



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

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| <b>Appeal Number:</b>                         | 36 - 16   |
| <b>Applicant:</b>                             | Mr. Kenneth Charles Seaforth Mackenzie                                  |
| <b>Assessment Manager:</b>                    | Sunshine Coast Inspection Services (Neil Lockett)                       |
| <b>Concurrence Agency:</b><br>(if applicable) | Sunshine Coast Council (Council)  |
| <b>Site Address:</b>                          | 25 Fountain Road, Buderim, Qld 4556, Lot 2 RP 105587 — the subject site |

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### Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse a Class 10a Carport. Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building as it did not meet and could not be conditioned to meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome P02.

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| <b>Date and time of hearing:</b> | 21 October 2016 at 10:30 am  |
| <b>Place of hearing:</b>         | The subject site   |
| <b>Committee:</b>                | Mr. Richard Prout – Chair<br>Mr. Andrew Parker – Member  |
| <b>Present:</b>                  | Mr. Kenneth Charles Seaforth Mackenzie – Applicant and Property Owner<br>Mr. Steve Rosenius – Council representative<br>Mr. Peter Chamberlain – 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 to refuse the Class 10a carport at the direction of Council, and approves the building with the following conditions:

- The proposed carport must be sited and built in accordance with the following drawings (**ATTACHED** at the end of this decision):  
Drawing Number 2016-36 sheet 1 of 3, dated 21/11/2016, Site Plan;  
Drawing Number 2016-36 sheet 2 of 3, dated 21/11/2016 Plan View;  
Drawing Number 2016-36 sheet 3 of 3, dated 21/11/2016 Elevation View.
- The carport must remain open at all times and must not be enclosed on any side with walls, screens, lattice, shutters or the like; and
- Garage doors, roller-doors and the like must not be installed to the open carport;

- The carport roof must have a non-reflective finished surface in natural colours compatible with the existing dwelling; and
- The Applicant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for Building Work.

## **Background**

The subject site is a 969 m<sup>2</sup> allotment located at 25 Fountain Road, Buderim and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is rectangular in shape with a street frontage of approximately 27 m.

The existing dwelling on the site is approximately forty years old and does not have any covered car parking. The existing dwelling is complying with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2 (QDC MP1.2).

In May 2016 the property owners engaged Suncoast Pergolas (Builder) a company specialising in prefabricated carports, patios, gazebos, enclosures etc. to design and construct a new carport and entry porch, to be located in front of their existing dwelling with a front road boundary setback of 1 m from Fountain Road for the carport and 4.92m for the entry porch.

As part of their service the builder lodged a Development Application for Building Work with Sunshine Coast Inspection Services (Assessment Manager).

However, the proposed carport did not comply with Acceptable Outcome A02.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

*Where located on a lot in a residential zone, a garage, carport or shed:*

*(a) is setback at least 6 metres from any road frontage;*

As such the Assessment Manager lodged a request for referral agency response for building work with Council on 30 May 2016. The Council issued a Concurrence Agency Response on 25 August 2016 instructing the Assessment Manager to refuse the application as it did not meet and could not be conditioned to meet the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO2 for Garages, Carports and Sheds.

An application for appeal Form 10 was lodged with the Building and Development Dispute Resolution Committees Registrar by the Applicant on 4 October 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 4 October 2016;
2. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
3. Assessment Manager Decision Notice, Permit No: 160529, dated 20 September 2016, refusing the carport as directed by Council;
4. The following drawings:
  - Site Plan, undated with no designers details or reference number;
  - Plan View, undated with no designers details or reference number; and

