



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	19-033
Appellant:	Robert Reynolds and Linda Wells
Respondent (Assessment Manager):	The Certifier Pty Ltd
Co-respondent (Concurrence Agency):	Redland City Council
Site Address:	6 Dinton Court Alexander Hills and described as Lot 397 on SP 195999 (the subject site)

Appeal

Appeal under section 229(1)(a)(i) 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.

Date and time of hearing:	Wednesday 30 October 2019 at 10.30am
Place of hearing:	6 Dinton Court, Alexandra Hills (the subject site)
Tribunal:	Kim Calio– Chair Elizabeth Anderson- Member
Present:	Robert Reynolds and Linda Wells – Land owners and Appellants Chris Vize, Service Manager Redland City Council - Council representative Ellen Dwyer, Principal Planner Redland City Council - Council representative Paul Mills, Supervisor – Bay Fencing Alan Grect, General Manager – The Certifier Liam Olders, Town Planner – The Certifier Craig Rodgers, Certifier – The Certifier

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 (2)(c) of the *Planning Act 2016* (PA) replaces the Assessment Managers decision with the following decision:

1. The second carport is approved in accordance with the revised plans listed below which provide for a reduction in the height at the north-eastern corner of the structure of approximately 740mm and such other reasonable and relevant condition or conditions as the assessment manager sees fit provided that such condition is (or such conditions are) not inconsistent with the revised plans:
 - a. Site Plan DWG:1 of 3 dated 12/11/19 Issue B prepared by Davies Drafting and Design

- b. Floor Plan DWG:2 of 3 dated 12/11/19 Issue B prepared by Davies Drafting and Design
 - c. Elevations and Section A DWG:3 of 3 dated 12/11/19 Issue B prepared by Davies Drafting and Design
2. The assessment manager is to notify to the parties such other reasonable and relevant condition or conditions as the assessment manager sees fit that is (or are) not inconsistent with the approved revised plans.

Background:

1. A second carport was built 4 years ago without a development approval at 6 Dinton Court Alexandra Hills by the current owners/occupiers. As the carport has been constructed within 6m of the front property boundary a development approval would have been required under the provisions of the Redland City Council Planning Scheme.
2. The second car port is located 0.5m from the front property boundary, is 5.25m in depth and 5.75m wide at the front and reduces down to approximately 3.5m wide where it meets the front steps leading up to the dwelling. The second car port varies in height from 3.8m at the front and 2.9m at the rear near the front steps.
3. The property owners decided that they should legalise the structure and engaged The Certifier to gain approval for the second carport on 28/2/2019.
4. The Certifier as the assessment manager referred the development application to the Redland City Council as a concurrence agency as provided for under the Planning Regulations 2019 (Schedule 9 Part 3 Division 2 Table 3).
5. Council in its role as a concurrence agency directed the assessment manager to refuse the development application on 7/6/2019 due to non-compliance with the Queensland Development Code Part MP1.2 (QDC MP1.2).
6. The assessment manager accordingly refused the development application on 4/7/2019.
7. The land owners, Robert Reynolds and Linda Wells, lodged a Notice of Appeal with the Development Tribunal on 26/7/2019.

Jurisdiction:

1. Section 229(1) of the PA identifies that schedule 1 of the PA states the matters that may be appealed to the tribunal.
2. Table 1 of schedule 1 states the matters that may be appealed to the Planning and Environment Court or the tribunal (subject, in the case of the tribunal, to the pre-conditions stated in section 1(2) of Schedule 1).
3. The tribunal has jurisdiction under section 229 and schedule 1, section 1, table 1, item 1 of the PA.
4. The pre-condition in section 1 sub-section (2) of schedule 1 for the application of table 1 to the tribunal is satisfied in this instance because of paragraph (g) in that the development application is a matter under the PA that relates to the *Building Act 1975* (BA). The appellants seek approval for certain building work that is assessable against the building assessment provisions in the BA.

