



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>05-15</b>
<b>Applicant:</b>	Mr Matthew Thompson and Ms Deanne Burch
<b>Assessment Manager:</b>	Coastline Building Certification Group Pty Ltd
<b>Concurrence Agency:</b> (if applicable)	Gold Coast City Council (Council)
<b>Site Address:</b>	18 Marlin Court, Palm Beach and described as Lot 786 on RP 120536 – the subject site

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### Appeal

Appeal under section 530 of the *Sustainable Planning Act 2009* (SPA), against the decision of the Assessment Manager, at the direction of the Gold Coast City Council as Concurrence Agency, to refuse a request to make a Permissible Change to a development approval (Request). The request was to delete or amend Condition 2 of the Concurrence Agency conditions imposed on the original approval (#201400721) for a house and attached carport, and amend relevant plans accordingly. Condition 2 required that, “*The height of the open carport is to be a maximum of 3 metres...*”. The carport had been built to a height of 4.4 metres.

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<b>Date and time of hearing:</b>	Thursday 26 February 2015 at 10:30am
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	John Panaretos – Chair Deanna Heinke – Member
<b>Present:</b>	Deanne Burch – Applicant Danny Pettiona – Lead Consultants representative

Gold Coast City Council advised in writing that a representative would not be in attendance at the hearing and that no written submission would be lodged for consideration during the appeal.

Matthew Thompson, the co-owner and co-applicant, was unable to attend the hearing due to work commitments.

Coastline Building Certification Group Pty Ltd was not invited to attend the hearing by the Applicant.

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## Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA, **confirms** the decision of the Assessment Manager to refuse the request for Permissible Change.

## Background

The subject site is a 612 square metre allotment located in a cul de sac in a canal estate at Palm Beach. The rear boundary of the subject site abuts a canal. The subject site contains a newly constructed two storey masonry dwelling and attached rendered double carport with a parapet roof form. The carport is located between the double garage and front property alignment.

The Applicant lodged a Building Application with Coastline Building Certification Group Pty Ltd (Coastline) as the Assessment Manager, for a two storey detached house with an attached garage, proposing a range of alternative solutions to the Gold Coast Planning Scheme's relevant Codes. The carport dimensions on the plans which were originally submitted with the Building Application and the same plans which were later approved by Coastline, referred to a floor line to ceiling line height of 3.040 metres on plan W12584 Sheet 6 of 15 dated 19/02/14.

Gold Coast City Council (Council) as Concurrence Agency, in approving the alternative solutions, issued a response which amended plans W12584 Sheet 6 and 7 of 15 dated 19/02/14 with an annotation:

*“Maximum height of open carport not to exceed 3 metres measured from natural ground level to top of fascia”.*

The carport was not constructed in accordance with the Council response and instead was constructed in accordance with the plans which were originally submitted with the application, i.e. 3.040 metres measured from the floor line to the ceiling line.

Following is a summary of the information available to the Committee which identifies the events which led to this egregious outcome and the actions taken to remedy the contravention of the Council direction.

The permissible change request was not tendered in evidence. On 4 March 2015, Committee requested Council forward a copy. Council subsequently advised that the documentation was archived. The Committee considered the time involved in retrieving the documentation and withdrew the request.

## Sequence of events

Council issued a Referral Agency – Information Request on 14 February 2014 to Matt Thompson and Deanne Burch as the property owners and Applicants for this appeal C/- Coastline Building Certification Group Pty Ltd as the Assessment Manager, which requested:

1. *“ Provide amended scaled and dimensioned site plan/s indicating the following:*
  - *the proposed gatehouse as applied for;*
  - *consistent positioning for the proposed open carport. Submitted plan Sheet 3 of 14 and plan Sheet 2 of 14 indicate the open carport in differing positions;*
  - *a reduced overall width for the proposed open carport of 6 metres measured from outside pier to outside pier in accordance with Council’s adopted Advisory Notes – Design and siting of buildings and structures.*

*Please ensure amended plans are re-dated and contain amending plan numbers.*

2. *Provide elevations of the proposed development in accordance with Council's Information Notes to assist applicants in completing a Referral Agency Assessment Application form which is annexed to the completed application form.*
3. *Deletion of the proposed garage as discussed."*

It is noted the Information Request did not explicitly require the carport height to be reduced but did refer to 'Council's Information Notes'.

