



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	42-14
Applicant:	Leanne Edwards
Assessment Manager:	Caloundra Building Approvals
Concurrence Agency:	Sunshine Coast Regional Council
Site Address:	18 Royal Close, Wurtulla and described as Lot 266 on CG6312 – “the subject site”.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (hereafter “SPA”) in relation to the part refusal of a development application (Application) for building siting for a carport on the subject site. The part refusal was directed by the Sunshine Coast Regional Council (hereafter “the Council”) in its role as a Concurrence Agency for the Application. The Application seeks to erect a carport within the front 6m setback area of the site.

Date and time of hearing:	Wednesday 28 January 2015 at 9.30am
Place of hearing:	The subject site
Committee:	Mr Chris Schomburgk – Chair Mr Shane Adamson – Member
Present:	Ms Leanne Edwards – Applicant Mr David Edwards – Attending with the Applicant Mr Gary Sheffield – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(2)(a) of the SPA, **confirms** the decision appealed against and upholds the decision of the Assessment Manager and Council to refuse, in part, the Development Application.

Background

The Application that is the subject of this appeal seeks approval for two elements:

- i) A rear deck to be set back 3.5m from the rear property boundary (a canal); and
- ii) A double carport to be set back 153mm from one point of the front (street) boundary at its closet point.

It is only the latter component which is the subject of the appeal, with the Council, as Concurrence Agency, approving the pool deck as proposed. However, the Decision Notice provided by the Assessment Manager, Caloundra Building Approvals, states that the Development Application was “Refused”. That

appears to be an error, as it later states, under the Reasons for Refusal, that the Application was “Part Approved and Part Refused”. The appeal hearing proceeded on that basis.

The subject site is towards the end of a cul-de-sac (Royal Close), with the site’s front boundary being irregularly shaped. There are 25 houses in Royal Close, and none of those houses have structures within the front (generally 6m) setback area. There are a number of mature trees in the street verge in the vicinity of the subject site.

There is a sewer line across the front of the subject site, in very close proximity to the proposed carport.

The existing dwelling has a double garage under the main roof, with two archway openings for cars. At the hearing, the Applicant advised that the archway openings were not sufficiently large to enable a large vehicle (station wagon or 4WD) to be housed, with the result that one of their cars is parked in the driveway.

The proposed carport is 7000mm wide and 6500mm deep, and is to be in front of the existing house. At its closest point, the proposed carport is only 153mm from the front boundary, increasing to approximately 3500mm at the eastern side. The carport structure is to be 2276mm from the eastern (side) boundary, although the roof is to be only 1600mm from that boundary. The proposed carport is not to be connected to the existing house/garage.

The carport is to be an open structure with a flat roof, although at the hearing, the Applicant advised that it would consider an alternative roof form if required.

At the appeal hearing, the Applicant also advised that it is intended to enclose the existing garage and convert it into habitable room/s, but that is not a relevant consideration for this appeal, despite the Council’s representative’s assertion to the contrary at the hearing.

The Applicant provided letters of “no objection” from neighbours on both sides of the subject site (numbers 17 and 19 Royal Close).

The Council’s decision to refuse the proposed siting variation is based on the argument that part of the Application does not comply with, and cannot be conditioned to comply with, two specific aspects of Performance Outcome PO2 of the Dwelling House Code of the Sunshine Coast Planning Scheme 2014, being that ... carports ...:

- *“do not dominate the streetscape; and*
- *...*
- *maintain the visual continuity and pattern of buildings ... within the street”.*

At the hearing, the Council representative also sought to rely on the provisions of the QDC to justify Council’s refusal. In particular, he sought to rely on the Acceptable Solution A1(a)(i) of Element 1 of MP1.2. The Committee advised that this was merely an Acceptable Solution and did not, of itself, warrant refusal of the Application. Non-compliance with an Acceptable Solution does not, of itself, necessitate refusal of an Application. In any event, the Application is to be assessed against the Performance Outcome PO2 under the Dwelling House Code of the Sunshine Coast Planning Scheme 2014 and not the QDC. The hearing proceeded on that basis.

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 Committee’s Registrar on 28th November 2014.
2. The Development Application and accompanying material.
3. Council’s Concurrence Agency response dated 7th November 2014.

4. A written statement provided by the Council representative at the hearing.
5. The Sunshine Coast Planning Scheme 2014 – particularly, the Dwelling House Code, section 9.3.6
6. The Queensland Development Code Part MP1.2 (QDC MP1.2), particularly Element 1 – Design and Siting of Buildings and Structures, P1 and A1(a)(i).
7. The *Sustainable Planning Act 2009* (SPA)

Findings of Fact

The Committee makes the following findings of fact:

1. The Council's response dated 7th November 2014 advised part refusal of the Application (the carport), but approved the pool deck component. The Assessment Manager's Decision Notice of 10th November 2014 incorrectly advised of the refusal of "The Application". The Committee proceeded on the basis that only the carport had been refused. The Assessment Manager should have taken greater care when preparing the Decision Notice and this error needs to be corrected.
2. The proposed carport is to be an open structure, separate from the existing building. The existing building includes a double garage under the main roof, but the Applicant advised that it is not of sufficient dimensions to accommodate a large vehicle (eg: 4WD).
3. The carport component of the Application seeks a setback from the front boundary of 153mm at its closest point, and 2276mm from the eastern side boundary. The side boundary setback is not an issue in this appeal.
4. Royal Close is a discrete cul-de-sac with established homes, and there are no other structures within the 6m front setback in this street. The character of the street is best described as mostly single storey dwellings with enclosed garages, generally setback 6m from the front property boundary. While there are other carports within the 6m setback area generally in the locality, this does not represent the character of Royal Close.

Reasons for the Decision

1. Royal Close is a discrete cul-de-sac, and there are no other structures within the 6m front setback in this street. As such, the proposed structure would present as an intrusion into the established streetscape, and would, to some degree, dominate this part of that streetscape, contrary to PO2 of the Dwelling House Code.
2. Equally, the intrusion into the front setback would not maintain the visual continuity and pattern of buildings within the street, as required by PO2 of the Dwelling House Code.
3. The proposed carport location conflicts with PO2 of the Dwelling House Code and there are not sufficient grounds to justify approval.

Chris Schomburgk - Chairperson
Building and Development Committee Chair
Date: 3 February 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