



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	32 - 16
Applicant:	Fastrack Building Certification (Mr Allister Marr)
Assessment Manager:	Fastrack Building Certification (Mr Allister Marr)
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	20 Kalowendha Avenue, Pelican Waters, Qld 4551, Lot 250 SP109067 – the subject site

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 (d).

Date and time of hearing:	26 September 2016 at 2.00pm
Place of hearing:	The subject site
Committee:	Mr. Richard Prout – Chair Mr. John O'Dwyer – Member
Present:	Mr. Allister Marr – Applicant Mr. Durand Hooper – Property owner Mrs. Michelle Hooper – Property owner 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 to refuse the Class 10a Carport.

Background

The subject site is a 700 m² allotment located at 20 Kalowendha Avenue, Pelican Waters and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is a corner allotment with Investigator Place to the north and Kalowendha Avenue to east.

The existing dwelling on the site was built in 1999 and includes a large double garage facing Kalowendha Avenue. The existing dwelling is compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2.

In April 2016 the property owners engaged altec the spacemakers (Builder) a company specialising prefabricated carports, patios, enclosures etc. to design and construct a new carport

to be located in front of their existing garage with a front road boundary setback of 1 m from Kalowendha Avenue.

As part of their service the builder lodged a Development Application for Building Work with Fastrack Building Certification (Assessment Manager). The Assessment Manager assessed the application and on 6 May 2016 issued a Development Approval for Building Work approving the carport.

However the Development Approval issued by the Assessment Manager 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;*

Soon after the Building Approval was issued building work commenced onsite and the carport was completed in May 2016.

The development came to the attention of the Sunshine Coast Council (Council) in May 2016 following enquiry from a resident who was seeking to construct a carport of a similar size and setback. After investigating the matter Council issued a Show Cause Notice under section 247 of the *Building Act 1975* to the Assessment Manager on 2 June 2018.

The notice required the Assessment Manager to show cause as to why an Enforcement Notice should not be issued to the Assessment Manager under section 248 of the *Building Act 1975* for an offence pursuant to section 83(1)(b) of the *Building Act 1975* namely:

83 General restrictions on granting building development approval

- (1) The private certifier must not grant the building development approval applied for—
(b) until all necessary preliminary approvals under the Planning Act are effective for other assessable parts of the development;*

The Assessment Manager responded to the Show Cause Notice advising that the application had been assessed against the provisions of the Queensland Development Code MP 1.2 section A1(c) (open carports) as the Assessment Manager was of the opinion that the Sunshine Coast Planning Scheme 2014 does not have an alternative provision for open carports.

The Assessment Manager lodged a request for referral agency response for building work with Council on 9 June 2016. The Council issued a Concurrence Agency Response on 11 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 (d) for Garages, Carports and Sheds.

The Applicant lodged a Notice of Appeal (Form 10) with the Committee's Registrar on 8 September 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 8 September 2016;
2. Assessment Manager Decision Notice, Permit No: 20160773, dated 8 September 2016, refusing the carport as directed by Council;
3. The following drawings:

- Site Plan, by altec the spacemakers, dated 27 April 2016, Job No: 90279E, Drawing No: 001; and
 - Roof Plan and Section, by altec the spacemakers, dated 27 April 2016, Job No: 90279E, Drawing No: 002.
4. Letter from Assessment Manager dated 8 September 2016, to the Committee, response to the Council reasons for refusal, and addressing performance criteria of the Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcomes P02;
 5. Letter from Assessment Manager dated 13 September 2016 to the Committee, detailing reason for Appeal;
 6. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
 7. Undated letter from property owners giving authority to Fastrack Building Certification (Assessment Manager) to act on their behalf for the Appeal;
 8. Undated letter from the property owners detailing reasons why they believe the carport should be approved;
 9. Undated letter from the owner of 18 Kalowendha Avenue, Pelican Waters confirming that they have no objection to the carport;
 10. Sunshine Coast Council Application Form – 2013/4 Regional Strategy and Planning Request for Referral Agency Response for Building Work dated 9 June 2016, lodged by Fastrack Building Certification (Assessment Manager);
 11. Information Request from Council to Assessment Manager dated 21 June 2016;
 12. Email from Council to Assessment Manager dated 21 June 2016 with attached Information Request;
 13. Letter from Assessment Manager dated 15 July 2016 to Council responding to Council Information Request;
 14. Email from Assessment Manager to Council dated 15 July 2016 with attached response to Council Information Request;
 15. Email from Council to Assessment Manager dated 18 July 2016 advising that the Carport does not comply with Performance Outcome P02 (a)(b)and (c) and providing opportunity for Assessment Manager to provide additional information;
 16. Letter from Assessment Manager dated 5 August 2016 to Council responding to Council email dated 18 July 2016 and Information Request;
 17. Email from Assessment Manager to Council dated 5 August 2016 with attached response to Council Information Request;
 18. Concurrence Agency Response from Council dated 11 August 2016 instructing Assessment Manager to refuse Development Application for Building Work;

19. Email from Council dated 12 August 2016 to Assessment Manager with attached copy of Concurrence Agency Response confirming refusal;
20. Show Cause Notice dated 2 June 2016 issued by Council to the Assessment Manager regarding the non-conforming carport;
21. Undated letter from Assessment Manager responding to Council Show Cause Notice;
22. Decision Notice issued by Fastrack Building Certification dated 6 May 2016, approving the Class 10a Carport;
23. Verbal submissions at the hearing from all parties to the appeal;
24. Additional information supplied by the parties as a result of requests made by the Committee Chairman and Member at the hearing and confirmed after the hearing;
25. The Sunshine Coast Planning Scheme 2014;
26. The Queensland Development Code MP 1.2 (QDC MP 1.2)
27. The *Sustainable Planning Act 2009* (SPA)
28. The *Building Act 1975* (BA)