Council issued a response dated 26 February 2014 to the Applicants C/- the Assessment Manager which included:

*"With reference to the above application for a Referral Agency Response the following matter/s have been included as part of the Gold Coast City Council assessment:*

- *a new dwelling within the road setback clearance area and waterfront setback clearance area;*
- *a gatehouse within the road clearance area;*
- *an open carport within road setback clearance area;*
- *development exceeding 9 metres in length within the western (side) setback clearance area;*
- *site coverage exceeding 50% but not exceeding 51.63%;*

*The following conditions and advisory notes must be included as the Referral Agency Response in the Development Permit for Building Work issued by the Assessment Manager (Private Building Certifier).*

#### **Referral Agency Conditions**

1. *The development shall be carried out strictly in accordance with the endorsed plan/s submitted to Council as amended in red and indicated in the table below except where modified by the following conditions. Such plan/s are stamped and returned to the applicant as the Referral Agency Response and shall not be modified without the written endorsement of Council as the Referral Agency.*

<b>Plan No.</b>	<b>Revision</b>	<b>Title</b>	<b>Date</b>	<b>Drawn By</b>
W12584 Sheet 2 of 15	19/02/14	Site Plan	19/02/14	WH Wilson
W12584 Sheet 3 of 15		Lower Floor Plan	19/02/14	WH Wilson
W12584 Sheet 4 of 15		Lower Floor Plan	19/02/14	WH Wilson
W12584 Sheet 5 of 15		Upper Floor Plan	19/02/14	WH Wilson
W12584 Sheet 6 of 15		Elevations	19/02/14	WH Wilson
W12584 Sheet 7 of 15		Elevations	19/02/14	WH Wilson
W12584 Sheet 8 of 15		Sections	19/02/14	WH Wilson
W12584 Sheet 13 of 15		Floor Plan/Elevation	19/02/14	WH Wilson

*Council deems that, subject to the implementation of the following conditions and due consideration to the advisory notes by the Assessment Manager (Private Building Certifier), the proposed development work/s will comply with the relevant Performance*

*Criteria of the Gold Coast Planning Scheme 2003 and/or the Queensland Development Code.*

*Any proposed deviation from the endorsed plans/drawings as a result of on-site or in-situ conditions must not be made unless amended plans/drawings are submitted to and endorsed by Council.*

*This Referral Agency Response is limited to those encroachments or other matters nominated by the applicant as part of the Referral Agency Assessment Application and as indicated for assessment by council as a Referral Agency.*

- 2. The height of the open carport is to be a maximum of 3 metres measure from natural ground level to the top of the fascia.*
- 3. The development shall be constructed using materials with patterns, textures and colours compatible with and which blend with the natural landscape with the use of non reflective materials being recommended.*
- 4. All lighting devices associated with the development shall be positioned and shielded to the satisfaction of Council so as not to cause glare or nuisance to nearby residents and motorists."*

The 8 plans referenced in the table above were stamped with a Council stamp dated 26 February 2014, initialled and annotated "2014/00721" and "*This endorsed plan is to be read in conjunction with Councils Referral (Concurrence) Agency Response Letter.*"

Over 2 months later on 6 May 2014, the Assessment Manager issued Decision Notice QB1410017 under sections 334 and 335 of the SPA for a two storey detached dwelling with an attached garage. The Decision Notice included the following significant components—

- *"I wish to advise that on 6/5/14 the above development application was: approved in full with conditions. The General Conditions of Development Approval relevant to this approval are attached."*

The Decision Notice included a 3 page attachment entitled "General Conditions of Approval for Building Work" which itemised 15 conditions. These conditions did not reference the Council response. Condition 2 related to Notice of Inspection. This condition identified that Footings – after excavation of foundation material and before the pouring of concrete must be carried out by Coastline Building Certification Group. The condition also identified that the Final inspection – at the completion of all aspects of the work must be carried out by Coastline Building Certification Group as the Assessment Manager. The condition did not require the Slab and Frame inspections to be carried out by Coastline Building Certification Group.