- Elevation Views, undated with no designers details or reference number.
5. Letter from Applicant dated 15 September 2016, to the Committee, detailing reasons for Appeal;
  6. Sunshine Coast Council Application Form – 2015/16 Planning and Environment Request for Referral Agency Response for Building Work, not dated, lodged by Suncoast Inspection Service (Assessment Manager);
  7. Concurrence Agency Response from Council dated 25 August 2016 instructing Assessment Manager to refuse Development Application for Building Work;
  8. Information Request from Council to Assessment Manager dated 14 June 2016;
  9. Letter from the Applicant dated 23 August 2016, to the Council responding to the Council Information Request addressing the performance criteria of the Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcomes P02;
  10. Photographs of the subject site and the streetscape in Fountain Road including a number of carports in the street;
  11. Email from the Applicant to the Council dated 25 August 2016 responding to the Council Concurrence Agency Refusal requesting additional information;
  12. Right to Information (RTI) RTI16/013 from the Applicant to the Sunshine Coast Council dated 29 September 2016, which includes the following documentation;
    - Council internal assessment checklist for RAB16/0342, 25 Fountain Road, Buderim (Assessment checklist for Concurrence Agency Referral and Preliminary Building Approval for single detached housing, associated outbuildings and structures);
    - Email dated 22 July 2016 from the Assessment Manager to Council responding to Council Information Request dated 14 June 2016;
    - Email dated 8 August 2016 from Council responding to the Assessment Managers email of the 22 July 2016;
    - Email dated 24 August 2016 from Applicant to the Council with an attached report dated 23 August 2016 addressing the performance criteria of the Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcomes P02;
    - Internal email dated 25 August 2016 between Council staff confirming carport is to be refused.
  13. Verbal submissions at the hearing from all parties to the appeal;
  14. Email and letter dated 31 October 2016 from Applicant to Committee requesting further clarification from the Council regarding Concurrence Agency Assessment process;
  15. Email dated 1 November 2016 from the Council responding to the Applicant email and letter of the 31 October 2016;

16. Additional information supplied by the Applicant on the 17 November 2016 to the Committee as a result of requests made by the Committee Chairman and Member at the hearing namely:
  - Untitled and undated amended carport and entry porch design i.e. Site Plan, Plan View, Elevation Views; and
  - Undated letter from Suncoast Pergolas to the Applicant detailing a number of safety and usability concerns with the proposed amended carport design.
17. Email from the Council dated 18 November 2016, confirming they had no objections to the proposed carport subject to a number of conditions;
18. The Sunshine Coast Planning Scheme 2014;
19. The Queensland Development Code MP 1.2 (QDC MP 1.2)
20. The *Sustainable Planning Act 2009* (SPA)
21. The Sustainable Planning Regulation 2009 (SPR)
22. The *Building Act 1975* (BA)

### **Findings of Fact**

The Committee makes the following findings of fact:

#### **Subject Site**

1. The subject site is a 969 m<sup>2</sup> allotment located at 25 Fountain Road, Buderim and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014;
2. The allotment is rectangular in shape with a street frontage of approximately 27 m;
3. The existing dwelling on the site is approximately forty years old and does not have any covered car parking. The existing dwelling is complying with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the QDC MP1.2;
4. The existing dwelling originally incorporated a covered garage however the Council issued a Development Approval for Building Work in 1992 for the conversion of the garage to a laundry and storeroom, Council reference 92/3539;
5. The existing access driveway gradient is steep however it is approximately 1.3m higher than the floor level of the original garage. The gradient of the original driveway would not have complied with today's standards and would not have been suitable for vehicle movements and is probably the reason it was converted to a laundry/storeroom;
6. There is no location on the site where a carport or garage could be built with a 6m front road boundary setback in accordance with Acceptable Outcome A02.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1;
7. The property does not have complying off street parking in accordance with Acceptable Outcome A08(a) (Access and Car Parking) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

*(a) for a lot exceeding 300m<sup>2</sup> – at least 2 (two) car parking spaces with at least one space capable of being covered.*
8. The following buildings and structures were noted onsite at the hearing:

- A dwelling built approximately forty years ago which does not have any covered parking for vehicles; and
  - A swimming pool located on the western side of the existing dwelling approved by Council in 1991.
9. The site is not affected by any Council or Unitywater infrastructure;
  10. The site is not affected by any easements;
  11. The streetscape in Fountain Road and the surrounding area consists of residential dwellings with a mixture of open fronted allotments or up to 1.8 m high front and side boundary fences/walls with soft landscaping and with buildings generally setback 6 m from the road boundaries.

