



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	15-16
Applicant:	Todd Langton
Assessment Manager:	John Dunn Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	14 Curbarra St, Buddina 4575, described as Lot 174 on Plan B 92914 (the subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of John Dunn Building Approvals as the Assessment Manager to refuse a Development Application (Application) for a carport and roofed deck extension within the prescribed setbacks of the road boundary under the Sunshine Coast Planning Scheme. Sunshine Coast Council as Concurrence Agency, directed the refusal.

Date and time of hearing:	23 June 2016, 10:30am - 11:30am
Place of hearing:	The subject site
Committee:	Deanna Heinke - Chair John Gillespie - General Referee
Present:	Peter Soden – Property Owner’s representative Vince Whitburn – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Assessment Manager on 1 May 2016 to refuse in part the Application for the carport and deck extension.

Background

The site is 546m² and is located at 14 Curbarra St, Buddina. The site is rectangular in shape and is relatively flat from the street frontage to the rear of the site. The subject site is surrounded by detached houses and the entire street contains detached houses which range from single to two storey levels.

The existing development on the site is a 2 storey dwelling house of brick construction. At the upper level a verandah is located along part of the frontage of the house. The existing house is setback approximately 5.484 metres from the front alignment. An existing garage is located on

the western side of the house towards the rear of the house. A crossover and driveway provide access to the existing garage. The original garage which was located at the ground level of the house has been converted into a room. The driveway to the original garage remains intact and the original garage door has been replaced by glass doors.

A Development Application (Application) was submitted for a building approval for construction of 3 components, including (1) a carport, (2) a deck extending from the existing verandah along part of the upper level and (3) proposed roofed deck along the eastern side of the existing dwelling.

The proposed carport was dimensioned as 6 metres in width and 9 metres in length. The proposed carport was to have no setback from the front boundary. The proposed front deck was to have a setback of 4.5 metres from the front boundary. The carport and 9 metre roofed area was to be located 0.150 metres from the side boundary. Part of the proposed carport was to be accommodated under part of the side roofed deck. Both the carport and that part of the deck proposed along the front of the dwelling were to be located within the front boundary setback.

The Council issued a Concurrence Agency response recommending part approval and a part refusal. The part approval was to allow a setback of 1.5 metres from the outermost point of the roofed deck to the eastern side boundary adjacent to Lot 175 on Plan B92914 (i.e. item (3) described above). The part refusal related to the proposed carport and the proposed deck at the front of the dwelling, as the proposed development was not considered to comply with and could not be conditioned to comply with the performance criteria PO2 and PO3 of the Dwelling house code.

The Assessment Manager refused the Application in part and approved the application in part, in accordance with the Concurrence Agency advice.

Council issued the part refusal on the following grounds:

"The application for the proposed carport and the proposed deck at the front of the dwelling is refused as the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria PO2 and PO3 of the Dwelling House Code.

PO2 –

Garages, Carports and Sheds

- (a) preserve the amenity of adjacent land and dwelling houses;*
- (b) do not dominate the streetscape;*
- (c) maintain an adequate area suitable for landscapes adjacent to the road frontage; and*
- (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*

PO3 –

Where located in a residential zone, the dwelling house is set back from any road frontage so as to:-

*(b) create a coherent and consistent streetscape, with **no** or only minor variations in frontage depth." (Council's emphasis i.e. not emphasised in the Code).*

The Assessment Manager, upon receiving the Council advice issued a Decision Notice dated 1 May 2016, refusing in part the siting variation for the carport and roofed deck along the front of the existing dwelling.

The Applicant then lodged an Application for Appeal (Form 10) with the Committee's Registrar on 13 May 2016. A hearing was conducted on the subject site at 10.30am on 23 June 2016.

The Applicant's representative and Council representative made representations at the hearing.

The Applicant's representative submitted:

- The part of the application which was refused should be approved;
- The proposed carport and front deck is required to modernise the dwelling;
- The extension to the front deck will also provide a roof above the front door which is located at the ground level;
- There are other examples in the area of carports located between the house and the front alignment;
- Existing driveway located on the eastern side of the house, would be removed if approval was given for the carport on the western side of the site. A 6 metre wide crossover is proposed in association with the carport;
- No letter of support had been obtained from the adjoining land owner, however the land owner could be approached to provide a letter of support;
- The owner could be contacted to consider submitting amended plans;
- Alternative garage and parking options were too expensive.

Council's representations:

- The proposed extension to the front deck and the proposed carport would dominate the streetscape and be inconsistent with the pattern of setbacks in the street;
- There are other carports in the surrounding area located within the front 6 metre setback, however there are no carports located on the boundary in subject street;
- Other carports and structures in the surrounding area which are located in the front 6 metre setback may have been approved under a previous Planning Scheme;
- Council's current Planning Scheme states front setbacks to have no or only minor variations in frontage depth. Exceptions may apply to corner sites and structures such as gate houses;
- Council is of the view that the predominant character of the area is buildings setback 6 metre and that the carport and front deck will present an unacceptable intrusion into the road frontage setback.

