



## Building and Development Dispute Resolution Committees—Decision

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### **Sustainable Planning Act 2009**

<b>Appeal Number:</b>	<b>13 - 14</b>
<b>Applicant:</b>	Geoffrey Celliers and Kristine Storli
<b>Assessment Manager:</b>	Fastrack Building Certification
<b>Concurrence Agency:</b> (if applicable)	Moreton Bay Regional Council (Council)
<b>Site Address:</b>	8 Hawkes Avenue Arana Hills and described as Lot 365 on RP 894288 — the subject site

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against a Decision Notice issued by Fastrack Building Certification at the direction of Moreton Bay Regional Council as Concurrence Agency to refuse a Building Development Application (Application) for a Class 10a structure (elevated carport, side deck, store room, stair and handrails) within the prescribed setback requirements to a road boundary at the subject site.

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<b>Date and time of hearing:</b>	Wednesday 14 May, 2014 at 10am
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	John Panaretos – Chair
<b>Present:</b>	Geoffrey Celliers – Applicant Paul John Kendall – Builder, agent of applicant Veen Lyall-Wilson – Representative of the assessment manager Chris Trewin – Moreton Bay Regional Council (MBRC) Tammara Scott – Development Compliance Officer, MBRC Chris Hyck – Development Compliance Officer, MBRC

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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 appealed against and approves the siting variation for the Class 10(a) double carport subject to modification of the proposal plans by deleting the storeroom along with its skillion roof as proposed by the applicant.

### **Background**

The site is occupied by an existing dwelling with double garage set 6 metres back from the front alignment. The Applicant has acknowledged that internal building works to convert the garages to habitable rooms and storeroom have been undertaken. The reason given for the conversion

is that the garages are unusable due to excessive and dangerous driveway slope (approximately 20%).

A siting variation for a carport, storeroom and ancillary structures was refused by Council as Concurrence Agency, pursuant to an Application for building works by the Applicants' agent. The variation proposed a setback of 0.135 metres to the front alignment and 0.175 metres to the side boundary.

Council's reasons for refusal, conveyed to the Assessment Manager in two letters, were as follows:

- *The proposal does not meet the specific outcomes for assessable development outlined in the Detached House Code of the PineRiversPlan.*
- *When in the built form Council does not consider the structure to be of a scale, size and bulk that is appropriate for the lot and compatible with the surrounding residential development.*
- *...the structure is considered to have an adverse impact on the existing streetscape for the area.*
- *...the structure is not considered to be in keeping with the established character for the area.*

In this case, the proposal can not satisfy Probable Solutions PS1.1(1), PS2.1 and PS4 of the Detached House Code, relating to front and side setbacks and requirement for three parking spaces respectively. Thus, the proposal relies on satisfying the relevant Specific Outcomes and/or the purpose of the code.

Council officers measured the driveway gradient, immediately prior to the hearing, at approximately 17.5%. It is also noted that the bulk of the subject site and portions of adjoining allotments are designated "Potential Landslide Areas" in the planning scheme's Overlay mapping.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 7 April 2014.
2. Moreton Bay Regional Council's referral agency responses dated 4 March, 2014 and 20 March, 2014.
3. Decision Notice issued by Fastrack Building Certification dated 26 March, 2014 refusing the Application.
4. Verbal submissions made by the Applicant and his representative and the Assessment Manager at the hearing.
5. Verbal submissions made by Council at the hearing.
6. Notated plans, representing a solution that Council would agree to, submitted to the Registrar by Council on 16 May, 2014.
7. Notated plans, representing a counter solution, submitted to the Registrar by the applicant on 20 May, 2014.
8. *The Pine Rivers Plan*

## 9. Sustainable Planning Act 2009 (SPA)

### Findings of Fact

The Committee makes the following findings of fact:

The subject site drops down from street level at about 20% gradient. The proposal is for a double carport at street level, thus its floor level is 1.75 metres above ground level at rear, with a landing and stairs at rear down to ground, and house floor, level. The carport is covered by a tiled, hip roof and attached at the western side is a small storeroom within the front 6 metre setback.

To warrant approval, the proposal should satisfy the relevant Specific Outcomes of the Detached House Code. Council's position is that the proposal can satisfy the code by adding an uncovered deck to provide a third car bay, attached to the side of the carport, thus satisfying PS4 of the code, subject to the whole structure being softened by existing and proposed screen landscaping for the length of the front boundary, and abutting the carport on the western side boundary.

The Applicant proposes an alternative solution of deleting the storeroom from the carport to reduce the structure's prominence in the streetscape.

The Applicant and Applicant's representatives argued that the driveway gradient is unsafe, citing incidences of fatal accidents elsewhere in Australia on steep driveways. The Committee accepts Council's contention that the driveway grade was fully approved around the time of subdivision and subsequent house construction (at that time Council's maximum standard residential driveway grade was 1:4 or 25%), but notes that it exceeds Council's current standard driveway maximum of 1:6 as shown in Council's Drawing No.43, "Residential Access and Invert Crossings".

Council argued that the proposal would offend against the character of the streetscape since there are no similar front setback alternative solutions in the 'Arlington Estate' area, which the subject site forms part of. On the other hand, the Applicant tendered photographic evidence of numerous examples of carports and garages within the prescribed front setback in the Arana Hills area. Council indicated that some of the examples are in areas of steeper terrain and others may be unauthorized work.

Finally, Council is concerned that work internal to the house has been undertaken prior to the approval for building work. However, that issue is not the subject of this appeal and should be pursued in another forum.

### Reasons for the Decision

- 1 Driveway access to the site falls short of the current Council standard and, combined with sharp transitional curves at top and bottom, is unsafe.
- 2 The "Potential Landslide Areas" Overlay on the subject site is testament to the steep terrain in this localised part of the 'Arlington Estate'.
- 3 The immediately surrounding streetscape is characterised by a consistent setback line from the street alignment. Nevertheless the carport, designed in a style similar the existing house, minus the storeroom and its skillion roof, has a degree of transparency that is acceptable in the streetscape and a sufficiently consistent character with the surrounding area.

- 4 A larger structure incorporating a third car bay on a deck, as proposed by Council, would require a much wider crossover and clearing of existing mature landscaping at the front of the house, thus causing a much greater intrusion into the streetscape and the character of the area.
- 5 With respect to SO4 of the Detached House Code, it is considered that the proposal significantly improves the achievement of the objective of clause (c)(ii) of the Overall Outcomes: *“provides adequate levels of safety for pedestrians and vehicles, at all times, both on and adjacent to the site...”* while sufficiently satisfying clause (c)(i): *“avoids unreasonable congestion of the road system external to the site...”*.
- 6 No objection was raised by Council to the proposed side boundary setback.

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John Panaretos  
**Building and Development Committee Chair**  
**Date: 23<sup>rd</sup> May 2014**

## **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  
GPO Box 2457  
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