

# Cloncurry Shire Council

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Our ref: DI&E:LT – TP06/23

27 March 2023

GMA Certification Group on behalf of  
Jack Roberts Construction  
Remote Office Mount Isa  
C/- PO Box 2760  
NERANG QLD 4211  
**Email:** adminmi@gmacert.com.au

Dear Rebecca

**REFERRAL AGENCY RESPONSE — SITING DISPENSATION – 15 PAYNE STREET,  
CLONCURRY, APPROVAL (WITH CONDITIONS)**  
(Given under section 57 of the *Planning Act 2016*)

The development application described below was properly made to the Cloncurry Shire Council on 8 March 2023.

## Applicant details

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Applicant name: GMA Certification Group on behalf of Jack Roberts Construction  
Applicant contact details: Remote Office Mount Isa  
C/-PO Box 2760  
NERANG QLD 4211

## Application details

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Application number: TP06/23  
Approval sought: Development Permit  
Nature of development proposed: Referral Agency for Building Work – Referral Response  
Details of proposed development: Required siting of a permanent structure, being a carport less than 5m from the side boundary  
Category of assessment: Code Assessment

## Location details

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Street address: 15 Payne Street  
Real property description: Lot 13 on RP703334  
Local government area: Cloncurry Shire

## Decision

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Date of decision: 21 March 2023

## Details of the approval

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Development permit Referral Agency for Building Work – Referral Response

## Resolution

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### RESOLUTION 19.2023

Moved: Cr Nathan Keyes

Seconded: Cr Vicky Campbell

That Council approve the Development Application TP06/23 seeking approval for Siting Dispensation at 15 Payne Street, Cloncurry for the construction of a carport 1.5m from the western side boundary, in lieu of the 5m required, subject to the conditions set out in Attachment 2.

In Favour: Cr Greg Campbell, Cr Sam Daniels, Cr Vicky Campbell, Cr Nathan Keyes, Cr Janessa Bidgood

Against: None

Ineligible: None

**CARRIED**

## Conditions

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This approval is subject to the conditions in Attachment 1.

## Further development permits

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Please be advised that the following development permits are required to be obtained before the development can be carried out:

1. Building Approval

## Properly made submissions

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Not applicable—No part of the application required public notification.

## Rights of appeal

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The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

A copy of the relevant appeal provisions is attached.

## Currency period for the approval

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Pursuant to section 54 (4) of the *Planning Act 2016*, you will not be required to refer your building work application on to Council for any additional Referral Agency Response if:

- (a) You submit this referral agency response in its entirety, including all referenced plans and documents, when making the application to the Assessment Manager;
- (b) There are no changes to the proposal that was presented to Council with this referral; and
- (c) The development application to the Assessment Manager is made within 24 months of the date of this referral agency response.

**Approved plans and specifications**

A copy of the following plans is enclosed.

Plan Name	Plan No.	Revision No.	Plan/Revision Date
Site Plan			

Should you have any questions or concerns in respect of this matter please contact Council's Senior Town Planner, Larinda Turrell at this office.

Yours faithfully



Philip Keirle  
Chief Executive Officer

- Encl: Attachment 1 - Statement of Reasons  
Attachment 2 - Conditions of Approval  
Attachment 3 - Appeal provisions  
Attachment 4 - Approved plan

**12.8 PLANNING AND DEVELOPMENT – CONCURRENCE RESPONSE TP06/23 – SITING DISPENSATION (PROPOSED CARPORT), LOT 14 ON RP703334 – 15 PAYNE STREET, CLONCURRY**

**Author:** Larinda Turrell, Senior Town Planner  
**Authoriser:** Megan Anderson, Planning and Environment Manager  
**Attachments:** 1. Attachment 1 - Code Response  
 2. Attachment 2 - Conditions of Approval  
 3. Attachment 3 - Statement of Reason  
 4. Attachment 4 - Proposed Site Plan

### RECOMMENDATION

That Council approve the Development Application TP06/23 seeking approval for Siting Dispensation at 15 Payne Street, Cloncurry for the construction of a carport 1.5m from the western side boundary, in lieu of the 5m required, subject to the conditions set out in Attachment 2.

