



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	20-016
<b>Appellant:</b>	Mr Steven R J Dudley
<b>Respondent (Assessment Manager):</b>	Gladstone Regional Council
<b>Site Address:</b>	9 Quoin Street, West Gladstone and described as Lot 20 on RP 608797—the subject site

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### Appeal

Appeal under s. 229 and Schedule 1, section 1, Table 1, Item 1 of the *Planning Act 2016* (PA) against the refusal of a development application for construction of a carport on residential premises.

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<b>Date and time of hearing:</b>	11:00am on Thursday 1 October 2020
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Luke Neller– Chair Stuart Smith - Member
<b>Present:</b>	Steve Dudley – Appellant Debbie Dudley – Appellant Helen Robertson – Council representative Shaunte Farrington – Council representative Dylan Huth – Council representative

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) **replaces** the decision to refuse the application with a decision to approve the application with the following conditions:

1. Building works do not encroach the boundaries of the allotment.
2. Building Works are to be carried out in accordance with the BCA 2019 and product manufacturers specifications.
3. Statutory QBCC warranties or Owner Builder Permits where required must be in place prior to commencing construction.
4. Assessment manager must be notified to carry out mandatory inspections in accordance with HPW 'Guidelines for inspection of class 1 and 10 buildings and structures'.

5. Any other reasonable conditions, not inconsistent with the above conditions that the assessment manager seems fit to impose. Any such conditions are to be provided to the Tribunal, via the registrar and the appellant within 10 business days of this decision starting to have effect. (Section 254(5) of the PA deals with when the decision starts to have effect.)

## **Background:**

### The Proposal:

1. The subject site is rectangular and flat having an area of 627m<sup>2</sup> and a road frontage of approximately 19.5m. The lot has been developed for residential purposes including a detached house, single garage, other ancillary structures at the rear, and associated improvements such as fencing and landscaping.
2. The site is located on Quoin Street, West Gladstone, where Gladstone West State School is located on the eastern side of the street, and detached housing is located on the western side of the street. The greater area is generally residential development with the majority of sites being detached housing.
3. The appellant proposes the construction of a new carport between the house and the road frontage, in front of an existing single garage and over the existing driveway. The appellant advises that the occupiers have multiple vehicles, and the carport will provide shelter to these vehicles.
4. The proposed carport is documented as 5.5 meters wide and 6 meters deep with a maximum height above slab of 3.53 meters and an eave height of 3 meters above slab.

### Refusal of the Application:

5. The owner lodged (date unknown) a development application for building works for the construction of a carport and other building work to the local government, Gladstone Regional Council, as Assessment Manager for Design and Siting. Section 54(3) of the PA operated in this instance such that the Council's functions and powers as assessment manager included those the Council would have had as a referral agency.
6. The council decided the carport did not comply with the road frontage setbacks prescribed by Queensland Development Code Part MP1.2 (QDC MP1.2) A1 and side boundary setbacks prescribed by QDC MP1.2 A2.
7. The council provided a response dated 28<sup>th</sup> of November 2019, approving the other building work with conditions and refusing the application with respect to the carport.
8. The owner lodged, on 15<sup>th</sup> of December 2019, a new development application for building works for the construction of a carport to the local government, Gladstone Regional Council, as Assessment Manager.
9. The council issued a decision notice on 20<sup>th</sup> of July 2020, refusing the development application for the carport.

### Grounds for Appeal:

10. The owner, on 26<sup>th</sup> of July 2020, lodged a Form 10 - Notice of Appeal with the Development Tribunal.

11. In summary the grounds for appeal were:

- a. The carport was an 'open carport' and complied with acceptable solutions QDC MP1.2 A1 (c) and did not require a concurrence agency referral for design and siting.
- b. Where a concurrence agency referral was required, the council had been incorrect in determining that the carport would inappropriately impact the streetscape in terms of bulk, consistent setbacks of building within the street, and nuisance to the public.

