



Building and Development Dispute Resolution Committees – Decision

Sustainable Planning Act 2009

Appeal Number:	15-14
Applicant:	Alan Pridmore
Assessment Manager:	Harald Weber
Concurrence Agency: (if applicable)	Cairns Regional Council (Council)
Site Address:	18 Chystanthus Street, Trinity Park and described as Lot 208 on SP 186272 – subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA), against the decision of the Assessment Manager to refuse a Building Application (Application) for additions to an existing dwelling.

Date and time of hearing:	13 May 2014 at 10:00am
Place of hearing:	The subject site
Committee:	Bruce Shephard– Chair
Present:	Alan Pridmore – Applicant / Builder Sonja Knotek – Property Owner Brian Knotek – Property Owner Harald Weber – Assessment Manager John Evans – Cairns Regional Council representative Brian Nesbit – Cairns Regional Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA confirms the decision by the Assessment Manager to refuse the Application.

Background

The subject site is a 676 square metre allotment located in a small residential subdivision on the northern side of Cairns developed approximately 8 years ago. The subject site is surrounded by similar dwellings, typically of masonry block construction and metal roofing. The street has a narrow road way with narrow footpaths giving the street scape a condensed appearance.

The owners have 3 to 4 cars depending on the week (as children who also have cars, live part time in the house) and a boat all of which are parked on the drive way and front lawn. No vehicles or boats are housed in the double garage as this space is currently used for storage.

The proposed development was for a open carport to be located over the existing driveway occupying the six metres between the garage and the front of the allotment. A storage space was included in the proposal to be located in the space between the proposed carport and the eastern side boundary. Therefore the proposal results in an extension which is nine metres wide along the front boundary starting at the eastern boundary. The front elevation consists of a wall 3.2 metres high with the roof concealed behind the wall.

The Applicant lodged a Building Application (Application) with Harald Weber of All Construction Approvals as the Assessment Manager on 24 February 2014. Cairns Regional Council as Concurrence Agency issued a response on 11 March 2014. The Council incorrectly referred to their Concurrence response as a 'Decision' and attached information regarding appeal rights. It is important to note the Decision is made by the Assessment Manager not the Concurrence Agency. That aside, the Council considered their response in contest with the applicable siting provision which is the Queensland Development Code M.P. 1.2 (QDC MP 1.2). Council advises the Assessment Manager to refuse the Application due to the unacceptable bulk and scale of the proposed building extension which in their view would reduce the outlook and views of adjoining property's.

The Assessment Manager issued a refusal of the Application on 3 April 2014. The supporting appeal documentation was lodged with the Building and Development Committee Registrar on 16 April 2014 followed by formal lodgement of the Form 10 Appeal Notice on 22 April 2014.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal lodged with the Committees Registrar on 22 April 2014.
2. Letter from Sonja Knotek dated 11 April 2014.
3. Letter from Alan and Jody Pridmore dated 14 April 2014.
4. The Building Application refusal by Harald Weber dated 3 April 2014.
5. Concurrence Agency Response by Council dated 11 March 2014.
6. IDAS form 1.
7. IDAS form 2.
8. Lot plan SP 186272.
9. Plans drawn by Alan Pridmore.
10. Letter to Council by Alan and Jody Pridmore dated 18 March 2014.
11. Letter from Ernest Nobes (neighbour) of 20 Chystantus street dated 22 March 2013.
12. Letter from Julie McKenna (neighbour) of 17 Chystantus street dated 20 March 2014.
13. Letter from Rachelle Jones (neighbour) of 16 Chystantus street dated 23 March 2014.
14. Photos provided by Alan Pridmore.
15. Aerial view of the street provided by the Council.
16. Queensland Development Code M.P. 1.2 (QDC MP 1.2)

Findings of Fact

The Committee makes the following findings of fact:

1. The Assessment Manager received a properly made Building Application for additions to an existing dwelling which was not sited in accordance the acceptable solutions of QDC MP 1.2.
2. The Council as the Concurrence Agency advised the Assessment Manager to refuse the Application on the 11 March 2014.
3. The Assessment Manager refused the Application on the 3 April 2014.
4. The QDC MP 1.2 has a concession for siting open carports within the front setback however this concession is not applicable to this Application because the subject site has space on both sides of the dwelling with the minimum of 2.5 metres width for a carport.

Reasons for the Decision

The Building Application for the proposed carport and storage area should not be approved as detailed in the current plans for the following reasons.

1. The current proposal does not comply with the acceptable solutions of QDC MP 1.2.
2. The proposed structure is 9 metre wide and 3.2 metres high along the front boundary which would result in significant bulk that would dominate the street scape. This impact is amplified by the fact the street is condensed due to the narrow road width and narrow footpaths.
3. The site has locations for the proposed carport which would comply with the acceptable solutions of the QDC MP1.2 and would not dominate or negatively impact the street scape.

Bruce Shephard
Building and Development Committee Chair
Date: 23rd May 2014

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
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