## **Application Process**

1. In May 2016 the property owners engaged Suncoast Pergolas (Builder) a company specialising in prefabricated carports, patios, enclosures etc. to design and construct a new carport and entry porch, to be located in front of their existing dwelling with a front road boundary setback of 1 m from Fountain Road for the carport and 4.92m for the entry porch;
2. As part of their service the builder lodged a Development Application for Building Work with Sunshine Coast Inspection Services (Assessment Manager);
3. However the proposed carport did not comply with Acceptable Outcome A02.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

*Where located on a lot in a residential zone, a garage, carport or shed:  
(a) is setback at least 6 metres from any road frontage;*

4. The Assessment Manager lodged a request for referral agency response for building work with the Council on 30 May 2016 along with plans detailing the location and design of the proposed carport;
5. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the BA allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC MP 1.2 for boundary clearance and site cover. Table 9.3.6.3.1 of the Dwelling House Code clearly states that Acceptable Outcomes A02.1(a) is an alternative provision to the QDC;
6. The Council issued an Information Request on 14 June 2016 to the Assessment Manager stating:

*This application has been assessed and Council considers that the carport does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes P02 (a), (b) and (d) for Garages, Carports and sheds.*

*You are invited to discuss these areas and submit a re-designed carport and to comply with the above criteria.*

7. The Assessment Manager emailed the Council on 22 July 2016 responding to the Information Request, providing justification as to why the carport should be approved;
8. The Applicant also responded to the Council Information Request on 23 August 2016, providing a report addressing the performance criteria of the Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcomes P02, along with further justification as to why the carport should be approved;

9. The Council issued a Concurrence Agency Response on the 25 August 2016 instructing the Assessment Manager to refuse the application as it did not meet and could not be conditioned to meet the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO2 for Garages, Carports and Sheds, namely:

*In accordance with section 289(1) the reasons for refusal are as follows:*

*The proposed carport does not comply with and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014, Performance Outcome P02 item (d) for Garages, Carports and Sheds.*

*(d) Maintain the visual continuity and pattern of buildings and landscape elements within the street*

10. The Assessment Manager issued a Decision Notice on the 20 September 2016, refusing the Class 10a Carport as directed by Council;
11. The Committee received the application for appeal, Form 10 from the Applicant on the 4 October 2016.

### **Relationship Between QDC, The Sunshine Coast Planning Scheme 2014 and a Council Amenity and Aesthetic Resolution**

Part of the Applicants written submission to the Committee and verbal submission at the hearing related to section 288(2) (Limitation on concurrence agency's power to refuse application) of the SPA which states:

#### **288 Limitation on concurrence agency's power to refuse application**

*(2) To the extent a local government's concurrence agency jurisdiction is about assessing the amenity and aesthetic impact of a building or structure, the concurrence agency may only tell the assessment manager to refuse the application if the concurrence agency considers—*

*(a) the building or structure, when built, will have an extremely adverse effect on the amenity or likely amenity of its neighbourhood; or*

*(b) the aesthetics of the building or structure, when built, will be in extreme conflict with the character of its neighbourhood.*

The Applicant stated:

*It is considered that pursuant to section 288(2) of the Sustainable Planning Act 2009, the Sunshine Coast Council, as Concurrence Agency, has over-stepped its authority and has no jurisdiction to recommend refusal of the carport application for reasons of visual and/or aesthetics unless a suitable reason is given that the proposed structure will have an extremely adverse effect on the street and/or neighbourhood.*

It should be noted that section 288(2) referred to above relates to a local government amenity and aesthetic resolution as per Schedule 7, Table 1 item 17 of the *Sustainable Planning Regulation 2009* (SPR).

The assessment carried out by the Council in this instance related to design and siting as per Schedule 7, Table 1 item 19 and item 20 of the SPR.

