



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	34 - 15
Applicant:	Greg and Jodie Pryce
Assessment Manager:	GMA Certification Group
Concurrence Agency: (if applicable)	Cairns Regional Council (Council)
Site Address:	Lot 60, Coronado Street, Kewarra Beach and described as Lot 60 on SP 207575 – the subject site

Appeal

The appeal is made pursuant to section 527 of the *Sustainable Planning Act 2009* (SPA) against a decision notice issued by GMA Certification Group as Assessment Manager to refuse a Building Development Application (Application).

Date and time of hearing:	Monday 2 November 2015 at 10.00am
Place of hearing:	The subject site
Committee:	John Eylander– Chair Clayton Baker - Member
Present:	Jeff Evans, Assessment Manager, GMA Certification Group Greg Pryse, Applicant John Evans, Cairns Regional Council John Benck, Builder

Decision:

In accordance with section 564 (2)(c) of the SPA, the Building and Development Dispute Resolution Committee (Committee) **confirms** the decision of the Assessment Manager that the Development Application does not meet the performance criteria P2 (c) of the Queensland Development Code MP1.2 as the use of this structure negatively affects the amenity and privacy of the residence of the adjoining lot at number 10 Coronado Street, Kewarra Beach.

Background

The subject site is 1,000m² in area with 20m frontage front and rear. The rear of the site backs onto bushland forming a drainage easement. The easement is heavily vegetated giving the occupants of the property an attractive vista. The adjoining properties share the same vista.

On 17 February 2015 GMA Certification Group (Assessment Manager) approved with conditions an Application for the construction of a carport to the southern elevation of the existing dwelling. The Application was referred to Cairns Regional Council as a Concurrence Agency as the proposed carport did not meet the acceptable solutions of the Queensland Development code MP1.2 (QDC

MP1.2). The proposed carport was sited approximately 150mm from the boundary of the property at the outermost projection and some 450mm from the outer edge of the columns.

This boundary consists of a 600mm high timber sleeper retaining wall with a 1.8m timber fence. That is, the top of the fence is approximately 2.1m above the ground level of the carport.

The carport is more than 20m in length and 3.165m - 3.275m in height. The carport has a skillion roof 5.4m in width attached to the house.

The carport elevation at street view has a panel lift door with fixed louvers to both sides and above. Fixed louvers were also installed along the side boundary to a length of approximately 10m giving the appearance that the structure is enclosed.

In August 2015 the Applicants received a show cause notice from the Council alleging unauthorised building work which included partial enclosure of the carport and conversion of the rear section of the carport into an entertainment area.

The as built attached carport included three insulated wall panels along the side boundary wall approximately 10m in length. The Applicants have constructed a kitchen along the insulated wall panels. The western end wall of the structure has shutters of more than 3m in width. The pool fence has been altered and now encroaches the entertainment area.

The rear of the carport opens to the pool area for approximately one third of its northern length as a recreational area.

In August 2015 the Assessment Manager received an Application to regularise the unapproved work. The Application was referred to the Council as the proposal did not meet the acceptable solutions of the QDC MP1.2.

Council refused the Application on 28 August 2015 citing:

"the structure as constructed does not meet the performance criteria P2 (c) of the Queensland Development Code MP1.2 as it is for recreation purposes and due to proximity to the boundary line, the noise generated from the use of this structure negatively affects the amenity and privacy of the residents of the adjoining lot at number 10 Coronado Street, Kewarra Beach".

On 18 September 2015 the Assessment Manager issued a decision notice to refuse the Application for the reason *"this refusal is based on the concurrence agency advice issued by Cairns Region Council number 2015/2034 on 28 August 2015"*.

On 21 September 2015, the Applicants lodged an Application for appeal (Form 10) with the Registrar of the Building and Development Committees.

A hearing was held on the subject site on Monday 2 November 2015 at 10.00am.

Applicant submissions at the hearing:

- The open carport has been approved;
- The rear section of the structure has cool-room panels installed to the southern elevation to ensure privacy to the residents of the adjoining property. The cool-room panels will minimise any noise transfer between allotments. Additionally, there is an 1800mm high boundary fence separating the two properties.

Council's submissions at the hearing

- The Council received a complaint from the neighbour
- The Council submitted the noise generated from the use of the structure negatively affects the amenity and privacy of the residence of the adjoining lot at number 10 Coronado Street, Kewarra Beach

Acceptable solution A2 (a) (i) of QDC MP1.2 requires a building or structure less than 4.5m in height to be located at least 1.5m from a side boundary. There are concessions in A2 (c) (ii) and A2 (d) of QDC MP1.2, which allows certain structures to be placed on the boundary but those concessions do not apply where the proposed use relates to that associated with the habitable parts of the dwelling. That is the new entertainment area would likely be classified as a Class 1a structure rather than a Class 10a carport.

