



## Development Tribunal – Decision Notice

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### Planning Act 2016

<b>Appeal Number:</b>	<b>48-17</b>
<b>Appellant:</b>	Sin Woon Thoo & David Tapper
<b>Assessment Manager:</b>	Mr. Michael Leahy, Building Approvals and Advice
<b>Concurrence Agency:</b> (if applicable)	Brisbane City Council (Council)
<b>Site Address:</b>	15 Alkina Street, Kenmore and described as Lot 147 on RP 93892 - the subject site

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### Appeal

Appeal under section 229 and Schedule 1, Table 1, item 1 of the *Planning Act 2016* in relation to the refusal of a development application for a Carport, Entry and En-suite. Brisbane City Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the development application as it did not comply with the *Queensland Development Code MP1.2 – Design and Siting Standard for Single Detached Housing – on lots 450 m<sup>2</sup> and over* (QDC MP 1.2), in particular performance criteria P1 (a) and (b) which deal with the street frontage.

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### Date and time of hearing:

**Place of hearing:** The subject site, 15 Alkina Street, Kenmore

**Tribunal:** Mr. Ain Kuru – Chair  
Mrs. Tamara Peverill – Member

**Present:** Ms. Sin Woon Thoo – Appellant  
Mr. David Tapper – Appellant  
Ms. Cynthia Lawes – Consultant assisting Appellants  
Mr. Duncan Kirk – Council representative, Brisbane City Council  
Mr. Alex Crisafulli – Council representative, Brisbane City Council

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016*:

- sets aside the decision of the Assessment Manager to refuse the proposed Carport, Entry and En-suite at the direction of the Council as a Referral Agency; and
- orders the Assessment Manager to remake the decision assessing the amended plans lodged with the Tribunal (Drawing W5, version E; Drawing W6, version F; and Drawing W7, version F, all dated 29.01.18) with the Referral Agency having no requirements pursuant to section 56 of the *Planning Act 2016*; and
- orders the Assessment Manager to assess the application in accordance with the building assessment provisions of the *Building Act 1975*.

## Background

The subject site is rectangular having an area of 607 m<sup>2</sup> and road frontage of 15.08 metres. The lot has been developed for residential purposes with a detached house and associated improvements and landscaping. The land slopes steeply away from the road frontage, with a drop of about 2.5 metres from the street to the ground level of the existing house.

The building work subject of the appeal comprises of two carports and an entry structure, comprising:

- An east carport measuring 3.22 metres wide by 6 metres deep and approximately 3.6 metres above ground level, with a skillion roof sloping back to the house. It is setback 0.6 metres from the road, and 2.288 metres from the side boundary.
- A west carport measuring 5.3 metres wide by 6 metres deep and approximately 3.6 metres above ground level, with a skillion roof sloping back to the house. It is setback 6 metres from the road, and 3.03 metres from the side boundary. This carport includes a bike and bin storage area.
- An entry structure between the two carports, setback approximately 3.5 metres from the road and roofed with a glass canopy approximately 2.4 metres above ground level.

The carports are clad with panelled wall sheeting and there are two windows on each external wall facing the side boundaries. Each carport has a panel door and are only partially open at the roof and entry structure.

The adjoining dwelling to the west has a double garage on the western frontage. The adjoining dwelling to the east has a solid front fence in the front setback and car accommodation is provided within the dwelling.

The Appellant engaged a building designer to design and manage renovations to their house. A builder was subsequently engaged and according to the Appellant, commenced construction without development approval for the work. The building work has been largely constructed.

The Council contacted the builder to advise that the carport was not lawfully approved. To remedy the situation, the builder lodged a Development Application for Building Work with the Assessment Manager (Private Certifier Michael Leahy) on 25 July 2017.

As the proposed carports did not comply with the prescribed road frontage setback listed in Acceptable Solution A1 of the QDC MP1.2, the private certifier was unable to decide the application. In accordance with *Planning Regulation 2017*, Schedule 9, Part 3, Division 2, Table 3, the application was referred to Council for assessment under the relevant performance criteria, which for this application was Performance Criteria P1.

