council as a concurrence agency. Council provided a concurrence agency response requiring D.B.R. Building Certification Pty Ltd to impose a number of conditions. The following conditions are subject of the appeal:

- “4. Any endorsements noted in red on documents.*
- 5. Please note the 2 (Two) proposed Patios have been refused. ”*

The applicants asserted the following reasons for their decision to appeal the condition of approval, both within the written submission and during the hearing:

- The patio structure is a covered walkway between the house and the approved carport;
- The proposed structure would contribute to the aesthetics of the house;
- It would not “create an eyesore”;
- No reason has been given for the refusal;
- No objections have been made by any party;
- The structure would not adversely affect visibility for vehicles.

In response to the Applicant’s submission of 17 December 2010, Council made the following written submissions in their correspondence of 8 February 2011:

- Part 7 Division 5 of the Redlands Planning Scheme restricts domestic outbuildings to an area of 36m²;
- The proposed outbuildings had a combined area of 55m², consisting of:
 - 21.5m² for a new carport (approved);
 - 16.6m² for a covered walkway between the dwelling and the approved carport (refused);
 - 16.9m² patio at the rear of the property (refused);
- The carport was approved as it ‘had no visual impact upon adjoining properties and increased the undercover parking’;
- The proposed covered walkway was to be setback only 1.2m from the front boundary, which was considered to adversely impact upon the neighbours’ privacy and the streetscape;
- There did not appear to be any precedent of structure approved in the front 6m setback, with the exception of carports.

During the hearing, all parties agreed upon the following points:

- The proposed structure was a covered walkway, linking the front door to the approved carport over an existing pathway;
- The application illustrated a setback 1.2m from the property boundary, with the structure extending 3.3m from the house facade;
- The dimensions were 5.3 metres by 3.3 metres, with a total area of approximately 14.19m²;
- Combined with the carport, the structures would extend a total of 9.5m across the front of the dwelling;
- It would have a maximum height of 3.7m to the top of the curve of the structure.

Council raised or confirmed the following additional points during the hearing:

- The proposed structure, in combination with the carport, was considered too ‘bulky’;
- Queensland Development Code does not contain controls for covered walkways;
- The Redlands Planning Scheme allows for a gatehouse of 4m² within the front setback.

The parties agreed to resolution of the issues, identifying the following factors for a covered walkway structure:

A curved roof structure linking the front door of the dwelling to the approved carport, with the following dimensions:

- 5.3m across the facade;
- 3.2m from the house facade;
- A minimum setback to the front boundary of 1.5m;
- A maximum height of 3.8m to the top of the curve of the structure;
- Provision of an 'unroofed void' between the building and covered walkway; and

A solid roof over the dwelling entrance, extending a maximum of:

- 3.2m from the house facade;
- 1.9m across the facade, centred upon the dwelling entrance; and

A covered walkway between the dwelling entrance and carport, with the following dimensions:

- A minimum setback to the front boundary of 1.5m;
- A maximum width of 1.5m;
- A minimum setback of 1.5m to the house facade for an unroofed void;
- A maximum height of 3.8m to the top of the curve of the structure; and

Retention of existing vegetation along the front boundary and adjoining the house.

Review of the Redlands Planning Scheme identifies the following Overall Outcome for the Domestic Outbuilding Code:

“(a) to ensure the domestic outbuilding is -

- (i) sited and of a scale and construction that respects the amenity of adjoining properties by preserving solar access to living areas and private open space;*
- (ii) not dominant when viewed from any public place including the street, and is proportionate to and visually compatible with the residential setting.”*

The agreement reached at the hearing is consistent with the Overall Outcome of the Domestic Outbuilding Code, as well as the relevant Overall Outcomes of the SMBI Residential Zone Code.

Material Considered

The material considered in arriving at this decision comprises:

1. Decision Notice issued by D.B.R. Building Certification Pty Ltd Group, dated 8 December 2010.
2. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal, including plans, photographs, and written submission, as lodged with the Registrar on 17 December 2010.
3. Redland City Council's referral agency response, dated 3 November 2010, and its submission to the Committee received on 8 February 2011.
4. Verbal submissions from the applicant, the assessment manager, and concurrence agency at the hearing on 8 March 2011.
5. The applicant's further information, provided to the Registrar on 10 March 2011.
6. The *Redlands Planning Scheme 2010* (Version 3).
7. The *Sustainable Planning Act 2009*.

Findings of Fact

The Committee makes the following findings of fact:

1. The site is a small lot of approximately 519 m², containing a two storey dwelling setback approximately 4.5m from the property's front boundary.
2. The land is zoned SMBI Residential (Southern Moreton Bay Islands), and subject to the SMBI Residential Zone Code under the Redlands Planning Scheme 2010 (Version 3).
3. The proposed structure (covered walkway) does not comply with relevant Acceptable Solution A1 of the SMBI Residential Zone Code, which requires a minimum setback of 6m to the frontage and combined area of 45m² for domestic outbuildings.
4. The proposed structure does not conflict with the relevant Overall Outcomes identified in the Redlands Planning Scheme.
5. The proposed structure can be conditioned to resolve concerns identified by Redland City Council and to ensure compliance with the Overall Outcomes.

Reasons for the Decision

1. 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 existing dwelling has a flat 2 storey façade and the proposed covered walkway is to be constructed half-way across the front of the dwelling and connecting to the proposed carport. The covered walkway is proposed to have a gently curved roof which will add to the aesthetics of the front façade of the dwelling. The bulk of these structures combined will not be significantly affected by the construction of the covered walkway. The structure would contribute aesthetically to the dwelling entrance and its relationship to the street.

(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 covered walkway.

(c) the outlook and views of neighbouring residents

The outlook and views of the neighbouring residents will not be impacted by the proposed covered walkway. There are established landscaping to the front of the site both along the alignment and across the front of the dwelling. There is an existing uncovered walkway already connecting the carport to the front entry of the dwelling. It is proposed to cover this with the curved walkway roof, which will be significantly within the existing landscaping.

The proposed covered walkway will not have an adverse impact on the privacy of the neighbours.

(d) nuisance and safety to the public.

The covered walkway will not impact on the nuisance and safety to the public within the neighbourhood.

- The structure would benefit the residents by providing a sheltered connection between the house and the carport.
- The structure would provide protection to the entry to the house and stairs from weather.
- The conditions, as set out above, will ensure that the covered walkway does not detract from the amenity of the streetscape.

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.

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.

In assessing the criteria from this part of the Code in relation to the building structure (covered walkway), the Committee found that there were grounds to allow for the covered walkway to be allowed. Hence, in accordance with the provisions of section 564 of the *Sustainable Planning Act 2009*, the Committee **sets aside** the decision of D.B.R. Building Certification Pty Ltd.

Georgina Rogers
Building and Development Committee Chair
Date: 13 April 2011

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 Infrastructure and Planning
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