Matters raised at the hearing:

12. The Council stated:

- a. QDC MP1.2 A1(c)(ii)(A) was not satisfied as there was an existing garage that complied with the prescribed setbacks, and therefore there was an alternative on-site location for a garage that met all of the provisions. The 'open carport' therefore didn't satisfy the acceptable solutions and required referral for design and siting to determine if the proposal satisfied the performance criteria.
- b. The proposal satisfied QDC MP1.2 P1(c) and P2 (a), (b), and (c). The proposal carport did not satisfy QDC MP1.2 P1 (a), (b), and (d).
- c. The proposed carport did not satisfy P1(a) as it added a façade to the front boundary line and added bulk within the setback.
- d. The proposed carport did not satisfy PO1 (b) as it was inconsistent with the front boundary setbacks of the other properties on the western side of Quoin Street. The council provided a map during the hearing to all parties demonstrating that the front setback of building work on the western side of Quoin Street varied from 2.41m to 10.35m.
- e. The proposed carport did not satisfy P1 (d) due to nuisance and safety concerns as the carport would:
  - i. Result in limited visibility to a driver leaving the carport.
  - ii. Be a safety hazard due to the street being used unofficially as a set down/pickup area for parents.

13. The owner stated:

- a. The existing garage was used for the secure storage of their collectable vintage car. They had concerns about the vehicle being vandalised or targeted by car thieves.
- b. Their existing driveway only allowed for parking of one additional vehicle, parked in tandem with the garage.
- c. During peak periods around school hours, there was heavy traffic and many vehicles parked in the street for school pickup. This caused nuisance as there was no alternative parking available, which would be resolved by additional carparking being available on their own property.
- d. In relation to QDC MP1.2 PO1 (a), the open nature of the carport would result in minimal bulk and was therefore unlikely to conflict with the streetscape.
- e. In relation to QDC MP1.2 PO1 (b), the open structure was similar to other setbacks in the area and would not disrupt the pattern of buildings in the street.
- f. In relation to QDC MP1.2 PO1 (d), the driveway was already used for the movement of vehicles.
- g. A letter of support had been provided to the council by the neighbour immediately to the north.

- h. There were examples of other carports built to the front boundary within the local suburb and surrounding streets.

**Jurisdiction:**

14. The appeal is made pursuant to section 229 of the Planning Act. Specifically, the appeal is made against the refusal of a development application for building work in accordance with sections 1(2)(a) and 1(2)(g) and Table 1 (item 1) of Schedule 1 of the PA.

**Decision Framework:**

15. Pursuant to s.253(2) of the PA, the onus rests on the appellant to establish that the appeal should be upheld.
16. Pursuant to s.253(4) of the PA, the Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.
17. Pursuant to s.246 of the PA, the Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or through the registrar and may request any information it reasonably requires to decide the appeal.
18. The Tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

**Material Considered:**

The material considered in arriving at this decision comprised:

- A. Form 10 – Notice of Appeal, grounds for appeal and correspondence accompanying the lodged with the Tribunals Registrar on 26<sup>th</sup> of July 2020.
- B. Gladstone Regional Council Notice of Decision – Refusal dated 20<sup>th</sup> of July 2020 referenced BP/1101/2019
- C. Form 15 – Engineering Design Certificate for proposed carport dated 27<sup>th</sup> of September 2019 including Shed Kit Compliance Statement 241887, Wind load certification 241887, Site Plan 241887, Job Elevations 241887, Column and Mullion Locations 241887, Bracing locations 241887, Drawings SH2009-60 (Rev C-5), SH2009-61 (Rev-C6), SH2009-63 (Rev-C4).
- D. Google Map of West Gladstone indicating properties within a 500m radius of the subject site with a structure on the boundary line. Provided by the Appellant with the Notice of Appeal document bundle.
- E. Seventeen (17) Google Maps Street View images of structures on the boundary line in West Gladstone at various addresses. Provided by the Appellant with the Notice of Appeal document bundle.
- F. Map of Quoin Street West Gladstone indicating approximate front boundary setbacks of other building work at each dwelling house within the street. Provided by council during the hearing and circulated to all parties for review before being handed to the tribunal.

