



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	54- 11
Applicant:	Graham & Kym Parry
Assessment Manager:	Regional Certification Group
Concurrence Agency: (if applicable)	Townsville City Council (Council)
Site Address:	30 The Esplanade, Toolakea and described as Lot 61 on EP 636 — the subject site

Appeal

Appeal under section 526 of the *Sustainable Planning Act 2009* (SPA) against the decision dated 29 June 2011 issued by Regional Certification Group, as the Assessment Manager, to refuse a Development Application (DA) for building works for the siting of a carport.

Date of hearing:	28 August 2011
Place of hearing:	The subject site
Committee:	Mr Bruce Shepherd - Chair Ms Deanna Heinke - Referee
Present:	Mr & Mrs Parry – Owners Mr Martin Clark – Representative for the Owner Ms Melanie Percival – Townsville City Council Ms Denise Hinneberg – Townsville City Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision appealed against and dismisses the appeal.

Background

The subject site is generally flat and of a regular shape, except for the two corner truncations adjacent to the Crown land. It is occupied by a two storey detached house in which a single storey garage is attached at the front of the dwelling.

The garage appears to have been converted to form part of the dwelling and is setback 7.6 metres from the site frontage. The original garage is dimensioned 6 metres in depth x 10 metres in width.

Most of the garage appears to have been converted to form part of the dwelling some years ago, however a single garage remains. (The status of building approval for the conversion and date of the conversion is unknown and was not discussed at the hearing).

There is currently a single car accommodation at the western end of the original garage structure. The owner advised at the hearing that he intends to convert this to form part of the dwelling.

An area from the front site boundary to the dwelling (i.e. 7.6 metres) and to each side boundary (i.e. 20 metres except for the corner truncation), has been recently concreted. The owner also advised that the concrete slab was laid a few days prior to the hearing.

The subject site is located in an established residential street which represents the beachside locality of Toolakea. The street is occupied by a range of single and double storey detached dwellings. All of the residences on the subject side of the street abut Crown land in the form of beach reserve. The street has a standard road reserve and standard 6 metre setbacks generally apply.

The adjoining allotment to the east of the subject site is Crown land and provides public access to the beach.

The applicant has sought Building Approval for a triple width carport (dimensioned 6 metres x 10 metres) to be constructed in front of the original garage. The proposed triple width carport is to be setback 1.6 metres from the front boundary. The design of the proposed carport is to blend in with the construction of the former garage.

Due to the proposed building being located partially within the 6 metre setback, an application for a referral agency advice was made to Council on 4 November 2010.

On 20 December 2010, Council advised the owner by letter, that the proposal was assessed against the Thuringowa Planning Scheme and Queensland Development Code (QDC) MP1.2 – Design and siting standards for single detached housing on lots 450 m² and over. The development had been refused on the following grounds:

1. Proposal does not comply with the Queensland Development Code MP1.2 – Design and Siting Standards, P1 (a) & (b) as the location and bulk of the structure will have an adverse impact on the amenity of the streetscape.
2. Proposal does not comply with the Queensland Development Code MP 1.2 – Design and Siting Standards, A1 (c) (i) & (ii) as there is alternative on-site location for a carport that complies with A1 (a) (i).
3. Having regard to the site specific circumstances, there is not sufficient justification for the proposed relaxation of the Queensland Development Code setback provisions that would outweigh the adverse impacts identified above.

Subsequently, the owner lodged a Building Application with the Assessment Manager on 6 June 2011 to which they provided a written advice on the same day to the owner, advising they are unable to approve the proposed carport until a siting relaxation was granted by Council.

On 29 June 2011, the Assessment Manager issued a Decision Notice outlining that Council as concurrence agency under section 287 of SPA, had refused the application.

On the same day the owner's appealed the decision to the Committee. A report dated 24 June 2011 prepared by Mr Martin Clark, Planning Consultant, was included in the material for consideration by the Committee.