- *Section 3 - The Approved Plans of the Decision Notice referenced "Drawing No. W12584 (Sheets 2 to 10, 12, 13 & Tie Down, Bracing) prepared by WH Wilson Building Designer dated 19 February 2014 – Amended and 1401-04 (Sheets 1 to 6) prepared by ICON Consulting Engineers dated January 2014 – Issue A"*

The approved plans included a 4.4 metre high double carport located between the double garage and the front property boundary. There were several notations by the Assessment Manager on the approved plans, including for example "*Floor level of habitable rooms – minimum habitable floor level to be RL 2.75m AHD. Refer attached conditions of approval for additional information.*" However the Assessment Manager notations did not include the Council notations identified on the Council issued plans dated 26 February 2014 relating to the reduction in height of the carport.

- *Section 6 - IDAS referral agencies applicable to this application are: Gold Coast City Council as a Concurrence Agency – Siting and referenced BLD201400721 dated 26.02.14."*

The Applicant advised the Committee at the hearing that the full Council response was not attached to the Decision Notice and was received by post months earlier than the receipt of the Decision Notice.

The Assessment Manager's Decision Notice dated 6 May 2014 could be considered ambiguous due to the combination of the following –

- the reference to the approved plans which did not include further amendments required by the Council conditions;
- the lack of detail regarding the Council conditions;
- the notated approved plans which did not include the Council plan notations; and
- the disconnect / lapse in time between the receipt of the Council determination and the Assessment Manager Decision Notice.

These factors appear to have contributed to miscommunication between the parties.

The double carport was constructed to a height of 4.4 metres and is attached to the double garage and detached dwelling. The Applicant advised during the hearing that the additional carport height was required to accommodate a boat. The Applicant also advised that the builder engaged to construct the dwelling chose to use a private building certifier other than Coastline.

Based on the 6 May 2014 Decision Notice, the builder may have been able to use an alternative building certifier for the Slab and Frame inspections, however Coastline were required to be utilised for the Footing and Final inspections. A final inspection conducted on 5 December 2014 by Coastline resulted in an unsatisfactory report due, amongst other matters, to the height of the carport, constructed in excess of the maximum 3 metre height requirement of Council.

The Committee was provided with a copy of the Final Inspection Report undertaken by Coastline, which included 6 items considered unsatisfactory. Item (1) stated:

*“Amended relaxation required from GCCC for carport height. The relaxation approval is for a max height of 3.0m measured from natural ground level to top of facia (measured onsite at approx. 4.4m).”*

The Applicant engaged 'Lead Consultants' to write a 'Town Planning Report' dated 17 November 2014. Lead Consultants submitted a Permissible Change request to Council to retrospectively authorise the 'as constructed' carport height. With this request, they submitted the 'Town Planning Report' which stated that a miscommunication between the relevant parties during the construction process had resulted in the "dwelling" being constructed:

*‘not directly in accordance with conditions 1 and 2 of the Council approval for a building relaxation issued by Council on 26 February 2014.’*

To remedy this situation, Lead Consultants requested Council consideration of an amendment to the two conditions relating to the endorsing of amended plans and amending the maximum height of the carport to 4.4 metres measured from natural ground level to the top of the fascia.

Council, under their Planning Scheme, issued a refusal notice on 4 December 2014 to Lead Consultants. Coastline, as Assessment Manager, followed this by issuing a Decision Notice refusal on 30 January 2015.

Council stated the Grounds for Refusal as:

*“Council deems that the siting of the proposed development works would be in conflict with and not comply with Performance Criteria PC3 for the Residential Choice Domain under Part 5 Division 2 Chapter 5 of the Gold Coast Planning Scheme 2003 on the following ground:*

- (a) the maximum height of the 'as constructed' open carport is considered contrary to the streetscape character of the Residential Choice Domain. Specifically the height is considered excessive and represents a detrimental effect on the amenity of the*

*streetscape in terms of bulk and with no other comparable and similar development in the vicinity;*

*(b) the maximum height of the 'as constructed' open carport is considered contrary to Council's 'Advisory Notes – Design and siting of buildings and structures' which is a readily available public available to the public which (in part), promotes carport design which otherwise supports the intention of the Performance Criteria of the Residential Choice Domain under Part 5 Division 2 Chapter 5 of the Gold Coast Planning Scheme 2003;[sic]*

*(c) the 'as constructed' open carport is contrary to Council's Referral Agency Response dated 26 February 2014 which specifically by condition and by red amendment notes on the endorsed drawings, reduced the height of the open carport to a maximum of 3 metres above natural ground level.*

An Application for Appeal/Declaration (Form 10) and supporting documentation were lodged with the Building and Development Committee Registrar on 3 February 2015.

