



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	10-2012
Applicant:	Drew Miller
Assessment Manager:	Alliance Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council
Site Address:	12 Tandara Street Warana and described as Lot 262 on Plan W95556 — the subject site

Appeal

Appeal under section 564 of the *Sustainable Planning Act 2009* (SPA) against the decision of the assessment manager to refuse a siting variation for a proposed carport at the subject site. The decision was based on a concurrence agency response from Council.

Date of hearing:	25 May 2012
Place of hearing:	The subject site
Committee:	Robin King-Cullen, Chair Cheryl Sisson, General Referee
Present:	Drew Miller, Applicant Ian Simpson, Alliance Building Approvals representative Alan Thompson, Sunshine Coast Regional Council, Council representative Steven Rosenius, Sunshine Coast Regional Council, Council representative

Decision:

The Committee, in accordance with section 564 of the SPA **confirms** the decision appealed against.

Background

The Proposal

The matter concerns the decision of Council as concurrence agency to refuse an application for siting variation to enable a double carport to be constructed within 400mm of the front road boundary and 200mm from the western side boundary.

The subject site, having an area of 564 square metres, is located in Tandara Street, Warana.

The subject site is relatively flat and contains a single storey dwelling constructed prior to 1985 with a 5800mm setback from Tandara Street and a 3300mm setback from the western side boundary. A sewer line traverses the site in an east west direction approximately 1500mm from the rear boundary.

An attached carport, capable of accommodating two vehicles in tandem, exists between the dwelling and the western side boundary. The carport is in a poor state of repair. There is no enclosed car accommodation. The existing buildings occupy approximately 40% of the site and there is sufficient area free of buildings at the rear of the site where the proposed carport could be located.

In support of his application, the applicant states that:

- (a) although the existing dwelling currently has a complying carport capable of accommodating 2 vehicles in tandem, this is not adequate to safely accommodate and protect the family's 3 cars and one motor cycle;
- (b) the existing streetscape has already been affected due to existing properties in the general vicinity of Tandara Street having carports within the 6m frontage (a portfolio of photographs and locations of some 30 properties that apparently have carports within the 6m front setback was supplied at the hearing);
- (c) the proposed carport will not dominate the streetscape or obstruct views from neighbouring properties;
- (d) the property is being improved in stages, with particular attention to appearance from the street; and
- (e) the proposal meets the Specific Outcomes of the Caloundra City Plan 2004 and QDC MP 1.2.

In relation to (b) above, the Committee Chairperson sought further information from Council regarding existing carports in the immediate vicinity of the subject site erected within the 6m front boundary setback (11 of the 30 sites identified in the appellant's portfolio). It is relevant that none of these sites is located in Tandara Street. Council officers' investigations provided the following information in relation to 11 existing carport structures:

- In 5 instances there was no record of approval;
- In 5 instances the carport structures were approved before the Caloundra City Plan 2004;
- In 1 instance the carport structure was approved after the introduction of Caloundra City Plan 2004.

The Committee examined the information available on the only case of a carport structure approved after the introduction of Caloundra City Plan 2004. This carport was not located in Tandara Street (a residential access street) but in Wyandra Drive (a collector street). The Committee therefore considered the circumstances differed from the carport proposed on the subject site in terms of its affect on the streetscape.

During the hearing alternative locations for the proposed carport were discussed:

1. a single carport setback not less than 4500mm from the front boundary and located between the existing dwelling and the front boundary together with landscape screening (suggested by Mr Thompson). While not averse to investigating alternative locations for the carport, Mr Miller said he had difficulty understanding the benefits of this proposal over the original one. The possible negative impacts of such a structure in terms of energy efficiency were also questioned.
2. a double carport located towards the rear of the subject site. Mr Miller acknowledged that there is sufficient space for a complying carport at the rear of the subject site (although somewhat constrained due to sewer main) but said this would compromise usability of the rear yard and future plans for a swimming pool.

Concurrence Agency Decision

The concurrence agency (Council) response to the application dated 31 January 2012 refused the application on the grounds that:

"The development does not demonstrate compliance with and cannot be conditioned to comply with the following performance criteria (Specific Outcomes) of Caloundra City Plan 2004, Code 8.5 Detached House Code, 8.5.2, 07.

Garages & Carports

Garages and Carports do not dominate the streetscape and preserve the amenity of adjacent land and dwellings having regard to:

(a) building character and appearance.”

Material Considered

The material considered in arriving at this decision comprises:

3. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 6 March 2012.
4. Copy of the referral agency response dated 31 January 2012 from Council to Alliance Building Approvals directing refusal of the application.
5. Copy of development application decision notice dated 2 March 2012 from Alliance Building Approvals to Drew Miller stating that the application has been refused.
6. Verbal and written submissions made by the applicant at the hearing.
7. Verbal and written submissions made by Sunshine Coast Regional Council at the hearing.
8. Email correspondence from Alan Thompson to the Committee Chairperson dated 30 May 2012, 5 June 2012 and 8 June 2012 providing approval history regarding 11 existing carports in the vicinity of the subject site.
9. Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.

Findings of Fact

The Committee makes the following findings of fact:

- The premises currently has a carport for two vehicles in tandem which the applicant states is insufficient to house their vehicles.
- A complying double carport can be erected towards the rear of the subject site without the need for siting variation.
- There are no existing carports in Tandara Street with front setbacks less than 6m.
- There are 11 existing carports in the vicinity of Tandara Street with front setbacks less than 6 m. Of these 5 have been erected without approval and 5 were approved before the introduction of the Caloundra City Plan 2004
- The circumstances of the one existing carport in the vicinity of Tandara Street that was lawfully erected after introduction of the Caloundra City Plan 2004 are different to that of the proposal regarding streetscape and amenity.

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Reasons for the Decision

- The Committee considers that the proposal does not satisfy Specific Outcome 07 (Garages & Carports) of Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 in that it would dominate the streetscape and fail to preserve the amenity of adjacent land and dwellings having regard to building character and appearance. Furthermore, a complying double carport can be erected towards the rear of the subject site without the need for a siting variation.

Building and Development Committee Chair

Date: 19 June 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
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