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 Registrar on 29 June 2011.
2. Development Application Decision Notice issued by Regional Certification Group dated 29 June 2011.
3. Referral Agency Response issued by Townsville City Council dated 20 December 2010.
4. Report prepared by Mr Martin Clark on behalf of the applicant dated 24 June 2011.
5. Letter from Regional Certification Group to Mr Parry dated 6 June 2011.
6. *Sustainable Planning Regulation 2009* (SPR)
7. *Sustainable Planning Act 2009* (SPA)
8. *Queensland Development Code MP 1.2* (QDC)

Findings of Fact

The Committee makes the following findings of fact:

The Assessment Manager's decision to refuse the application is based on the concurrence agency advice from Council.

Council advice was based on three items:

1. The proposal did not comply with performance criteria P1 (a) & (b) of QDC MP 1.2.
2. The proposal did not comply with acceptable solution A1 of the QDC MP 1.2 and alternative locations for the carport are available on site.
3. The proposed justification was considered to be out weighed by the adverse impacts.

During the hearing Council representatives advised that before they made a decision on the application, a meeting was held between Council and the owner on 1 December 2010. At that meeting Council advised that a reduced sized carport could be supported

While council was not supportive of the proposed carport with dimensions of 6 metres x 10 metres being setback 1.6 metres from the front boundary, Council was willing to support a carport with the dimensions of 6 metres x 6 metres being setback 1.6 metres from the front boundary. The owner chose not to amend the application at that time.

The site has a location for an alternative on-site carport, down the western boundary which would have the minimum 2.5 metre vehicular access. This is not an ideal location due to the difficulty in driving around the corner of the existing dwelling while negotiating the corner truncation of the allotment.

As part of the application and during the hearing the applicant outlined the reasons supporting their proposal which included:

- A 10 metre wide carport would have the same impact as a 6 metre wide carport.
- There would be no adverse impact on the streetscape as the proposed carport would not be visible due to screening provided by existing landscaping on the adjoining sites.

- The previous Thuringowa City Council's approach was to support carports of the proposed scale, within the 6 metre setback.
- The existence of the septic system located on the site precluded the consideration of an alternative car accommodation on that part of the site. The cost to relocate the existing septic system was financially prohibitive, precluding this as a suitable option.
- A reduced carport of 6 metres x 6 metres would not be sufficient to accommodate all of the owner's vehicles and would not provide sufficient weather protection to the doors to be installed along part of the frontage of the former garage.
- Accommodating 3 vehicles in potentially a double carport within the 6 metre setback and single carport elsewhere on site, was not considered acceptable to the applicant.

The Council representatives outlined the reasons for not supporting the scale of the proposal which included:

- There were no similar examples of structures of the proposed scale located elsewhere along the Esplanade.
- The curved road alignment at the point of the subject site, accentuates the subject site in the streetscape. Therefore the bulk and scale of the proposed carport would be more visually prominent than if the road alignment was straight.
- There were other areas within the subject site to accommodate vehicles in excess of those which could be accommodated within a double carport. Alternative areas included within the western side boundary clearance and adjacent to the septic system to the east.
- The reliance on existing vegetation on adjoining sites to screen the proposed carport was not supported, as there was no ability for Council to apply and enforce a landscaping condition external to the subject site.

During the hearing there was discussion regarding other examples of similar sized carports within the 6 metre front setback along the Esplanade at Toolakea. The Committee was unable to observe evidence of such structures on other sites in the street.

Reasons for the Decision

Council's policy to these applications has been evolving over time as outlined by Mr Martin Clark during the hearing. Due to this continual change the history of Council's approach to carports within the front 6 metre setback was not considered by the Committee when making this decision and the appeal was considered on its own merit.

The Committee noted that a carport with a setback of 1.6 metres from the front boundary is supported by Council. The only issue unable to be resolved between the Council and applicant relates to the width of the carport.

The Committee considers that Council's position of supporting a relaxation from 6 metres to 1.6 metres for a 6 metres x 6 metres carport is reasonable, particularly given the bulk and scale of other structures within the 6 metre front setback along the Esplanade and the general Esplanade streetscape. The Committee formed the view that an additional vehicle space could be accommodated elsewhere on the site exclusive of the 6 metre setback.

The Committee therefore confirms the decision appealed against as the benefits of the reduced carport size are out weighed by the adverse impacts of the proposal.

The Committee recommends the applicant engage the Council in discussions to find an agreed solution for a carport dimensioned 6 metres x 6 metres on site.

Bruce Shephard
Building and Development Committee Chair
Date: 12 September 2011

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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
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