The Committee agreed that the applicant's representative discuss an amended layout with the Applicant. Amended plans dated 30 June 2016 were received by the Committee on 1 July 2016.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 13 May 2016
2. Decision Notice – Refusal issued by John Dunn Building Approvals on 1 May 2016
3. Council Concurrency Agency response – Refused in part by Sunshine Coast Council dated 16 March 2016
4. Baden Design & Drafting Site Plan Drawing Nos. 16119 BR.1, BR.2 and BR.3 dated 27 January 2016
5. Additional information being amended Baden Design & Drafting Site Plan Drawing Nos. 16119 BR.1, BR.2 and BR.3 dated 30 June 2016, provided by the applicant's representative to the Committee on 1 July 2016 subsequent to the hearing which was distributed to all appeal parties

6. The *Sustainable Planning Act 2009* (SPA)
7. The *Sustainable Planning Regulation 2009* (SPR)
8. *Sunshine Coast Planning Scheme 2014*
9. Verbal representation by the Applicant's representative at the hearing
10. Verbal representations by Council at the hearing
11. Research undertaken on other existing buildings and structures in the surrounding area

Findings of Fact

The Committee makes the following findings of fact:

1. The subject site is a 546 m² allotment situated within an established residential neighbourhood of similar sized allotments and dwellings. The subject site contains a 2 storey brick dwelling with an existing garage located on the eastern side of the dwelling towards the rear of the house;
2. The Curbarra Street frontage is 18.105 metres in length, and contains two existing vehicle crossovers providing access from the frontage;
3. The Application, made to the Assessment Manager was correctly referred to Council as a Concurrence Agency under the *Sustainable Planning Regulation 2009*, Schedule 7, Table 1, Item 19;
4. The Application was partly refused by Council because it was deemed not to meet Performance Outcome 2 and 3 of the Dwelling house code;
5. The Dwelling house code section 9.3.6.3 PO2 and PO3 of the *Sunshine Coast Planning Scheme 2014* detailed above states:

"PO2 Garages, carports and sheds:-

- (a) preserve the amenity of adjacent land and dwelling houses;*
- (b) do not dominate the streetscape;*
- (c) maintain an adequate area suitable for landscapes adjacent to the road frontage; and*
- (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*

PO3 Setbacks in Residential Zones:-

Where located in a residential zone, the dwelling house is set back from any road frontage so as to:-

- (a) achieve a close relationship with, and high level of passive surveillance of, the street;*
- (b) create a coherent and consistent streetscape, with no or only minor variations in frontage depth;*
- (c) make efficient use of the site, with opportunities for large back yards;*
- (d) provide reasonable privacy to residents and neighbours on adjoining lots; and*
- (e) maintain reasonable access to views and vistas, prevailing breezes and sunlight for each dwelling house."*

6. Curbarra Street has a streetscape which represents a relatively consistent 6 metre front setback for dwellings, carports and garages;
7. At the hearing, the Committee provided the Applicant's representative with the opportunity to discuss an alternative design with the owner which located the proposed carport in alignment with the setback of the existing house and the deletion of the proposed deck

extension. The car accommodation could be included under that part of the side deck which was approved by Council on 16 March 2016 and contained in the Decision Notice dated 1 May 2016. The original garage area may be able to be utilised in an alternative design;

8. The Applicant's representative provided amended plans to the Committees Registrar on 1 July 2016, including Baden Design & Drafting Site Plan Drawing Nos. 16119 BR.1, BR.2 and BR.3 dated 30 June 2016;
9. The amended plans dated 30 June 2016 identified the carport being setback 0.45 metre from the front alignment and a different roof form;
10. The extent of the amendments identified in the plans dated 30 June 2016 did not address the extent of the issues discussed at the hearing;
11. There are no extenuating circumstances which apply to this site which allow the Committee to support this Application for the design and siting of the carport or extension to the front deck.

Reasons for the Decision

The Committee has reviewed all the information provided and finds the following:

- The existing character of the immediate area in Curbarra Steet is comprised mostly of dwellings with garages that generally maintain a 6 metre building setback from the front property boundary;
- The siting of the proposed carport and extension to the front deck will dominate the streetscape and will be inconsistent with pattern of front setbacks in the street.

Based on a site specific assessment and application of the performance criteria, and given the circumstances applicable to this subject site, the Committee upholds the decision of the Assessment Manager to refuse the Application in part. The proposed carport and deck extension will not maintain a coherent and consistent streetscape pursuant to Performance Outcomes PO2 (a), (b), (c) and (d) and PO 3 (b) of the Dwelling House Code, under the Sunshine Coast Planning Scheme 2014.

Deanna Heinke
Building and Development Committee Chair
Date: 14 July 2016

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