



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	21 - 17
<b>Applicant:</b>	Noosa Building Certifiers
<b>Assessment Manager:</b>	Noosa Building Certifiers
<b>Concurrence Agency:</b> (if applicable)	Moreton Bay Regional Council (Council)
<b>Site Address:</b>	13 Cypress Avenue, Woorim Qld 4507, and described as Lot 44 on W75314, the subject site.

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### Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against a Decision Notice of the Assessment Manager to refuse a development application for a carport. Council as the Concurrence Agency directed the Assessment Manager to refuse the application on the basis that the proposed building work will not satisfy the performance outcome PO22 of the Dwelling House Code, as it will dominate the streetscape.

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<b>Date and time of hearing:</b>	3rd August 2017 from 11 am
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Mr Henk Mulder - Chair Mr Steven Craven - Member Mr Brett England - Member
<b>Present:</b>	Mr. Luke Neller - Assessment Manager, appeal applicant, and agent for the Owner Mr Col Thauer - for the Owner  Mr Chris Trewin - Council representative Mr Rhys Dixon - Council representative

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager on 26 May 2017 to refuse the Application for the proposed Carport and approves the Application subject to the following:

- (a) The site development undertaken as shown on the following drawings:
  - Site Plan Page 01 undated, by Southern Cross Sheds
  - Elevation Page 02 undated, by Southern Cross Sheds
- (b) Prior to any building work commencing on site, a Development permit for building work is to be obtained.

## Background

1. The subject site is a 728m<sup>2</sup> allotment located at 13 Cypress Avenue Woorim Qld 4507, with an application for a Carport to its secondary street boundary, a laneway that also serves as the secondary street boundary to the medium rise accommodation and a shopping precinct that faces Second Avenue.
2. Council responded to a Concurrence agency referral with a request for further information dated 22 February 2017 that sought a response for issues of amenity and aesthetics that would include an assessment of total shed area of the site, the existing character of the streetscape. Council also provided advice regarding a favourable option reducing the size and carport doors
3. The Applicant responded to the request for further information on 18 April with seeking to restrict the application to Siting and Design issues rather than Amenity and Aesthetics, and provided a range of responses in confirming the application material would not be amended.
4. Council as a concurrency agency gave a response on 20 April 2017 directing a refusal of the application, based on the proposal not satisfying PO22 of the MBRC Planning Scheme .
5. The Assessment Manager made an appeal as the Applicant to the BDDRC on 26 May 2017

## Material Considered

The material considered in arriving at this decision comprises:

6. IDAS Form 1 and Form 2 Building work assessment application details;
7. The following drawings:
  - Site Plan Page 01, A4, undated, by Southern Cross Sheds
  - Elevation Page 02, A4, undated, by Southern Cross Sheds
8. Letter from Moreton Bay Regional Council (**MBRC**) to the Applicant (the Assessment Manager) dated 22 February 2017 acknowledging a request for a concurrence agency response and seeking additional information regarding aggregate area and setback does not have an adverse effect on amenity and for how the work proposed is not in extreme conflict with the character of the locality;
9. Emails from the Applicant and MBRC dated 29 March and the 6 April 2017 establishing the owners unwilling to match the information request and changes to the application, and confirming the application will not be assessed under the superseded planning scheme;
10. Letter from the Applicant dated 18 April 2017 presenting a response to Council for the approval of the works in regard to the Dwelling House Code setbacks; Parking, Access and Driveways; Casual surveillance; Laneway access; and Domestic Outbuildings, with title plan and photographs of the streetscape.

