



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	35-10
<b>Applicant:</b>	RE Sweetman Design and Drafting
<b>Assessment Manger:</b>	Les Kirby on behalf of Catalyst Building Approvals
<b>Concurrence Agency:</b>	Brisbane City Council (Council)
<b>Site Address:</b>	57 Selkirk Crescent, Upper Kedron and described as Lot 1 RP 899682 – the subject site

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### **Appeal**

Appeal under Section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Catalyst Building Approvals as the assessment manager to refuse a development application for construction of an attached carport and entry pergola. This decision was based on a deemed refusal from Council

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<b>Date of hearing:</b>	Wednesday 7 July 2010 at 10.00 am
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Dennis Leadbetter - Chairperson
<b>Present:</b>	Trevor Corke - Owner Rosalind Corke - Owner Les Kirby - Assessment manager Joe McCormack - Council representative

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### **Decision:**

The Committee, in accordance with section 564 (2) (c) of the SPA, **sets aside** the decision of the assessment manager dated 21 May 2010 and replaces it with the following decision:-

The assessment manager, in accordance with Section 564 (1), is **directed** to decide the development application for building works as if the concurrence agency had approved the application, with the following conditions:-

1. The development shall comply with all requirements of the BCA and other legislation as applicable.
2. The footpath crossover shall be a maximum of 5.5 metres wide and to the shape and gradient in accordance with Council policies for domestic vehicle access.

3. The carport shall remain open, however may have a door, which may be solid to a height of no greater than 2 metres but must be open above 2 metres in height above ground level.

## **Background**

The applicant lodged a development application with Catalyst Building Approvals as the assessment manager for approval of a development application for building works, for the construction of an attached carport, incorporating an entry pergola, on the subject site.

The assessment manager lodged a concurrence agency application with Council as the carport was to be located within the front alignment setback.

Council assessed the application against QDC MP 1.2 performance criteria P1, P2, P3 and P6, and refused the application on the grounds that:

*The proposed design and siting variation does not comply with the QDC performance criteria (P1) for the following reasons:*

- (i) *The proposed carport does not create an acceptable streetscape appropriate for the bulk of the building.*

## **Material Considered**

The material considered in arriving at this decision comprises:

1. *Form 10 – Notice of Appeal* and grounds of appeal contained therein received by the Registrar on 26 May 2010.
2. Drawings submitted with the appeal.
3. Verbal submissions from those attending the appeal hearing.
4. The written submission from Council dated 22 April 2010 refusing the application.
5. *The Sustainable Planning Act 2009 (SPA)*.
6. *The Sustainable Planning Regulation 2009 (SPR)*
7. *The Building Act 1975*.
8. The Queensland Development Code (QDC) Part MP 1.2.
9. The streetscape.

## **Findings of Fact**

The Tribunal made the following findings of fact:

1. There is a dwelling on the site.
2. The site has an area of 787 m<sup>2</sup> and is of irregular shape, being basically triangular in shape with a curved frontage to Selkirk Crescent and also being a corner block to an unformed Upper Kedron Road.
3. The site has a moderate fall to the south east.
4. The site has a sewerage easement along the Upper Kedron Road boundary.
5. The dwelling is set back nominally 6 metres to the Selkirk Crescent road boundary.
6. The dwelling has a double garage, which is being converted into additional habitable space.

7. The residence to the west side is elevated compared to the subject site, there being a difference of approx 2.2 metres.
8. There is no other location for the proposed carport on the site.
9. Structures in the immediate area are basically single level, and there were no carports located in the street alignment setback, within the immediate vicinity.

### **Reason for the Decision**

Council's representative at the appeal indicated that Council were not opposed to the development of a carport on the site, nor its location, but were of the view that the width nominated at 6.8 metres was wider than required and would set a precedence and would result in a structure that would present an unacceptable dominance to the streetscape. Council indicated that a carport of 6 metres in width, in accordance with acceptable solution A8 of the QDC Part MP1.2, was acceptable.

The applicants requested a wider carport to provide sufficient room to allow vehicle doors to be opened fully and also provide greater shelter from the weather. The carport was to be completely open as the only source of light and ventilation to a bedroom was through the carport.

The applicants also indicated that the carport design allowed a covered access to the west side of the dwelling.

The carport was designed as an integrated component of the existing dwelling by extending the existing hip roof to the projecting bedroom wing of the dwelling. Site measurement of that projecting portion of the existing dwelling indicated a dimension of 5.8 metres measured to the outside of the brick veneer wall to the outer face of the timber post. To extend this existing hip, while providing a design solution totally sympathetic to the existing dwelling, would result in a carport with an internal width less than 5.5 metres, which does not comply with the QDC Acceptable Solution A8. It is a matter of aesthetics, whether an offset to the existing roof line of 200 – 300 mm, to achieve the minimum width nominated by A8 of the QDC would be aesthetically pleasing or look more like a mistake, and also whether an increase in width from approximately 6 metres, acceptable to Council, to the 6.8 metres, required by the applicant, would result in an increased impact to the streetscape. To increase the width to 6.0 metres also results in a restriction to the side alignment set back due to the location of the support structure.

It should also be considered that acceptable solutions listed under A8 of the QDC MP 1.2 are minimum requirements no maximum.

It is the opinion of the Committee that a small offset, to enable the minimum internal dimension to be achieved or the increase by approximately 300 mm to have a width of 6.0 metres would not be as aesthetically acceptable. It is also the opinion of the Committee that an overall width of 6.8 metres would not adversely impact the streetscape because of the topography of the surrounding area including the elevation of the adjoining property.

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**Dennis Leadbetter**  
**Building and Development Committee Chair**  
**Date: 16 August 2010**

## **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 Tribunal's decision, but only on the grounds:

- (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  
PO Box 15009  
CITY EAST QLD 4002  
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