The Council issued a Referral Agency Response on 6 September 2017 instructing the Assessment Manager to refuse the application as it did not meet, and could not be conditioned to meet the requirements of the Performance Criteria P1 as:

- *“QDC MP 1.2 P1 (a) The enclosed Carport with Garage doors presents excessive Bulk to the street. The excessive height and width of the structure is not typical or comparable to neighbouring structures.”*
- *“QDC MP 1.2 P1 (b) The neighbouring property to the East does not have a structure within the front property. The neighbouring property to the West does have a low height low impact double width Carport with a garage door fitted. The structure is placed to the far right of the property.”*

A Form 10 – Application for Appeal was received on 5 October 2017. The grounds of appeal are:

- A carport between the road frontage and the house is the most practical design solution due to site constraints; and
- The Appellants were not aware that approval of the carport was required, and were misled by the professionals engaged to assist them.

## Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Application for Appeal received 5 October 2017 including the following documents:
  - Grounds for Appeal;
  - Development Application Decision Notice of Refusal issued by the Assessment Manager dated 12 September 2017;
  - Referral Agency Response issued by the Council dated 6 September 2017 correspondence dated 12 September 2017;
  - DA Form 2 – Building Work Details as lodged by Crowley Construction;
  - The following drawings as prepared by Building Designer Wairereraki Giffen:
    - Site Plan, Drawing W1, Version C, dated 22.02.17;
    - Existing Lower Floor Plan, Drawing W2, Version C, dated 22.02.17;
    - Existing Lower Floor Plan, Drawing W3, Version C, dated 22.02.17;
    - Proposed Lower Floor Plan, Drawing W, Version C, dated 22.02.17;
    - Proposed Upper Floor Plan, Drawing W5, Version C, dated 22.02.17;
    - Elevations, Drawing W6, Version C, dated 22.02.17;
    - Elevations, Drawing W7, Version C, dated 22.02.17;
    - Sections, Drawing W8, Version C, dated 22.02.17;
    - Workplace Health and Safety Report, Drawing W9, Version B, dated 14.02.17.
2. The *Planning Act 2016*;
3. The *Planning Regulations 2016*;
4. The *Building Act 1975*;
5. The Queensland Development Code MP 1.2 (QDC MP 1.2);
6. The Brisbane City Plan 2014;
7. Brisbane City Council Development Information Site Report for the subject site;
8. Queensland Globe (<https://qldglobe.information.qld.gov.au/>);
9. Amended plans submitted on 18 December 2017 during the onsite appeal hearing:
  - Proposed Upper Floor Plan, Drawing W5, Version D, dated 03.11.17;
  - Elevations, Drawing W7, Version D, dated 03.11.17;
  - Elevations, Drawing W6, Version D, dated 03.11.17.
10. Amended plans submitted on 19 January 2018:
  - Windows Retained, Proposed Upper Floor Plan, Drawing CC-501-P1, Revision 01, dated 11.10.17;
  - Windows Retained, Elevations, Drawing CC-501-P2, Revision 01, Sheet 1, dated 11.10.17;
  - Windows Retained, Elevations, Drawing CC-501-P3, Revision 01, Sheet 2, dated 11.10.17;
  - Windows Retained, Batten Spacing Details, Drawing CC-501-P4, Revision 01, dated 11.10.17.
  - Windows Removed, Proposed Upper Floor Plan, Drawing CC-501-P1, Revision 01, dated 11.10.17;
  - Window Retained, Elevations, Drawing CC-501-P2, Revision 01, Sheet 1, dated 11.10.17;
  - Windows Retained, Elevations, Drawing CC-501-P3, Revision 01, Sheet 2, dated 11.10.17;

- Windows Retained, Batten Spacing Details, Drawing CC-501-P4, Revision 01, dated 11.10.17.
11. Amended plans submitted on 7 February 2018:
- Proposed Upper Floor Plan, Drawing W5, Version E, dated 29.01.18;
  - Elevations, Drawing W6, Version F, dated 29.01.18;
  - Elevations, Drawing W7, Version F, dated 29.01.18.