Decision Framework:

1. The onus rests on the appellants to establish that the appeal should be upheld (s. 253(2) of the PA).
2. 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 (s. 253(4) of the PA).
3. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA.
4. 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 (*Material Item*) considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 26 July 2019. Documents accompanying the Form 10 include:
 - a. Redland City Council Referral Agency Response dated 7/6/2019 directing the Assessment Manager to refuse the development;
 - b. Decision Notice refusing the development application issued 4/7/19 by the assessment manager Luke Jones of The Certifier;
 - c. Proposed Plan set refused by the assessment manager 13/11/2019
 - i. Site Plan DWG:1 of 3 dated 28/11/18 prepared by Davies Drafting and Design
 - ii. Floor Plan DWG:2 of 3 dated 28/11/18 prepared by Davies Drafting and Design
 - iii. Elevations and Section A DWG: 3 of 3 dated 28/11/18 prepared by Davies Drafting and Design;
 - d. Additional grounds of appeal attachment; and
 - e. Six colour photographs of the existing structure.
2. Letter from Liam Olders of The Certifier dated 12/11/2019 including additional material (revised plans, Form 15, letters of support from neighbours) requested by the tribunal at the Hearing 30/10/19 and received by the Registrar 13/11/2019.
3. Revised Plan set received by the Registrar 13/11/2019:
 - a. Site Plan DWG:1 of 3 dated 12/11/19 Issue B prepared by Davies Drafting and Design;
 - b. Floor Plan DWG:2 of 3 dated 12/11/19 Issue B prepared by Davies Drafting and Design; and
 - c. Elevations and Section A DWG: 3 of 3 dated 12/11/19 Issue B prepared by Davies Drafting and Design.
4. Form 15 Compliance Certificate for Building Design or Specification for as built Boat Port at 6 Dinton Court Alexandra Hills issued 28/11/18 by Brett Davis of Davies Drafting Queensland and received by the Registrar from The Certifier 13/11/2019.
5. Form 16 – Inspection Certificate/Aspect Certificate/QBCC Licensee Aspect Certificate including plans) for Boat Port at 6 Dinton Court Alexandra Hills issued 26/3/19 by WA Trewern (RPEQ) and received by the Registrar from The Certifier 13/11/2019.
6. Letters of support from neighbours at 1, 2, 3 and 4 Dinton Court, Alexandra Hills received by the Registrar from The Certifier 13/11/2019.

7. Sheet of photographs taken 30/10/19 during the course of the Hearing on site by the tribunal chair.
8. Planning Act 2016 (PA).
9. Planning Regulation 2017.
10. Building Act 1975 (BA).
11. Building Regulation 2006.
12. Development Code (QDC) MP 1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m2 and Over publication date 11 March 2010.
13. Redland City Plan 2018 Fact Sheet – Design and Siting of a Dwelling House, Dual Occupancy, Domestic Outbuildings and Domestic Additions – City Plan and Queensland Development Code Requirements.
14. Plan illustrating existing setbacks on properties adjoining 6 Dinton Court, Alexandra Hills prepared by Redland City Council and received by the Registrar from Redland City Council 4/11/19.
15. Consent Approval for a Relatives Apartment issued by Redland Shire Council on 6/2/1991 received by the Registrar from Redland City Council 26/11/2019.
16. Aerial photo and contours illustrating Dinton Court and the subject site sourced from Redland City Council online Red-e-Maps.

Findings of Fact:

The tribunal makes the following findings of fact:

Subject Site

1. The subject site is located at 6 Dinton Court, Alexandra Hills. Dinton Court is a relatively short cul-de-sac which contains approximately 6 residential allotments including the subject site.
2. The subject site is located towards the entry to the cul-de-sac from Frampton Street, is generally rectangular in shape and generally slopes from the south western to the north east from the rear of the site to the road frontage. The contours indicate a change in level of approximately 3m across the site (*Material Item 6 refers*).
3. Dinton Court slopes up significantly from its intersection with Frampton Street by approximately 4m (*Material Item 6 refers*). The subject site contains the first driveway encountered upon entering Dinton Court as the adjoining corner property takes its vehicle access from Frampton Street.
4. The property features a single level detached dwelling with an approved 9m by 7m car port adjacent to the eastern (lower side) side of the dwelling, an approved Relatives Apartment attached to the dwelling at the rear and a second unapproved car port located adjacent to the front boundary between the dwelling and the Dinton Court road frontage.
5. The second car port is located 0.5m from the front property boundary, is 5.25m in depth and 5.75m wide at the front and reduces down to approximately 3.5m wide where it meets the front steps leading up to the dwelling. The second car port varies in height from 3.8m at the front and 2.9m at the rear near the front steps.