11. Concurrence Agency Response from Council dated dated 20 April 2017 instructing Assessment Manager to refuse Development Application for Building Work on the basis of PO22 of the MBRC Dwelling House Code;
12. Assessment Manager Decision Notice to Applicant, dated 26 May 2017, refusing the application for a Carport as directed by Council for Development Application No: 2017-0060, with accompanying conditions and information regarding appeals;
13. Form 10 – Appeal Notice, grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 29 May 2017;
14. Letters to the Assessment Manager and Council confirming BDDRC Committee dated 18 July 2017;
15. Letters to the Applicant and Council dated 22 July 2017 confirming a hearing date 3 August 2017;
16. The *The Moreton Bay Regional Council Planning Scheme (MBRCPS)*
17. The *Sustainable Planning Act 2009 (SPA)*;
18. The *Sustainable Planning Regulation 2009 (SPR)*
19. The *Building Act 1975 (BA1975)*.
20. The *Building Regulation 2006 (BR2006)*

## Findings of Fact

The Committee makes the following findings of fact:

### A. Subject Site

21. The subject site is a 728m<sup>2</sup> allotment located at 13 Cypress Avenue Woorim Qld 4057, in a General residential zone, in a next generation neighbourhood zone precinct. The **MBRCPS** provides the following uses to be expected in this precinct.

Examples of intended residential development	Overview
<ul style="list-style-type: none"> <li>• Dwelling house</li> <li>• Dual occupancy</li> <li>• Multiple dwelling</li> <li>• Dwelling unit</li> <li>• Relocatable home park</li> <li>• Residential care facility</li> <li>• Retirement facility</li> <li>• Rooming accommodation *</li> <li>• Short-term accommodation * * if within 800m walking distance of a higher order or district centre precinct.</li> </ul>	<ul style="list-style-type: none"> <li>• Houses on a variety of lot sizes including traditional and narrow lots, dual occupancies (traditional and loft), row or terrace housing, plexes, low and medium rise apartments, townhouses and managed communities</li> <li>• Density of 15-75 dwellings per hectare</li> <li>• Building height generally up to 12 metres</li> </ul>

22. The allotment has an existing dwelling, one storey in height, and two street frontages, with the secondary frontage at Cypress Lane, where the work is proposed.
23. The secondary street access of Cypress Lane and the location for the proposed carport has an existing enclosed metal shed with a single garage door, set back approximately 1.5 metres from the street boundary. At the rear of this shed a metal fence screens the courtyards and garden, with an additional smaller storage shed closer to the residence.

24. The streetscape to Cypress Lane is comprised of a wide variety of secondary street boundary uses for residential, retail, multi-residential uses with access-ways, parking, high mesh fences, and additional metal fences. Heights, materials and scales vary in this Lane as a part of the diversity of use.

## **B. The Application**

25. An application for a Carport of 52m<sup>2</sup> to a secondary street boundary, recognised as a Lane, was made by Southern Cross Sheds on behalf of the Owners to the Assessment Manager on 23 January 2017
26. The Assessment Manager made application to MBRC for concurrence agency referral for siting and design, Council responded on 22 February 2017, detailing the criteria to be used and additional information sought with favourable review where doors were removed and width was reduced to the proposed carport.

The Amenity and Aesthetics Policy ensures building work does not have:-

1. *an extremely adverse effect on the amenity or likely amenity of one or more localities within the Moreton Bay Regional Council area; or*
2. *be in extreme conflict with the character of one or more localities within the Moreton Bay Regional Council area.*

Where -

- (2)(b)- *A garage, shed, carport or the like located wholly or partly within 6.0m of the road boundary of the property in the Caboolture District.*
- (3)(b)- *For the Caboolture District, where the aggregate site cover of existing and proposed garages, sheds, carports or the like on a property exceeds the 80m<sup>2</sup> on a lot size of 600m<sup>2</sup> to 1999m<sup>2</sup>.*

Please provide evidence that the proposed building work does not have an extremely adverse effect on the amenity or likely amenity or be in extreme conflict with the character of the streetscape and area - by way of photographs and addresses of similar structures with consistent setbacks, bulk and size within the road boundary setbacks. *Note - Please consider the combined width of structures within road boundary setbacks.*

27. In confirming that changes would not be made to the application material, the Applicant in a letter dated 18 April 2017 sought to establish detailed justification for Dwelling House Code setbacks; Parking, Access and Driveways; Casual surveillance; Laneway access; and Domestic Outbuildings, with title plan and photographs of the streetscape.
28. Council directed refusal of the application on 20 April 2017, citing **9.3.1, The Dwelling house code PO22:**

**PO22** - Domestic outbuildings and carports are located on-site to not dominate the streetscape. Acceptable Outcome 22 states a way of achieving this by ensuring domestic outbuildings have a total combined maximum roofed area of 70m<sup>2</sup> on lots between 600m<sup>2</sup> - 1000m<sup>2</sup>.

