



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	46-12
<b>Applicant:</b>	Gregory Francis O'Reagan
<b>Assessment Manager:</b>	Icon Building Certification
<b>Referral Agency:</b> (if applicable)	Brisbane City Council (Council)
<b>Site Address:</b>	32 Myagah Road Ashgrove and described as Lot 1 on RP56131 – the subject site

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Assessment Manager's decision, dated 24 September 2012, to refuse a Building Development Application for a carport on the advice of Brisbane City Council (BCC) as the Referral Agency.

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<b>Date of hearing:</b>	24 October 2012
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Greg Rust - Chair-
<b>Present:</b>	Mr & Mrs O'Reagan -Applicant- Peter Bird, Glynn Verity -Brisbane City Council (BCC} representatives - Joanna Lee –Certifier from Icon Building Certification

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(1) of the SPA dismisses the appeal on the grounds that the statutorily approved appeal application Form 10 is invalid. The Form 10 was lodged with the Committee Registrar on 18 September 2012, prior to the decision of the Certifier being issued to the applicant on 24 September 2012. Given the invalidity of the appeal application, the Committee does not have jurisdiction to make a decision.

### **Background**

Icon Building Certification received a Building Development Application from the Applicant to construct a carport to the front of the subject property. The subject site is located on the corner of Myagah Road and Cypress Drive in Ashgrove and the intention was for the carport to be positioned closest to that intersection. The carport is subject to the Queensland Development Code (QDC)] provisions of MP1.2

and in accordance with the requirements of the code, the Certifier referred the Application to the Council as Referral Agency for a response. The Council refused the Application on 29 August 2012.

Council provided the following reasons for refusing the Application:

- The bulk of the building in the corner of the block will have an effect on the streetscape and add unnecessary bulking.
- Nuisance and safety to the public. The carport is over 2 metres in height and built within the 9x9 metre corner truncation.
- The proposal will affect the amenity to the streetscape of all persons living in the street.

### **Appeal Documentation – Application for Appeal/Declaration- Form10**

The application for appeal (Form 10) was signed and dated by the Applicant on 18 September 2012 and stamped as received by the Committee Registrar on 20 September 2012. Page One of Form 10 stated that the attached Decision Notice was received by the Applicant on 29 August 2012 however the documentation attached to the appeal form was a Referral Agency response from the Council dated 29 August 2012 advising the Certifier that the application had been refused. The Certifier had written a note on Page One of the Form 10 "*the owner is away for 2 weeks from 22/9/12, please contact Building Certifier Joanna Lee on 07 3367 1819*".

On 24 September 2012, the Committee Registrar sent an email to the Certifier advising:

*I refer to the application for appeal lodged with the Building and Development Dispute Resolution Committees (Committees), received on 20 September 2012 in relation to a referral agency response from Brisbane City Council for the property situated at 32 Myagah Road, Ashmore.*

*Under section 334(1) of the Sustainable Planning Act 2009 (SPA), the Assessment Manager must give written notice of the decision in the approved form (decision notice) to (a) the applicant (b) each referral agency (c) if the assessment manager is not the local government and the development is in a local government area - the local government (d) if the application is a building development application - each designated person for the application.*

*Under section 527(2) an appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the applicant.*

*I have also attached a scanned copy of the appeal documentation received, as the Form 10 shall require to be completed in accordance with the issuing dates of the decision notice.*

The Certifier replied to the Registrar's email on 24 Sept 2012. The email included three Attachments:

- A Decision Notice from the Certifier dated 24 Sept 2012;
- The first page of the original Form 10 - however the date the Decision Notice was received had been altered to 24 Sept 2012 and not as originally stated, the 29 August 2012. The 29 August had been crossed out;
- The Second Page of Form 10 which was the original page 2 that had been signed and dated by the owners on 18 Sept 2012, and date stamped as received by the Registrar on 20 September 2012.

Therefore, both versions of Form 10 received by the Registry on 20 September and 24 September 2012 respectively were invalid because the Certifier had not issued a Decision Notice at the time the appeal was lodged. It appears that the Decision Notice was only issued after the Certifier was advised by the Registrar of the legislative requirement to do so on 24 September 2012.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. Form 10 – Application for Appeal /Declaration, and correspondence accompanying the appeal received by the Registrar on 20 and 24 September 2012.
2. *Sustainable Planning Act 2009* (SPA)
3. Discussions and verbal submissions held at time of hearing

## **Findings of Fact**

The Committee makes the following findings of fact.

- The Assessment Manager had not issued a Decision Notice at the time the appeal was lodged with the Committee Registry on 18 September 2012.
- The issue of a Decision Notice is a requirement under section 334(1) of the SPA.
- The Committee Registry advised the Certifier of the requirement to issue a Decision Notice via email on 24 September 2012.
- The Certifier emailed the Registry on 24 September 2012 with a Decision Notice dated 24 September 2012 and the Form 10 which had been altered - the Certifier had altered the date of the Decision Notice issue from 29 August to 24 September 2012 however the form still contained the original Applicant signature dated 18 September 2012.

## **Reasons for the Dismissal**

The Committee is required to comply with the Legislative requirements of the SPA. The appeal was not validly lodged and as such the Committee has no alternative other than to dismiss the appeal.

The Committee in accordance with section 564(1) of the SPA dismisses the appeal on the grounds that the statutory Form 10 - Application for Appeal/ Declaration was invalid and a valid Form 10 is required under section 527(2) of the SPA.

The appeal should not have progressed to a hearing however the Applicant may take benefit from the meaningful discussion at the hearing during which Council agreed to consider changes to the proposal through an amended / new application.

The Committee would like to take this opportunity to express to the Certifier the importance of ensuring any Application must be comprehensive and accurately documented and be in accordance with the applicable legislative requirements.

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**Building and Development Committee Chair**  
**Date: 9 November 2012**

## **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  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**