### ITEM MINUTES

Cr Nathan Keyes informed the meeting that he has a declarable conflict of interest in Item 12.8 - Planning and Development – Concurrence Response TP06/23 – Siting Dispensation (proposed carport), Lot 14 on RP703334 – 15 Payne Street, Cloncurry:

I have a declarable conflict of interest in this matter as I have done business with Phil Avery (applicant), through his company, TOPX.

I have determined that this conflict of interest is not of sufficient significance that it will lead me to making a decision on this matter that is contrary to the public interest. I will best perform my responsibility of serving the overall public interest of the whole of the Council area by participating in the discussion and voting on this matter. However, I acknowledge that the remaining Councillors must now determine whether I have a declarable conflict or a prescribed conflict of interest in this matter and if so whether I may participate or must leave for the discussion and voting.

#### RESOLUTION 17.2023

Moved: Cr Sam Daniels  
 Seconded: Cr Vicky Campbell

The remaining eligible Councillors agreed to Cr Nathan Keyes remaining in the Chambers for discussion and vote on Item 12.8 - Planning and Development – Concurrence Response TP06/23 – Siting Dispensation (proposed carport), Lot 14 on RP703334 – 15 Payne Street, Cloncurry.

In Favour: Cr Sam Daniels, Cr Vicky Campbell, Cr Janessa Bidgood  
Against: None  
Ineligible: Cr Greg Campbell, Cr Nathan Keyes

**CARRIED**

## ATTACHMENT 1 - STATEMENT OF REASONS – TP06/23

### NOTICE ABOUT DECISION - STATEMENT OF REASONS

The following information is provided in accordance with section 63(5) of the *Planning Act 2016*

Development application TP06/23 was received from GMA Certification Group on behalf of Elenore Avery for 15 Payne Street, Cloncurry also known as Lot 14 on RP703334 for a single storey structure (carport) 12.5m x 10m located 1.5m from the western side property boundary.

On the 21 March 2023, the above development application was approved in full, with conditions.

#### Reasons for the decision

The proposed is a single storey structure (carport) 12.5m x 10m which will have minimal impact on the subject site and adjoining property. The extent of non-compliance with the minimum setback of 1.5m is assessed as being unlikely to impact on the adjoining property in terms of amenity and privacy.

The proposal includes design and siting which provides a pleasant visual outlook and service functions of the occupants.

Includes appropriate level of privacy for occupants of adjoining properties.

There is no objection to the proposal from a planning viewpoint.

#### 1. Assessment benchmarks

The following are the benchmarks applying for this development:

Benchmarks applying for the development	Benchmark reference
<b>Queensland Development Code:</b> <b>P2 Buildings and structures –</b> (a) provide adequate daylight and ventilation to <i>habitable</i> rooms; and (b) allow adequate light and ventilation to <i>habitable</i> rooms of <i>buildings</i> on adjoining <i>lots</i> . (c) do not adversely impact on the amenity and privacy of residents on adjoining <i>lots</i> .	The proposed carport is not considered to impact on access to natural light, sunlight and does not create overbearing development for the adjoining dwelling house nor their open space and does not impact on the amenity and privacy.