6. The driveway, approved carport and second car port have all been excavated to a level approximately 4 steps below the level of the house. The approved car port and second carport slope towards the driveway which in turn slopes gently to Dinton Court.
7. The second carport appeared to be well constructed and integrated with the dwelling and fence. Similar materials have been utilised creating a cohesive effect (*Material Item 7 refers*).
8. The subject site is surrounded by other single storey brick dwellings on similar sized land parcels. Setbacks from the street frontage are predominantly 6 metres. However two properties, 4 Dinton Court and 5 Dinton Court appear to contain buildings that are less than 6m from the front property boundary at 5m and 5.5m respectively. (*Material Item 14 refers*).
9. Letters of support from the 4 properties opposite the subject site being numbers 1, 2, 3 and 4 Dinton Court have been supplied by The Certifier. All letters of support express no concerns with the existing second car port and 3 express a view that proposals to lower the carport would not be practical or beneficial (*Material Item 11 refers*). Letters of support have not been provided from neighbours adjoining the subject site.

The Hearing

The Appellants

1. The appellants advised during the hearing that the second carport located between the dwelling and the front property boundary, had been constructed 4 years ago without approval.
2. The appellants also advised that the second carport originally housed a boat however it is only used for vehicles presently and that the height of the car port reflected this and also the desire to provide privacy and as well as an outlook when sitting on their front patio attached to the dwelling.
3. It was confirmed by the appellants that the subject site also contains an approved Relatives Apartment which was built in 1991 and utilised by a family member who needed special medical care. This care was provided in home by visiting medical practitioners who utilised the second carport for parking their vehicle.
4. The appellants advised that they engaged The Certifier on 28/2/2019 in order to regularise the structure and Council confirmed the development application was not the result of a complaint to or compliance action by Council.

The Certifier

5. Alan Grect of The Certifier advised that a Form 15 (*Material Item 4 refers*) had been obtained as had a build over sewer (BOS) approval and that neither a plumbing approval nor a Form 16 was required. This advice was later updated by way of the letter from Liam Olders of The Certifier dated 12/11/2019 (*Material Item 2 refers*) which noted a BOS was not required and but included a Form 16 which had been previously been issued 26/3/19 (*Material Item 5 refers*).
6. Mr Grect further advised that a Form 21 is not required until after the building approval should an approval be issued.

The Council

7. During the hearing Council noted that their concern related only to QDC MP1.2 PO1 (a) and (b) as PO1 (c) and (d) were considered to be met. Council's concern related to how the structure relates to the street, neighbours and the dwelling.
8. Although Council recognised that the structure was compatible with the dwelling and fencing design, it was determined that there was an impact on the streetscape particularly from the bottom of the street. The bulk of the structure viewed from the lower side of the property was of particular concern as the high point of the structure is actually located on the lower part of the property street frontage. This results in the slope of the roof across the front property boundary opposing rather than following the slope of subject site and street.
9. Council was also concerned with the compatibility of the setback of the structure with the setbacks on neighbouring properties. The second carport is located 0.5m from the front property boundary which is not compatible with setbacks on surrounding properties. It was observed during the Hearing that the second carport stands alone in its minimal setback from the front property boundary.
10. Council agreed to provide a plan to the Registrar to indicate the setbacks for structures on surrounding properties (*Material Item 14 refers*).
11. Council indicated that they could provide a copy of the Relatives Apartment approval to the Registrar but that it may take some time. Given the date of the approval Council anticipated that archive files would need to be accessed.
12. Council confirmed that 2 car parking spaces are required for a dwelling.

Queensland Development Code (QDC) MP 1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m² and Over publication date 11 March 2010

13. The sections of MP1.2 which Council determined that the structure did not comply with are stated below:

“PO1 The location of a building or structure facilitates an acceptable streetscape, appropriate for-
(a) The bulk of the building or structure; and
(b) The road boundary setbacks of neighbouring buildings or structures; and ...”
14. It was observed during the Hearing that the second carport appeared well constructed and had some design merit but this did not alleviate the non compliance with PO1 (a) or (b).
15. In response to the concerns the appellant, after consulting with The Certifier, made an offer to reduce the height of the second carport roof to reduce its appearance of bulk. The parties at the Hearing agreed that a significant reduction in height (approximately 800mm) particularly at the highest point in the north-eastern corner of the structure, would be an improvement to the negative impact on the streetscape. It was agreed amended drawings would be prepared and provided to the Registrar for consideration by the Tribunal.

