



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>09 - 15</b>
<b>Applicant:</b>	Leesa Smith and Peter Nichols
<b>Assessment Manager:</b>	Kawana Building Approvals
<b>Concurrence Agency:</b>	Sunshine Coast Regional Council (Council)
(if applicable)	
<b>Site Address:</b>	94 Mandara Drive, Wurtulla and described as Lot 330 on CG 803594 – the subject site

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a development application (Application) for building work for the siting of a new carport. The decision followed a Concurrence Agency response directing refusal of the Application.

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<b>Date and time of hearing:</b>	Friday, 13 March 2015 at 10am
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Robin King-Cullen – Chair Shane Adamson - Member
<b>Present:</b>	Leesa Smith and Peter Nichols – Applicants Peter Dee - Applicant's builder Vince Whitburn – Council representative

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA ***changes*** the decision of the Assessment Manager. The Committee considers the Application is unlikely to impact on the amenity of adjacent land and dwelling houses however the proposed carport does not comply, and cannot be conditioned to comply, with the following two aspects of the Sunshine Coast Planning Scheme 2014 Performance Outcomes PO2 for garages, Carports and Sheds:

- it is considered to dominate the streetscape; and
- it does not maintain the visual continuity and pattern of buildings within the street.

### Background

The appeal relates to the decision of the Assessment Manager to refuse an Application for a siting variation to enable an open double carport to be constructed within 200mm of the front road

boundary to Jabiru Drive. The refusal was based on the Concurrence Agency response from Council.

The subject site, a corner allotment, comprises 670 m<sup>2</sup> and is located in an established suburb of predominantly single storey, detached houses. The neighbourhood is part of an older suburb in which re-development and refurbishment of older houses is occurring.

Mandara Drive is the main residential street in this part of Wurtulla, extending for approximately 1 km between Currimundi Lake Conservation Park and the Nicklin Way, with a number of smaller cul-de-sac running off it. The site is located at the north eastern extremity of Mandara Drive, at its junction with Jabiru Drive.

Jabiru Drive is a circular street abutting Tokara Canal to the north and Currimundi Lake Conservation Park to the south. A shared pathway, part of the Kawana Section of The Coastal Pathway, extends along the northern and western boundaries of the Currimundi Lake Conservation Park and runs parallel to Jabiru Drive to the south east of the site. The site is visible from the shared pathway.

The site contains an existing single story brick veneer residence with a double garage under the main roof. The Applicants explained that the existing garage does not provide adequately for their large vehicle and other vehicles and trailers on the premises. An existing 1.8m high block fence has been erected along both street frontages.

The plans show a proposed open carport measuring about 6.6m x 5.8m in front of the existing double garage. The carport has a minimal pitched roof, being 2.4m in height at the front road boundary, increasing to a maximum height of 3m where the proposed carport roof adjoins the roof of the existing dwelling.

Council directed the Application be refused on 5 February 2015, for the following reasons:

“The Carport does not comply and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014, Part 9.3.6 Dwelling House Code - Performance Outcomes PO2 for 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.”

The Assessment Manager issued a Decision Notice dated 6 February 2015, refusing the Application as directed by the Concurrence Agency.

The Applicants lodged a ‘Form 10 - Appeal Notice, grounds of appeal and accompanying correspondence with the Committees Registrar on 19 February 2015.

Following the appeal hearing the Applicants submitted further plans clarifying the location and height of the proposed carport.

In support of their appeal, the Applicants submitted photographs and addresses of 14 carports in Mandara Drive that have been constructed within the 6m road boundary setback. The lawfulness and dates of approval of these carports are largely unknown.

In the immediate vicinity of the subject site there are no other carports built within the 6m setback in either this section of Mandara Drive or in Jabiru Drive. The nearest property having a carport erected within the 6m setback is approximately 200 meters from the subject site. The Applicants also submitted signed letters from their adjacent and immediate neighbours in Mandara Drive and Jabiru Drive stating the construction would not affect the amenity or look of their property.

The Applicants explained at the hearing that there was no practical opportunity to provide the carport elsewhere on the site due to location of services and consequential impact on available yard space and privacy.

Council's representative indicated at the hearing that ground (a) stated in Council's refusal - "Preserve the amenity of adjacent land and dwelling houses" is not of concern in this appeal, however the remaining grounds stated in (b) and (d) below were Council's primary concern:

- (a) Do not dominate the streetscape; and
- (d) Maintain the visual continuity and pattern of buildings and landscape elements within the street.

### **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 19 February 2015.
2. The Concurrence Agency response dated 5 February 2015 from Council.
3. The Development Application Decision Notice from the Certifier dated 6 February 2015.
4. Verbal submissions made by the Applicants and Builder at the hearing.
5. Verbal submission made by the Council representative at the hearing.
6. Further plans prepared by the Applicants' builder and forwarded under cover of email dated 24 March from the Registrar, Building and Development Dispute Resolution Committees.
7. *Sustainable Planning Act 2009* (SPA).
8. 9.3.6 Dwelling House Code under the Sunshine Coast Planning Scheme 2014.

### **Findings of Fact**

The Committee makes the following findings of fact:

1. The site is located in an older established suburb where many houses have been, or are, in the process of redevelopment or refurbishment.
2. The visual continuity and pattern of buildings in Mandara Drive at this location comprises dwellings with garages and/or carports that mostly maintain a minimum 6m setback from the front boundary.
3. The roof of the proposed carport will extend up to 1.2 m above the block boundary fence, and will increase the impact of building bulk on the streetscape.
4. The streetscape in the immediate vicinity of the site is visible not only to local vehicular and pedestrian traffic, but also to users of the Coastal Pathway located opposite the site adjacent to the Currimundi Lake Conservation Park.

### **Reasons for the Decision**

1. Although there are some carports constructed within the 6m setback located elsewhere along Mandara Drive, these are removed from the subject site.
2. The proposal will increase the impact of building bulk on the streetscape.
3. The character and pattern of buildings in the immediate locality, in particular when having regard to Jabiru Drive where the proposed carport would be located, predominantly comprises

dwellings with garages and/or carports that mostly maintain a minimum 6m setback from the front boundary.

4. While the proposed carport is unlikely to adversely impact on the amenity of adjacent dwellings, it will not maintain the visual continuity and pattern of buildings in the street.

Therefore, the Assessment Manager's refusal of the Application is **changed** to remove element (a)- '*preserve the amenity of adjacent land and dwelling houses*' however the Application does not comply, and cannot be conditioned to comply, with the remaining two elements of the Sunshine Coast Planning Scheme 2014, Part 9.3.6 Dwelling House Code – Performance Outcomes PO2 for Garages Carports and Sheds for the reasons provided above.

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Robin King-Cullen  
**Building and Development Committee Chair**  
**Date: 15 April 2015**

## **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**