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 700 m² allotment located at 20 Kalowendha Avenue, Pelican Waters and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014;
2. The allotment is a corner allotment with Investigator Place to the north and Kalowendha Avenue to east. The existing dwelling on the site was built in 1999 and includes a large double garage facing Kalowendha Avenue. The existing dwelling is compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the QDC MP1.2;
3. The allotment was created on 19 October 1998;
4. The following buildings and structures were noted onsite at the hearing:
 - A dwelling with a double lockup garage approved by Council on 25 February 1999;
 - A swimming pool located on the northern side of the allotment approved by Council on 19 April 1999 ;
 - An open carport with a front road boundary setback of 1 m from Kalowendha Avenue-subject of the Appeal.
5. The site is not affected by any Council or Unitywater infrastructure;
6. The streetscape in Kalowendha Avenue 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 setback 6 m from the road boundaries;
7. The property has 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 300m² – at least 2 (two) car parking spaces with at least one space capable of being covered.*

Application Process

1. In April 2016 the property owners engaged altec the spacemakers (Builder) a company specialising prefabricated carports, patios, enclosures etc. to design and construct a new carport to be located in front of their existing garage with a front road boundary setback of 1 m from Kalowendha Avenue;
2. The Builder lodged a Development Application for Building Work with a Private Building Certifier, Fastrack Building Certification (Assessment Manager). The Assessment Manager assessed the Application and on 6 May 2016 issued a Development Approval for Building Work, approving the carport;
3. The Development Approval issued by the Assessment Manager 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. Council issued a Show Cause Notice under section 247 of the BA to the Assessment Manager on 2 June 2016. The Notice required the Assessment Manager to show cause as to why an Enforcement Notice should not be issued to the Assessment Manager under section 248 of the BA for an offence pursuant to section 83(1)(b) namely:

83 General restrictions on granting building development approval

(1) The private certifier must not grant the building development approval applied for—

(b) until all necessary preliminary approvals under the Planning Act are effective for other assessable parts of the development;

5. The Assessment Manager lodged a request for referral agency response for building work with the Council on 9 June 2016 addressing the relevant performance outcomes of the Sunshine Coast Planning Scheme, Dwelling House Code 9.3.6, Table 9.3.6.3.1, plans of the proposed carport, and a letter of support from the adjoining property owner;
6. Section 33 of the BA (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) 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 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;
7. The Council issued an Information Request on 21 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).

You are invited to discuss this item to assess if further information can be submitted to enable a compliant re-design to be assessed.
8. The Assessment Manager responded to the Council Information Request on 15 July 2016 setting out how the proposal complied with the *Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes P02 (a) (b) and (d)*.

9. On 18 July 2016 Council issued a further request for information in response to the advice from the Assessment Manager on 15 July 2016.
10. The Assessment Manager responded to the further Council Information Request on 5 August 2016 confirming how the proposal complied with the Code.
11. The Council issued a Concurrence Agency Response on the 11 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 (d) 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
12. The Assessment Manager issued a Decision Notice on the 8 September 2016, refusing the Class 10a Carport as directed by Council;
13. The Applicant lodged a Notice of Appeal (Form 10) on the 8 September 2016.

Relationship between QDC and Sunshine Coast Planning Scheme 2014

1. At the hearing the Assessment Manager advised that he was of the opinion that the applicable code for the carport was not Acceptable Outcome A02.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, as the planning scheme did not use the specific term *Open Carports* in its description. As such, as per section 33 of the *Building Act 1975* Council had not provided an alternative provision to the QDC MP1.2 section A1(c) (open carports).

The Assessment Manager also confirmed at the hearing that prior to issuing his Development Approval for Building Work on the 6 May 2016 at no time did he contact Council to discuss this opinion.

2. The Sunshine Coast Planning Scheme 2014 does not have a definition for a carport however the QDC MP1.2 has two definitions for carport namely:
 - **Carport** means a class 10a building, other than a garage, providing covered vehicular parking.
 - **Open Carport** means a carport with –
 - (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another building or a side or rear allotment boundary; and
 - (b) not less than one-third of its perimeter open.

In general the dictionary definition for a carport is a shelter for a car consisting of a roof supported on posts, built beside a house.

As such a carport by its nature is an open building and the fact that the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 P02 use the term *Garages, Carports and Sheds* and does not use the term “open” means the general meaning of the term carport would apply and the planning scheme requirement would apply to all carports – “open” or otherwise.

3. For the above reasons, the Committee is of the view 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 therefore complies with the requirements of section 33 of the *Building Act 1975*.

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

Reasons for the Decision

The Committee confirms the decision of the Assessment Manager to refuse the Class 10a Carport for the following reasons.

The Committee is of the view that the development is not compliant with the Performance Outcome P02 (d) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 as:

- *P02 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street*

The streetscape in Kalowendha Avenue 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 setback 6 m from the road boundaries

As the carport is set forward of the line of the dwelling with a minimum 1 m front road boundary setback, it does not maintain the visual continuity and patterns of the buildings within the streetscape.

Richard Prout
Building and Development Committee Chair
Date: 5 October 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