Performance criteria "P2 building and structures" requires the following:-

- (a) Provide adequate daylight and ventilation to habitable room; and
- (b) Allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.
- (c) Do not adversely impact on the amenity and privacy of residents on adjoining lots.

It was agreed by all parties at the hearing that the only element of performance criteria in P2 relevant to the appeal is P2 (c).

The builder on behalf of the Applicants argued the insulated wall panel's added insulation to reduce the noise from the entertainment area to the neighbouring property.

The Council representative maintained the refusal.

The Committee was able to access the rear of the neighbouring property via the Council easement. The neighbouring property has a rear covered patio area that backs onto a pool area. The as built carport entertainment area can be seen above the top of the timber fence. The neighbour has constructed a screen approximately 3.6m in length along the boundary fence between the side view of the patio and the as built carport.

The Committee observed from the reserve and neighbour's property that the insulated wall panels were out of character with the building's neighbourhood and drew attention to the structure. The 450mm setback from the boundary line consisted of a drainage channel. There is no provision for a garden bed or vegetation to soften the visual amenity. The Committee also observed there was no ready access to the area between the boundary fence and the wall of the structure as fixed panels had been screwed/riveted to the carport and the fence.

In addition to the siting issues it was noted that the possible new classification would affect the fire separation required under Part 3.7 of the Building Code of Australia Volume 2 between the subject site and the adjoining property. That is the external wall of the entertainment area is within 900mm of the boundary and would be required to achieve a 60/60/60 Fire Resistance Level.

Material Considered

The material considered in arriving at this decision comprises:-

1. Letter dated 21 September 2015 from GMA Certification Group Pty Ltd enclosing form 10 and attachments;
2. Form 10 – appeal notice, lodged 21 September 2015 with the Committees registrar;
3. Development application decision notice for the subject site dated 18 September 2015;
4. IDAS form 1 and 2 application for the subject site;
5. GMA Certification Group application for alternative citing assessment dated 18 August 2015;
6. Cairns Regional Council Development Application Concurrence Agency response dated 28 August 2015;
7. Applicant's consent authorising Jeff Evans of GMA Certification Group to lodge the appeal and act on their behalf;
8. Queensland Development code part MP1.2 – design and citing standards for single detached housing;

9. *Sustainable Planning Act 2009 (SPA)*;
10. *Building Act 1975 (BA)*;
11. Verbal representations by appeal parties at the hearing;
12. Development Application approval dated 17 February 2015;
13. Photographs.

Findings of Fact

The Committee make the following findings of fact:

- There are no alternative siting standards pursuant to section 33 of the BA applicable to this site.
- Because the land area exceeds 450m² QDC MP1.2 applies to the site.
- The structure is not compliant with acceptable solutions A2 (a) (i). The Application is subject to Concurrence Agency advice because the structure is within the 1.5m boundary clearance prescribed under QDC MP1.2.
- The only performance criteria of QDC MP1.2 relevant to the appeal is P2 (c).
- The carport is a class 10 (a) building pursuant to the National Construction Code and would likely be classified as a Class 1a structure given its intended use.

Reasons for the Decision

The as built carport structure does not comply with the Application approved on 17 February 2015. The carport has been partially enclosed to allow an outdoor kitchen to be installed to the entertainment area. The enclosing of the open carport with additional screens and the insulated wall panels has allowed the area to be an extension of the home and the liveable area. The construction of a kitchen area within the entertainment area suggests a use that is more than just occasional for entertainment. The enclosed area changes the use of the carport.

The enclosed entertainment area allows the Applicants to:-

- Prepare meals on a regular or permanent basis;
- Provide a sheltered family living area for regular use;
- Allow the storage of flammable materials against the wall that is 450mm from the boundary fence;
- There is no ready access between the wall and the boundary fence.

Further, the bulk and appearance of the insulated wall panels detracts from the neighbours amenity and enjoyment and use of the rear of the adjoining property. The use of the insulated wall panels only partially mitigates noise emanating from the entertainment area.

Decision

In accordance with section 564 (2) (c) of the SPA, the Committee confirms the decision of the Assessment Manager that the Application does not meet the performance criteria P2 (c) of the Queensland Development Code MP1.2 as the use of this structure negatively affects the amenity and privacy of the residence of the adjoining lot at number 10 Coronado Street, Kewarra Beach.

John Eylander
Building and Development Committee Chair
Date: 27 November 2015

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 Housing and Public Works
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 1800 804 833 Facsimile (07) 3237 1248