## ATTACHMENT 2 – CONDITIONS OF APPROVAL

<b>NATURE OF DECISION</b>											
<p><b>A</b> This approval is subject to the following conditions, the facts set out in the application and all relevant Council provisions of the <i>Cloncurry Shire Planning Scheme 2016</i> and the provision of the <i>Planning Regulation 2017</i> for design and siting (Schedule 9, Part 3, Division 2, Table 3).</p>											
<b>GENERAL</b>											
<p><b>1. Site Layout</b></p> <p>(a) The development must generally comply with the approved proposal plans and design drawings as referenced in the table below, which forms part of this application, except as otherwise specified by any condition of this approval.</p> <table border="1" data-bbox="300 607 1370 674"> <thead> <tr> <th>Plan Name</th> <th>Plan No.</th> <th>Revision No.</th> <th>Plan/Revision Date</th> </tr> </thead> <tbody> <tr> <td>Site Plan</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>				Plan Name	Plan No.	Revision No.	Plan/Revision Date	Site Plan			
Plan Name	Plan No.	Revision No.	Plan/Revision Date								
Site Plan											
<p><b>2. Compliance with conditions</b></p> <p>(a) All conditions must be complied with prior to the commencement of the use, unless specified in an individual condition.</p> <p>(b) The conditions of this development approval are to be read in conjunction with the approved plans /drawings/ documents at all times. Where a conflict occurs between the conditions of this approval and the approved plans / documents, the conditions of this development approval shall prevail.</p>											
<p><b>3. Currency Period</b></p> <p>This Referral Agency Response in its entirety, including all referenced plans and documents, must be submitted with a building application to the relevant Assessment Manger within two (2) years of the date of this Referral Agency Response.</p>											
<p><b>4. Lawful Point of Discharge</b></p> <p>(a) Ensure water run-off from the roof of the type of structure is directed into own property and does not cause ponding or a nuisance to adjoining properties;</p> <p>(b) Where retain walls, fences, buildings or other barriers which would cause a damaging effect and produce a concentrated flow at an outfall are constructed, a Stormwater Disposal System is to be installed to the structure to pipe all water run-off from the structure to the kerb.</p> <p>(c) The system shall be of a design and capacity sufficient to discharge all run-off to the kerb without causing nuisance to adjoining properties.</p>											
<p><b>5. Building works</b></p> <p>(a) The Class 10a building requires a development permit for building works.</p> <p>(b) The applicant is to seek and comply with all relevant building approvals to be issued by a qualified Building Certifier.</p>											
<p><b>6. Damage to Infrastructure</b></p> <p>(a) If any part of Council's existing sewer, water, channel and kerbing, or road infrastructure is damaged as a result of constitution activities occurring on the site associated with the Class 10a building, including but no limited to, mobilisation of heavy machinery and equipment, the owner/applicant must notify Council immediately of the affected infrastructure and have it repaired or replace by Council at the owner/applicants cost.</p> <p>(b) The applicant/owner is to be aware that, in granting this approval, Council has not taken into account the location of the subject private property's internal house drainage; this is the applicant/owner's responsibility.</p>											
<p><b>7.</b> The applicant/owner is to be aware that, in granting this approval, Council has not taken into account the location of the subject private property's internal house drainage; this is the applicant/owner's responsibility;</p>											
<p><b>8.</b> Approval of the proposed structure is given on the basis that the building is used in connection with the existing dwelling. Use of the carport in connection with any commercial business is subject to the Cloncurry Shire Planning Scheme 2016 of the rural residential zone code and home business code. At all times the principal use of the property must remain residential.</p>											

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
  - (a) matters that may be appealed to—
    - (i) either a tribunal or the P&E Court; or
    - (ii) only a tribunal; or
    - (iii) only the P&E Court; and
  - (b) the person—
    - (i) who may appeal a matter (the *appellant*); and
    - (ii) who is a respondent in an appeal of the matter; and
    - (iii) who is a co-respondent in an appeal of the matter; and
    - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The *appeal period* is—
  - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
  - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
  - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
  - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note—*

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.

- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
  - (a) the adopted charge itself; or
  - (b) for a decision about an offset or refund—
    - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
    - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

### 230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
  - (a) the respondent for the appeal; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
  - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
  - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
  - (f) for an appeal to the P&E Court—the chief executive; and
  - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
  - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.



**231 Other appeals**

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—
  - (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision; and
  - (d) a purported decision; and
  - (e) a deemed refusal.

*non-appealable*, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

**232 Rules of the P&E Court**

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

# PAYNE STREET

POOL FENCE