Section 376 (1) of SPA states that the *responsible entity* (in this case, the Council) must give *written notice of the decision* to the person who made the request and if the responsible entity is not the Assessment Manager, to the Assessment Manager.

Section 530 (2) of SPA requires that the appeal must be started within 20 business days after the day the notice is given to the person. Coastline as the Assessment Manager, issued the Decision Notice on 30 January 2015. However it could be argued that the appeal period commenced from the date that Council, as the responsible entity under Section 369 (1) (c) issued the Decision Notice.

A copy of the Council Information Request dated 14 February 2014 was submitted to the Committee Registrar immediately following the hearing on 27 February 2015.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. IDAS form 1- Application details dated 2 May 2014 Note that the copy cited by the Committee was not stamped by Gold Coast City Council and did not have plans attached. Matt Thompson and Deanne Burch are included as the Applicants for a Development permit for Building work.
2. IDAS form 2 - Building work requiring assessment against the *Building Act 1975* received 21 January 2014 by Coastline Building Certification Group.
3. Coastline Building Certification Group form undated and signed by Matt Thompson and Deanne Burch giving Coastline consent to 1.collate and lodge all development related applications on behalf of land owners; 2. Issue the building approval; and 3. Carry out building inspections.
4. Letter from Gold Coast City Council – Referral Agency – Information Request dated 14 February 2014 to Matt Thompson and Deanne Burch C/- Coastline Building Certification Group Pty Ltd.
5. Referral Agency Response (Section 287 of the *Sustainable Planning Act 2009*) by Gold Coast City Council dated 26 February 2014, addressed to Matt Thompson and Deanne Burch c/-Coastline Building Certification Group Pty Ltd.
6. The Building Application Decision Notice – Form 6 – QB1410017 by Coastline Building Certification Group Pty Ltd dated 6 May 2014.

7. WH Wilson and Associates plans No. W12584 (Sheets 2 to 10, 13 and Tie Down, Bracing) dated 19/02/14 – Amended.
8. WH Wilson and Associates plans No. W12584 (Sheets 2, 3,4,5,6,7,8, and 13) dated 19/02/14 – Amended and further amended by Gold Coast City Council on 26 February 2014.
9. Amended Building Relaxation Application Town Planning Report, including Appendix A – Letters of Support from 3 land owners in Marlin Court, Palm Beach, prepared by Danny Pettiona - Lead Consultants dated 17 November 2014 to Gold Coast City Council.
10. Final inspection report by Coastline identifying that the final inspection undertaken on 5 December 2014 resulted in an unsatisfactory outcome.
11. Letter from Gold Coast City Council (Amended Referral Agency Response - refusal) to Danny Pettiona of Lead Consultants dated 4 December 2014, including Plans drawn by WH Wilson dated 11 December 2013 and Amended 19 February 2014 Sheet 2, ,4, 5,6 of 15 stamped by Council dated 4 December 2014. Coastline Building Certification Group Pty Ltd Inspection Report – final inspection undertaken 5 December 2014.
12. Amended Building Application Decision Notice by Coastline Building Certification Group Pty Ltd – refusal dated 30 January 2015.
13. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 3 February 2015.
14. Gold Coast City Council Planning Scheme 2003 and Advisory Notes “Design and siting of buildings and structures”.
15. The *Sustainable Planning Act 2009* (SPA)

## **Findings of Fact**

The Committee makes the following findings of fact:

1. The Assessment Manager received a properly made Building Application for a detached dwelling with an attached garage [sic] which was assessable against the Residential Choice Domain Place Code of the Gold Coast City Council Planning Scheme 2003 and proposed a range of alternative solutions including waiver of the 6 metre front boundary setback required by Acceptable Solution AS4.1.1.
2. On 26 February 2014 Council approved the setback waiver for the carport but directed the Assessment Manager to include conditions and advisory notes in the Development Permit for Building Work, specifically requiring the height of the carport be limited to a maximum of 3 metres from natural ground level to the top of the fascia.
3. It appears the Decision Notice issued by the Assessment Manager dated 6 May 2014 did not comply with section 335 of SPA, as it omitted the Council conditions in the Decision Notice. Section 335 of SPA requires the Assessment Manager to identify the conditions and whether each condition is a Concurrence Agency or Assessment Manager condition.
4. The final inspection report on 5 December 2014 by Coastline as the Assessment Manager identified that the height of the carport measured approximately 4.4 metres.
5. The subject site is surrounded by a mixture of single and two storey dwellings consisting of various construction materials and designs. Although 6 examples of

carports on front alignments were proffered in the Lead Consultants Town Planning Report dated 17 November 2014, no carports identified in Marlin Court or in the vicinity are of comparable form, height and bulk, to the subject carport. The Committee noted that Council's Advisory Notes "Design and siting of buildings and structures" provides for various heights depending on whether the carport roof form is Hip, Dutch Gable, Parapet, Skillion or Gable. Further the Committee noted that the examples proffered did not document whether they had been approved and, if so, whether under current or former planning regimes.

6. The carport was not built in accordance with the Council conditions and was constructed to 4.4 metres from natural ground level to the top of the fascia.
7. The carport is attached to the garage and house, all of which are rendered. The Applicant advised at the hearing that the higher than usual ceiling height was required to accommodate the Applicant's boat.
8. A request was made by Lead Consultants in a report to Council to amend their response. This request included letters of support from neighbours and other documents. The report stated that approximately \$100,000 was required to correct the height, and that they considered this cost was disproportionate to the excess 1.4 metres. Further the report stated that the carport had a minor impact on the immediate streetscape character.
9. At the hearing the representative for Lead Consultants, Mr Pettiona, advised the Committee that it would cost approximately \$150,000 to amend the carport to make it compliant with Council's requirement. A building report was not provided detailing the building work and cost involved in adjusting the existing carport to meet the Council requirements of a maximum of 3 metres from the natural ground level to the top of the fascia, nor was the question of removing the carport addressed.
10. Contrary to the Lead Consultants report, the Committee considered that the visual impact of the masonry carport on the streetscape is significant.
11. Council issued a refusal of the siting variation application on the 4 December 2014, incorrectly referencing Performance Criterion PC3 of the Residential Choice Domain Place Code. PC4 is the relevant Performance Criterion.

## Reasons for the Decision

The Committee considered the request for Permissible Change to the existing approval inappropriate for the following reasons:

1. The proposed waiver of the front 6 metre setback must be assessed against the corresponding Performance Criterion PC4 of the Residential Choice Domain Place Code, which states:

*All buildings and covered car parking spaces must provide for setbacks from the street frontage and the side and rear boundaries of the site, which are appropriate to the efficient use of the site **and the streetscape character of this domain.*** [emphasis added]
2. In this case, the as constructed carport is 4.4 metres measured from the natural ground level to the top of the fascia. While a reduced front setback may be warranted, the subject structure dominates the streetscape and represents significant bulk and height on the front alignment, emphasised by the lack of similarly proportioned carports located on the front property boundary in the subject street and the surrounding area.



3. The provisions of the SPA relating to the timing for lodgement of a Notice of Appeal to the Committee are unclear in the case of refusal of a Permissible Change request. However, the Committee considered that the Notice of Appeal was lodged in reasonable time in view of the resulting uncertainty.
4. The combination of the carport height, parapet design, materials and position on the site resulted in a dominating structure within the streetscape. The impact of the overall form of the carport on the streetscape is not considered to be minor.
5. On the evidence available, the breakdown of communication in the approval process, particularly the apparent failure of the Assessment Manager to attach the Council conditions to its Decision Notice, appears to have resulted in adherence to the incorrect plans during construction. These circumstances, although regrettable for the Applicant, do not warrant approval in conflict with the planning scheme code.
6. The imposition of a maximum height on an alternative outcome for front setback is a reasonable response to streetscape assessment.

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**John Panaretos**  
**Building and Development Committee Chair**  
**Date: 24<sup>nd</sup> March 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**