



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	57 - 11
Applicant:	James Mazzetti
Assessment Manager:	Complete Residential Building Approvals
Concurrence Agency: (if applicable)	Toowoomba Regional Council
Site Address:	26 Hinchliffe Drive, Kearneys Spring and described as Lot 51 on SP162227—the subject site

Appeal

Appeal under section 541 of the *Sustainable Planning Act 2009* against the Decision Notice issued by Complete Residential Building Approvals to refuse, under direction from the Toowoomba City Council (Concurrence Agency) an application to enclose an existing carport.

Date of hearing:	12 October 2011
Place of hearing:	Toowoomba City Council
Committee:	Simon Forsyth Chair Liz Woollard General Referee
Present:	James Mazzetti Applicant and the owner of the subject property Bob Orr Toowoomba Regional Council Ian Bielby Complete Residential Building Approvals

Decision:

The Committee, in accordance with section 564 of the SPA, **confirms** the decision of the Assessment Manager dated 24 August 2011, as directed by the Concurrence Agency (Toowoomba City Council) to **refuse** the proposed enclosure of the existing carport at 26 Hinchliffe Drive, Kearney Springs.

Background

The applicant lodged a development application with the Assessment Manager for approval of an enclosure to an existing car port that is located within the 6m setback to the frontage.

The Assessment Manager lodged a Concurrence Agency application with Council on 09 July 2011, as the proposed carport enclosure sought to vary the requirement for garage structures to be setback from the street frontage by 6m.

Council instructed the Assessment Manager that the application was to be refused on the grounds that –

1. *The proposal is not in accordance with the acceptable solutions of the performance criteria of Part 1 of the Queensland Development Code, and*
2. *The proposed location of the garage at 2.5metres from the Hinchliffe Drive property boundary is inconsistent with the setbacks of neighbouring buildings in the street, and*
3. *The installation of a solid panel lift door converting the open carport to a garage will compromise the reasonable visual amenity expectations of the nearby residential neighbours, and*
4. *Part MP 1.2 A1 (c) of the Queensland Development Code only permits an open carport within six (6) metres of the street boundary under some circumstances provided that the perimeter is not enclosed more than 15%. The masonry columns supporting the existing carport represent 11% of the perimeter, and*
5. *The installation of a solid door to the front of the carport would increase the visual bulk of the structure and not provide an acceptable streetscape.*

The appellant advised the Committee that the principal reason behind the proposed enclosure of the carport, was security for work tools and equipment. Further advice was given that an application to erect a 7x3m shed in the rear of the subject site was refused by Council due to the need to build over sewer for this structure. The appellant also advised that the existing dwelling was extended in 2004 but was in fact one of the original acreage houses built prior to the Kearny Springs subdivision.

Toowoomba City Council advised that they are sensitive to the front setback requirements throughout the city to ensure the “garden city” image is maintained. Council advised that they actively police this issue and do not approve garage structures within the 6m setback. Council does however allow for mesh and grille enclosure to occur on carports as this meets the requirements under the Queensland Development Code..

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 12 August 2011.
2. Supporting letter of appeal by James Mazzetti and accompanying photos.
3. Concurrence Agency response dated 20 June 2011
4. Letter of refusal from Complete Residential Building Approvals dated 01 August 2011
5. Building over Sewer refusal for shed from Toowoomba Regional Council dated 05 October 2010
6. Application for Building over Sewer and supporting information
7. Photos with carport
8. Petition from neighbours supporting carport enclosure dated 11 July 2011
9. Nearmap Aerial Photo of locality
10. An inspection of the site and the locality, undertaken by the Chairperson and the general referee
11. Verbal submissions made by the owner at the hearing.
12. Verbal submissions made by Council at the hearing
13. Verbal submissions made by the Certifier at the hearing.
14. The *Sustainable Planning Act 2009 (SPA)*

15. The Queensland Development Code, (QDC MP 1.2).

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is a regular shaped lot of 749m² and slopes away from the round frontage.
2. The site is not a corner site.
3. Homes in the area are predominately single storey, with the occasional two storey dwelling.
4. The existing dwelling was built as an acreage dwelling and subsequently incorporated into a residential subdivision and renovated in approximately 2004.
5. The existing carport structure is located within the 6m setback areas fronting Hinclyffe Drive, extending to 2.5m from the front boundary.
6. There are no garage structures in the immediate vicinity that extend into the 6m setback area to frontage.

Council's refusal was based on the following elements –

- Non-compliance with the relevant acceptable solutions in the QDC MP 1.2
- Inconsistency of the proposal with setbacks in existence in the surrounding streets
- Impacts on the visual amenity of the streetscape and reasonable visual amenity expectations of residents of surrounding neighbours.

Reasons for the Decision

The Committee considered the matters presented by the appellant relating to his need to secure his work equipment, which is understood to be the critical driving factor behind the application to enclose the existing car port.

The Committee also considered the representations from Council where it was illustrated that Council have maintained a consistent application of their assessment of carport enclosures across the city area, namely being refusal of these proposals. Further, Council illustrated that they are actively policing this issue throughout the city by undertaking show cause and enforcement action to have illegal carport enclosures removed.

Council were also proactive in providing alternative design suggestions to the appellant such as lattice enclosure and grille door structures that would meet the criteria of the QDC MP 1.2 and be supported by Council, and would achieve the security outcome being sought by the applicant.

Whilst the Committee is sympathetic to the applicants predicament in securing his work equipment, in the subject circumstances the committee cannot support the applicants appeal as:

- the proposal is inconsistent with the surrounding setbacks in the street to carport;
- the garage structures, would create a visually dominant structure built essentially to the front boundary;
- it materially changes the current outcome of a carport to a garage within the 6m front setback.

The Committee considered the reasons put forward by the applicant, the applicants representative and Council and has determined that Council's concurrence agency response is appropriate and the matter is refused.

Simon Forsyth
Building and Development Committee Chair
Date: 3 November 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
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