Council has confirmed that it does not have any amenity and aesthetic resolution as per Schedule 7, Table 1 item 17 of the SPR. As such section 288(2) of the SPA is not applicable in this instance.

Schedule 7 – (Referral agencies and their jurisdictions) *Sustainable Planning Regulation 2009*

| <b>Table 1 – For building work assessable against the Building Act</b>  |  |   |
|---|--|---|
| <b>Column 1<br/>Application involving</b>   | <b>Column 2<br/>Referral<br/>agency and<br/>type</b>   | <b>Column 3<br/>Referral jurisdiction</b>   |
| Amenity and aesthetic impact of particular building work  |  |   |
| 17 Building work for a building or structure if it is—<br><br>(a) a single detached class 1(a)(i) building, class 1(a)(ii) building comprising not more than 2 attached dwellings or a class 10 building or structure; and<br><br>(b) in a locality and of a form for which the local government has, by resolution or in its planning scheme, declared that the form may—<br><br>(i) have an extremely adverse effect on the amenity, or likely amenity, of the locality; or<br><br>(ii) be in extreme conflict with the character of the locality | The local government—<br>as a<br>concurrence<br>agency | The amenity and aesthetic impact of the building or structure if the building work is carried out |
| Design and siting   |  |   |
| 19 If—<br>(a) the Queensland Development Code, part 1.1, 1.2 or 1.3 applies for building work; and<br>(b) under the part, the proposed building or structure does not include an acceptable solution for a relevant performance criteria under the part   | The local government—<br>as a<br>concurrence<br>agency | Whether the proposed building or structure complies with the performance criteria                 |
| 20 If—<br>(a) under the Building Act, section 33, an alternative provision applies for the building work; and<br>(b) under the provision, the proposed building or structure is not of the quantifiable standard for a relevant qualitative statement under the provision   | The local government—<br>as a<br>concurrence<br>agency | Whether the proposed building or structure complies with the qualitative statement                |

As per section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the BA, a planning scheme is permitted to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover.

The Committee is of the opinion that the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 does provide a qualitative statement and quantifiable standard for carports and is therefore complying with the requirements of section 33 of the BA.

This position is clearly reinforced within the Council Dwelling House Code with the statement: Note – A02.1(a) *alternative provision to QDC*.

### **Concurrency Agency Response Time Frame**

At the hearing and again after the hearing, the Applicant raised the issue that the Council assessment time period for the Concurrency Agency Response exceeded the required 10 business days, as per Schedule 15 (Referral agency assessment periods) of the SPR.

As such the Applicant was of the opinion that as per section 286 (1) (Effect if concurrence agency does not give response) of the SPA, the application was a deemed approval.

As previously stated, the assessment carried out by the Council was not for an amenity and aesthetic impact. Therefore as per section 286 (2) of the SPA, because the assessment time period exceeded 10 business days, the application was a deemed refusal. Namely:

**286 Effect if concurrence agency does not give response**

*(1) If a concurrence agency does not give a response under section 285, the assessment manager must decide the application as if the agency had assessed the application and had no concurrence agency requirements.*

*(2) However, the concurrence agency's response is taken to be a refusal of the application if—*

*(a) the application is a building development application; and*

*(b) the concurrence agency is the local government; and*

*(c) the matter being decided by the concurrence agency is a matter other than assessing the amenity and aesthetic impact of a building or structure; and*

*(d) the concurrence agency does not give a response under section 285.*

It should be noted that the Assessment Manager did not issue a decision notice after the 10 business days had lapsed. Instead the Assessment Manager chose to wait until receiving the Concurrence Agency Advice from Council instructing him to refuse the application.

In both instances the Applicant's appeal rights were only triggered once the Assessment Manager had issued a decision notice and the appeal process in both instances was via the Committee.

The fact the Assessment Manager chose to wait until receiving the Council advice to issue a decision notice was his choice and the Applicant cannot turn the clock back at this stage of the process or request the Assessment Manager to issue another decision notice.

