



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

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| Appeal Number: | 27 - 11 |
| Applicant: | Munro Homes Pty Ltd |
| Assessment Manager: | Regional Certification Group. |
| Concurrence Agency: (if applicable) | Townsville City Council |
| Site Address: | 14 Riley Circuit, Kirwan and described as Lot 410 on SP 141330 – the subject site |

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the decision dated 30 March 2011 issued by Regional Certification Group, as the assessment manager, to refuse a development application for building works for the siting of a carport.

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| Date of hearing: | 21 June 2011 |
| Place of hearing: | The subject site |
| Committee: | Mr Bruce Shephard - Chair |
| Present: | Mr Martin Clark – representative for the Applicant Ms Lorraine Brown - Owner Ms Melanie Percival - Townsville City Council Ms Denise Hinneberg – Townsville City Council Mr Jonathon Hughes – Townsville City Council |

Decision:

The 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 with a minor elevation above the road and is of a regular, rectangular shape. It is occupied by a single storey detached dwelling and is set back well from the road with the outer most projection in line with the rest of the adjacent buildings. The area is in an established residential neighbourhood of not more than ten years of age, occupied by a range of single storey detached dwellings in a street with generous road width and standard 6 metre set backs.

The applicant has sought a building approval for a double carport to be constructed in front of the existing double garage, located over the current driveway. The design was in the same style of the house and was proposed to blend in with construction of the house to avoid looking like a tacked on structure.

Due to the proposed building being located entirely within the front six metre setback an application for a referral agency advice was made to Townsville City Council which was received on the 06 December 2010. As part of the application to the Concurrence agency, the applicant included a report prepared by Martin Clark which discussed the desire to have additional shaded car parks for visitors and the merits of the proposed carport like shading to the existing garage and neighbours.

Two pieces of correspondence were issued by the Council, the first dated 16 December 2010, confirmed the application has been assessed by the Council's development assessment unit and was recommended for refusal with the reason for refusal in brief. The letter continues by informing the applicant that the application may be withdrawn by 28 January 2011 or the council will issue a refusal advice. The withdrawing of the application is encouraged by the council with an offer of a partial refund of fees. This on first view this might be seen as a good service to the public but is a matter of concern. By withdrawing the referral agency application the applicant cannot receive a decision and therefore has no appeal rights, the councils letter fails to include this information.

The second letter from Council dated 11 February 2011, states the Council has not received any response to their previous letter and makes the offer to supply additional information; or withdraw the application for a partial refund of fees or a refusal will be issued after 28 February 2011. It is the Committee's opinion that Council's processes are misleading to applicants and result in prolonging the decision process. The time frames for referral agency assessment period, being 10 business days which are set out in schedule 15 of the *Sustainable Planning Regulation 2009*.

On the 16 March 2011 the Council finally issued their referral agency advice months after the assessment period finished. The response outlines the reasons for the refusal being the proposal did not comply with the Acceptable Solution A1 or Performance Criteria P1 of the QDC M.P. 1.2. Subsequently the building certifier refused the application and issued their decision notice on 30 March 2011, giving the applicant appeal rights to the committees.

Regardless of the Council's processes which appear flawed, the Council's referral advice and the building application decision notice both refused to allow the carport within the front 6 metre setback. This is the matter the Committee has considered and the subject of this decision.

The issue of other properties having similar carports within the area was not considered by the Committee. This is due to none of the examples being located in close vicinity to the property leaving the street scape visible from the subject site clear of these structures.

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 20 March 2011.
2. Development Application Decision Notice issued by Regional Certification Group dated 30 March 2011.
3. Referral Agency Response issued by Townsville City Council dated 16 March 2011.
4. Report prepared by Martin Clark on behalf of the applicant dated 05 November 2010.
5. Report prepared by Martin Clark on behalf of the applicant dated 20 June 2011.
6. Letter from Townsville City Council to Munro Homes dated 16 December 2010.
7. Letter from Townsville City Council to Munro Homes dated 11 February 2011.
8. *Sustainable Planning Regulation 2009 (SPR)*.
9. *Sustainable Planning Act 2009 (SPA)*.

10. Queensland Development Code M.P. 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 Townsville City Council.

The Townsville City Council advice was based on three items:

1. The proposal did not comply with Performance criteria P1 of the *QDC*.
2. The proposal did not comply with Acceptable solution A1 of the *QDC*.
3. The proposed justification was considered to be out weighed by the adverse impacts.
4. Alternative locations for the carport are available on site.

This decision by the Council was made after a site inspection and considering other factors like the slope of the driveway, the design of the dwelling and the general character of the immediate areas built form.

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

- To shade the existing driveway which is used by visitors to the property and provide additional car parking
- Provide shading to the existing dwelling therefore reducing the effect of the sun to the dwelling and neighbours.
- The carport would not adversely impact on the amenity and privacy of adjoining lots
- Outlined the history of the Council's approach to carports within the front 6 metre setback.

Reasons for the Decision

The Committee agrees with the applicant in that the proposed carport would provide shade to cars parked on the existing driveway and to the existing garage itself. Alternative locations present their own adverse impacts, like additional driveways and removing some of the existing mature landscaping.

Alternative locations on site are available and currently used, as evident by the additional cross over and vehical parked down the eastern side of the dwelling. The alternative location may provide the solar benefits direct to the habitable parts of the dwelling and provide additional car parks. The proposal would not provide additional car parking locations on site and produce a negative effect on the streetscape and neighbour's outlook.

Council's policy to these applications has been evolving over time as outlined by Martin Clark. 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 therefore confirms the decision appealed against as the benefits of the proposed carport are far 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 additional shaded car parking on site.

Bruce Shephard
Building and Development Committee Chair
Date: 30 June 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
Telephone (07) 3237 0403 Facsimile (07) 3237 1248