The proposed carport (partly enclosed by garage doors) is 7m in width and 7.5m in length and setback 500mm from the secondary frontage to the laneway. The structure has a mean height of 2.8m and total height of 3.74m from natural ground level with a gable roofline (including slab). The structure is adjacent to the existing shed/garage structure on the allotment, with a total width of 5m, addressing the secondary frontage to the laneway. The total combined roofed area of existing and proposed domestic outbuildings is 85m<sup>2</sup> in lieu of the maximum 70m<sup>2</sup> for this size allotment. The allotment has an 18.1m secondary frontage adjoining Cypress Lane. The existing and proposed domestic outbuildings are considered to significantly dominate the streetscape, as the total width of structures exceeds 65% of the

total secondary frontage to the laneway. Whilst there are several domestic outbuildings on residential allotments addressing the laneway, 12m of car parking structures addressing Cypress Lane on one allotment is not considered to be consistent within the existing streetscape for the residential allotments.

Therefore, the proposed car parking structure is unable achieve PO22 of the Dwelling House Code as it is considered to be located on-site to dominate the streetscape.

### **C. The Hearing and the submissions:**

30. The hearing was undertaken on-site, after the site inspection on 3 August 2017. The Assessment Manager, Council's representatives and the committee members were in attendance.
31. The issue for the application of the new planning scheme in contrast with the superseded scheme was clarified, where the new plan was relevant to the application
32. Council's representative during the written application responses was not in attendance, having changed employment. The support for the views contained in the written Council responses were discussed more specifically within the site context. Casual surveillance sought at the boundary in the residential zone was considered to be less achievable with the advent of allowance for 2.0 metre high fences, an option taken up by many residents fronting Cypress Lane. The wide garage door proposed was noted by Council as appropriate for turning circle access from the lane.
33. The planning scheme raised issues for the application with regard to the roof cover for outbuildings. In contrast with the 85m<sup>2</sup> proposed, a maximum of 70m<sup>2</sup> is nominated as a requirement for accepted development SAO24 of the Dwelling house code for 600-1000m<sup>2</sup> lots, its purpose set out in Purpose statement 2.d as: *Garages, car ports and domestic outbuildings remain subordinate and ancillary to the principal dwelling and are located and designed to reduce amenity impacts on the streetscape and adjoining properties.* This was viewed again in context where the existing roofs to outbuildings would be staggered with significant setbacks.
34. The site circumstances were discussed in the context of the planning issues for the secondary street access and laneway, including car parking. The current use and utility for the properties within the vicinity of the secondary street boundary were clearly of a distinctly intense and non-detached residential nature, serving retail enterprise, and multi-residential buildings. The combination of existing outbuildings and fencing visible from Cypress Lane on the subject site and on neighbouring properties was considered pertinent because it sets a local standard of streetscape presentation in the context of which the subject proposal was not considered likely to create a negative impact.

### **Reasons for the Decision**

35. The Committee is satisfied that the proposal set out in the drawings will not dominate the streetscape in this particular circumstance, with regard to the scale, type and intensity of use currently undertaken to this lane.
36. The carport is set out as to not affect the amenity for the adjacent neighbours, nor diminish the character and streetscape of the lane, which can be readily viewed as a lane with an established value for secondary street access for vehicles and affiliated services.

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**Henk Mulder**  
**Building and Development Committee Chair**  
**Date: 4 September 2017**

## **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**