**Reasons for the Decision**

The Committee conditionally sets aside the decision of the Assessment Manager to refuse the carport at the direction of Council for the following reasons:

- At the hearing the Committee advised the parties to the appeal that it was of the opinion that there were a number of extenuating circumstance related to the site namely:
  - The property did not have any existing covered parking for vehicles;
  - There is no location on the site where a carport or garage could be built with a 6m front road boundary setback in accordance with Acceptable Outcome A02.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1;
  - The original garage was converted to a laundry/storeroom as the driveway gradient would not have been suitable for vehicle movements;
  - The dense landscaping within Fountain Road would help screen the fact the carport was forward of the line of the 6m setback of the buildings within the street.
- The appeal parties then discussed a number of alternative options to meet the Applicants and Council requirements which included:
  - Reduce the size of the carport to 5m in length and 5.5m wide measured from the wall of the dwelling in accordance with Acceptable Solution A8 (a)(iii) of the Queensland Development Code MP 1.2;
  - Reducing the proposed front road boundary setback from 1 m to a minimum 3m;



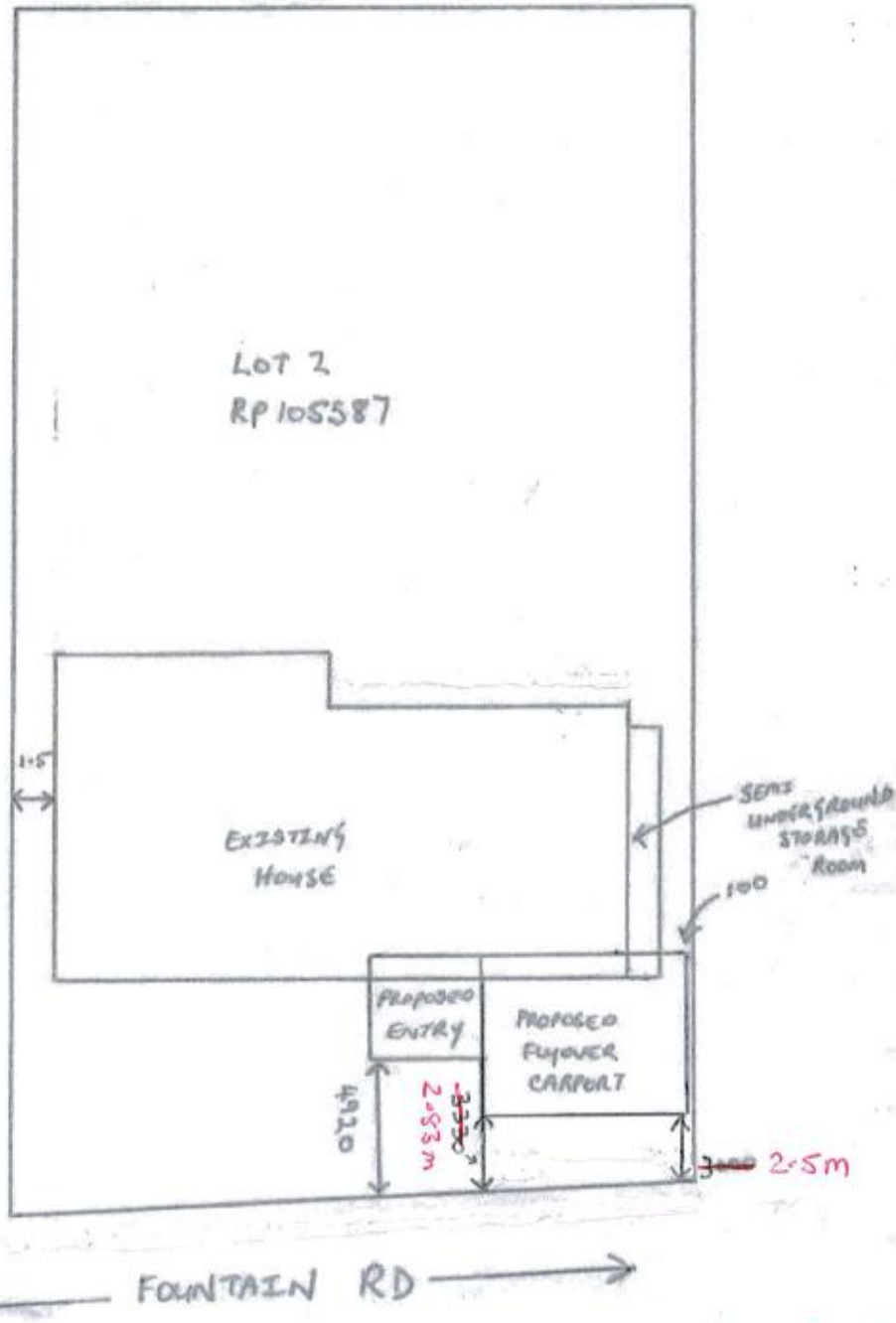
- The hearing was suspended to provide the Applicant with the opportunity of developing a revised site plan and elevation views for Council and the Committee to consider;
- The Applicant submitted an amended design to Council and the Committee on the 17 November 2016, which included a request from the Builder to permit a slightly larger carport than QDC standard to allow for vehicle stops to be located clear of the onsite stormwater drain;
- The Council advised the Committee on the 17 November 2016 that they were satisfied with the amended design and location (Including the Builders requested alteration) of the carport subject to a number of conditions.