- G. Email from Nicolas Whittle to Steven Dudley dated 21st of November 2019.
- H. Concurrence Agency Response for Design and Siting from Gladstone Regional Council dated 28th of November 2019 referenced BRA/459/2019.
- I. Verbal submissions made by the Appellant during the onsite hearing.
- J. Verbal submissions made by the Respondent during the onsite hearing.

### **Findings of Fact:**

#### Requirement for the application to be referred:

19. At the hearing, the appellant and respondent disagreed that the application complied with the acceptable solutions of QDC MP1.2 AO1(c) which states:

- (c) For **open carports**, the minimum road setback may be less than required by A(i)(a) if-
  - (i) the aggregate perimeter dimension of walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the line of supports) of that part of the carport within the same setback (Figure 4); and
  - (ii) there is no alternative on-site location for a garage or carport that –
    - (A) complies with A(i)(a); and
    - (B) will allow vehicular access having a minimum width of 2.5m; and
    - (C) has a maximum gradient of 1 in 5.

**Open Carport** means a carport with –

- (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another building or a side or rear allotment boundary: and
- (b) not less than one-third of its perimeter is open.

20. The appellant and respondent agreed the structure met the definition of an 'open carport' however, disagreed on the application of subsection (ii).

21. The respondent stated that the existing garage satisfied an alternative on-site location for a garage.

#### Assessment of QDC MP1.2 Performance Outcomes PO1

22. A carport is an open structure and its visual impact depends on its overall size, roof form, size of posts, whether it is partially enclosed by a door or walls, and the environment it will be constructed in such as associated landscaping. The Tribunal makes the following observations:

- a. The carport will be a low-pitched gable, with gable infilled.
- b. The posts are nominated as 100mm x 100mm RHS steel columns
- c. The carport is not proposed to be enclosed by walls or garage door.
- d. The carport will be located over the existing garage which will not require the removal of any significant landscaping or vegetation. The road frontage of the property is otherwise landscaped with large palms and other shrubs up to 2m tall which would offer screening or otherwise soften the appearance of the proposed carport. The front boundary is not fenced.

23. The Quoin Street streetscape is green and leafy, dominated by a powerline and marked parking on either side of the street. These features are out of character with a typical residential street.
24. The western side of the street is detached housing lots, generally single storey dwellings with traditional roof forms, no front fencing, and screened by green leafy landscaping.
25. The dwelling setbacks in the street varied from 2.4m to 10m. Eave overhangs, open patio areas, and carports constructed beside the dwellings was consistent within the streetscape.
26. There were no carports constructed between the dwelling and the road frontage on Quoin Street, however many other streets in the local area had carports built to the front boundary.

**Reasons for the Decision:**

27. The Tribunal considered QDC MP1.2 AO1(c) and determined that the proposed carport complies with the acceptable solutions, and the design and siting of the proposed carport is compliant with QDC MP1.2 AO1(c).
28. The Tribunal also considered the performance outcomes of QDC MP1.2 PO1. The Tribunal finds that the proposed carport also satisfies the Performance Outcomes. The street is dominated by carparking and the proposed open carport has been considered appropriate for the streetscape and satisfies the relevant performance outcomes.
29. All parties, including the Tribunal, were in agreeance that the proposed carport satisfied Performance Outcomes QDC MP1.2 PO2.
30. The reasons for the refusal were limited to the concurrence agency response for design and siting directing the assessment manager to refuse the application.

For this reason, the Tribunal did not consider any further assessment provisions.

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**Luke Neller**

**Development Tribunal Chair**  
**Date: 22 January 2021**

## **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.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

## **Enquiries:**

All correspondence should be addressed to:

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

**Telephone (07) 1800 804 833**

**Email: [registrar@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)**