Post Hearing

16. Revised plans were received by the Registrar on 13/11/2019 (*Material Item 3 refers*) which illustrate a reduction in the height at the north-eastern corner of the structure of approximately 740mm. This change to the second car port roof height and slope is considered by the tribunal to sufficiently reduce the visual dominance of the roof

structure, overall appearance of bulk and impact on the streetscape.

17. The existing Relatives Apartment was confirmed as approved as evidenced by the Consent Approval provided by the Council to the Registrar on 26/11/2019 (*Material Item 15 refers*).

Reasons for the Decision:

The tribunal considered the revised drawings (*Material Item 3 refers*) and determined that the reduction in height would facilitate an acceptable streetscape as it reduces the dominance and appearance of bulk when viewed from Dinton Court. In coming to this conclusion the tribunal noted the letters of support provided from surrounding residents, the design of the structure and its integration with the fence and dwelling as well as the general indications from Council at the Hearing that such an amendment would assist in alleviating their concerns.

Minor Change

The tribunal has decided to approve the development application subject to a 'minor change' as set out on:

- a) Site Plan DWG:1 of 3 dated 12/11/19 Issue B prepared by Davies Drafting and Design
- b) Floor Plan DWG:2 of 3 dated 12/11/19 Issue B prepared by Davies Drafting and Design
- c) Elevations and Section A DWG:3 of 3 dated 12/11/19 Issue B prepared by Davies Drafting and Design

As the PA does not permit a tribunal to make any change other than a minor change, the tribunal considered the relevant provisions of the PA and Development Assessment Rules to ensure the change meets the legislative test for being a minor change.

Section 254 of the PA deals with how this appeal may be decided and the first three subsections of that section are as follows:

- (1) *This section applies to an appeal to a tribunal against a decision.*
- (2) *The tribunal must decide the appeal by—*
 - (a) *confirming the decision; or*
 - (b) *changing the decision; or*
 - (c) *replacing the decision with another decision; or*
 - (d) *setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or*
 - (e) *for a deemed refusal of an application—*
 - (i) *ordering the entity responsible for deciding the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
 - (ii) *deciding the application.*
- (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*

Section 254(3) refers to 'minor change' which is defined in schedule 2 of the PA as follows:

Minor change means a change that—

- (a) *for a development application—*
 - (i) *does not result in substantially different development; and*
 - (ii) *if the application, including the change, were made when the change is*

made— would not cause—

- (A) the inclusion of prohibited development in the application; or*
- (B) referral to a referral agency if there were no referral agencies for the development application; or*
- (C) referral to extra referral agencies; or*
- (D) a referral agency to assess the application against, or have regard to, matters prescribed by regulation under section 55(2), other than matters the referral agency must have assessed the application against, or have had regard to, when the application was made; or*
- (E) public notification if public notification was not required for the development application;*

Schedule 1 of the Development Assessment Rules addresses the meaning of 'substantially different development'. A change may be considered to result in a substantially different development if any of the following apply to the proposed change:

- (a) involves a new use; or*
- (b) results in the application applying to a new parcel of land; or*
- (c) dramatically changes the built form in terms of scale, bulk and appearance; or*
- (d) changes the ability of the proposed development to operate as intended; or*
- (e) removes a component that is integral to the operation of the development; or*
- (f) significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or*
- (g) introduces new impacts or increase the severity of known impacts; or*
- (h) removes an incentive or offset component that would have balanced a negative impact of the development; or*
- (i) impacts on infrastructure provisions.*

The tribunal finds that the revised plans requested by the tribunal at the Hearing 30/10/19 and received by the Registrar from Liam Olders of The Certifier 13/11/2019 (*Material Item 3 refers*) whereby the height of the second carport structure at the front boundary has been reduced by approximately 740mm to a height of approximately 3.16m meets the test for being a minor change as it would not result in substantially different development. Further if the application, including the change, were remade it would not cause the development to be prohibited development, referral to any referral agencies or public notification.



Kim Calio
Development Tribunal Chair
Date: 21 January 2020

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