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**Richard Prout**  
**Building and Development Committee Chair**  
**Date: 21 November 2016**

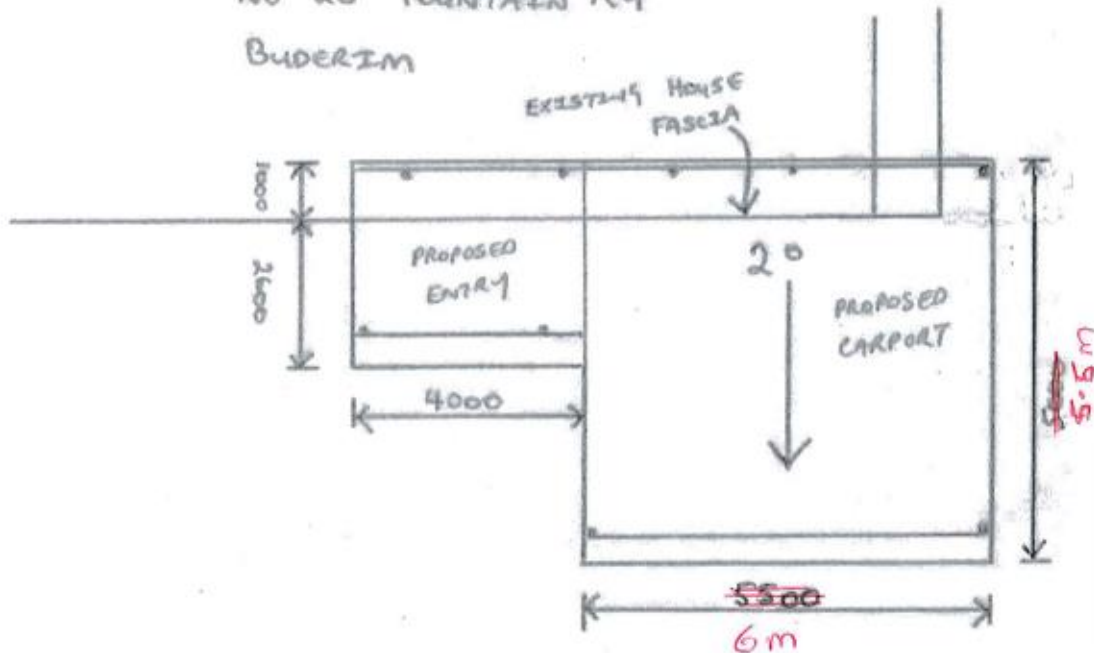
**(NOTE – ATTACHMENTS following)**

PROPOSED CARPORT & ENTRY  
K MACKENZIE & J WILLIAMS  
LOT 2 RP 105587  
NO 25 FOUNTAIN RD  
BYDERIM



DATE 2/11/2016, DRAWING NUMBER 2016-36, SHEET 1 OF 3, SITE PLAN

PROPOSED CARPORT & ENTRY  
 K MACKENZIE & J WILLIAMS  
 LOT 2 RP105587  
 NO 25 FOUNTAIN RD  
 BUDERIM



FRAMING SCHEDULE

MAIN POSTS 140x140 KWZULA LAMINATES  
 IN ROOF POSTS 75x75x4 D/GAL PC  
 FRONT BEAM 295x65 17C H3  
 SECONDARY BEAM 165x65 17C H3  