## Findings of Fact

The Tribunal makes the following findings of fact:

1. The proposed carports are ancillary to the use and development of the land for residential purposes.
2. The use of the land is consistent with the Low Density Residential zoning under the Brisbane City Plan 2014.
3. The proposed carports are sited 0.6 metres from the road frontage and do not comply with Acceptable Solution A1 of the QDC MP 1.2. Therefore the application must be assessed under the Performance Criteria P1 of the QDC MP 1.2.
4. At the hearing, the Council representatives advised that the proposal does not comply with Performance Criteria P1 of the QDC MP 1.2 as:
  - The enclosed carports with garage doors present excessive bulk to the street;
  - The excessive height and width of the structures is not typical or comparable to neighbouring structures;
  - The neighbouring property to the east does not have a structure within the front of the property; and
  - The neighbouring property to the west does have a low height, low impact double width carport with a garage door fitted.
5. At the Tribunal Hearing Council representatives advised that references to neighbouring buildings in Performance Criteria P1 of the QDC MP 1.2 only relate to those that directly adjoin the site.
6. Also at the Hearing, the Appellants presented an amended building design that sought to reduce the appearance of building bulk from the structure. The amended design retains the structure and garage doors in its current form and proposed to remove the panelled wall sheeting and replace with batten screening. No information was presented relating to the extent of spacing and transparency proposed.
7. Council representatives advised that while the amended proposal may be approved, it is not Council's role to redesign structures to enable compliance with the QDC MP 1.2. However Council representatives indicated in the hearing that the amended design went some way to addressing Council's concerns.
8. The Appellant formally submitted the revised plans to the Registrar on 19 December 2017.
9. On 20 December 2017, the Tribunal requested the Appellant provide further details on batten spacing. The Tribunal indicated that batten spacing could be reduced at lower levels to provide security, and that battening the full extent of the external walls may not be necessary to reduce the visual impact from the street. Further it would reduce privacy for the neighbours.
10. On 18 January 2018 the Appellants submitted further revised plans. The plans removed the fibre cement sheeting to the side and front elevations and replaced with timber battens spaced at intervals of 20 mm, 50 mm, 80 mm and 120 mm.
11. On 22 January 2018 the Committee requested a further amendment to the plans to:
  - Increase the batten spacing to provide a minimum of 50% transparency; and
  - Retain sheeting on the side elevation up to the window nearest to the street, with battens on the balance of the elevation.
12. On 7 February 2018 the Appellants submitted further revised plans. The plans revised the batten screening on the front and side elevations to a 40mm batten and 40mm vertical

spacing. Screening was also limited to only that part of the side elevation up to the first window. The wall sheeting was retained for the balance of the wall.

### **Reasons for the Decision**

Performance Criteria P1 of QDC MP 1.2 states that the location of buildings facilitate an acceptable streetscape having regard to the bulk of the building and setbacks of neighbouring buildings. The Tribunal is of the view that the proposal therefore needs to be considered in the context of the broader neighbourhood and streetscape.

The neighbourhood comprises of detached houses and established gardens. Most of the houses date from the 1960's and 1970's, with many having now being extended and renovated. Over time, many structures have been built close to the road frontage, including garages, carports, retaining walls and front fences. This was necessitated by the hilly topography of the area and the demands of residents to better utilise their land, including the provision of secure and additional car accommodation. In this regard there are numerous examples of garages built close to the road frontage, including on Alkina Street.

These carports do add significant bulk to the streetscape, more so than other buildings in the area. However the changes proposed by the Appellant to batten the front and part of the side elevations will reduce the bulk to what the Tribunal believes will be an acceptable streetscape. The Tribunal is also of the view that the contemporary design of the carports, with the articulated entry, spacing of battens and roof structure adds value to the streetscape and is a pronounced improvement to the standard of car accommodation in the area.

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**Ain Kuru**

**Development Tribunal Chair**

**Date: 21 February 2018**

## **Appeal Rights**

Schedule 1, Table 2 (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.

## **Enquiries**

All correspondence should be addressed to:

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

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