 REAR BEAM 240x45 F7 H3  
 ROOFING - 125MM INSULATED PANEL

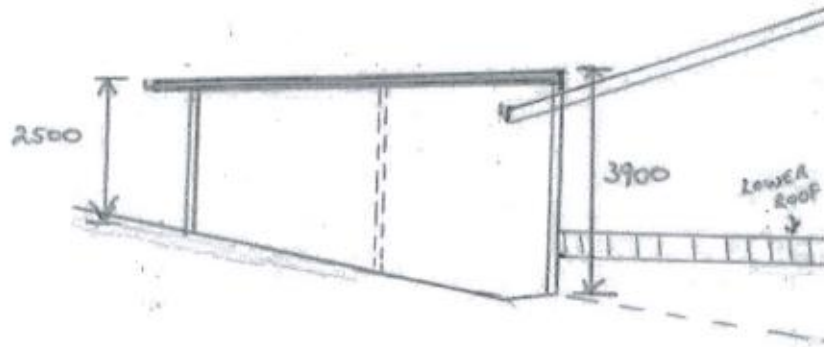
TIE-DOWN SCHEDULE

3) FOOTINGS - (MAIN) - 450x450x750 D  
 2) " - (SECONDARY) 450x450x600 D  
 POSTS TO POST SUPPORTS 2/12MM BOLTS  
 IN ROOF POSTS TO FRAME " "  
 BEAMS TO POSTS " "  
 PANEL TO BEAMS 230MM TYPE 17 AS PER SPEC

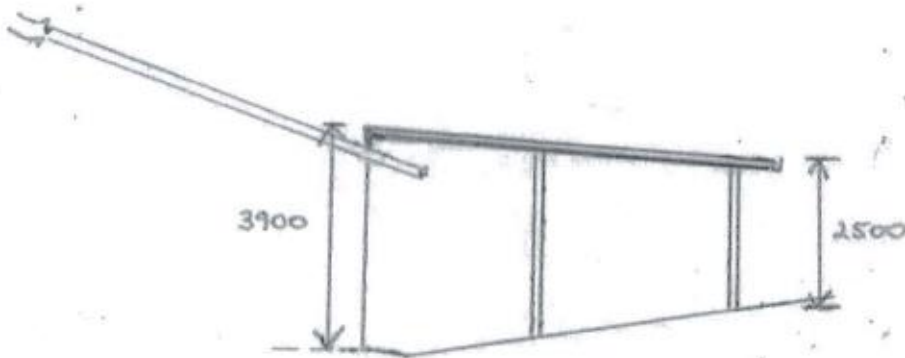
DITE 21-11-2016. DRAWING NUMBER 2016-36. SHEET 2 OF 3. PLAN VIEW

PROPOSED CARPORT - ENTRY  
K MACKENZIE - J WILLIAMS  
LOT 2 RP 105587

SIDE ELEVATION



SIDE ELEVATION



DATED 21/11/2016 DRAWING NUMBER 2016-36, SHEET 3 OF 3, ELEVATION VIEW

## **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**