



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	22-15
Applicant:	Gary Asmussen
Assessment Manager:	Sunshine Coast Regional Council (Council)
Concurrence Agency:	N/A
(if applicable)	
Site Address:	19 Cootamundra Drive Mountain Creek and described as Lot 32 RP 139216 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application for a Preliminary Building Approval for a Carport (Application).

Date and time of hearing:	1pm Wednesday 2 September 2015
Place of hearing:	The subject site
Committee:	Robin King-Cullen – Chair Samantha Hall - Member
Present:	Gary Asmussen and Wilaiwan (Wendy) Asmussen – Applicant Gary Sheffield – Council representative

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 and approves the Application in accordance with the amended Site Plan submitted by the Applicant to the Committee for its consideration on 6 October 2015, subject to the following conditions:

- A. provision of landscaping for the length of the fence on the western side of the property between the front face of the dwelling and the front boundary (as identified on the amended Site Plan as “trellis green screen”), to reduce the impact of the carport upon the neighbouring property to the west;
- B. provision of a 1500mm landscape buffer along the front boundary of the subject site for the length of the carport to reduce the visual impact of the structure from the street; and

- C. the Applicant obtains approval from Unity Water to build the Carport over the existing 225mm diameter sewer main.

Background

Prior to the lodgement of the Application, there was some prior history between the Applicant and the Assessment Manager ensuing from the erection of the carport without the approval of the Assessment Manager, including an earlier referral application for building approval that was later withdrawn, numerous communications between the parties and the issuing by the Council of a Show Cause Notice and Enforcement Notice about the carport.

On 29 June 2015, the Application was lodged with the Assessment Manager.

By letter dated 29 June 2015, the Assessment Manager advised the Applicant that it had decided to refuse the Application for the following reasons:

“the carport does not comply and cannot be conditioned to comply with Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Part 9, Performance Outcome PO2.

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.”*

On 13 July 2015, the Applicant filed an appeal with the Building and Development Dispute Resolution Committees against the Assessment Manager’s decision to refuse the Application.

The site and locality

The subject site comprises an area of 727 square metres and is located in a low density residential estate of predominantly single storey detached brick and tile dwellings. The existing dwelling is single story with one undercover garage accessed from the existing driveway at the south eastern corner of the site. The subject site is generally flat with a slight elevation up from Cootamundra Drive. The open carport the subject of the appeal had already been erected on the subject site in the location shown on the original design without the necessary development permit.

Cootamundra Drive is a two lane collector road providing access to numerous local residential streets and cul-de-sacs to the east of the subject site. Cootamundra Drive at this location is not conducive to on-street parking due to its two lane configuration and high traffic volume.

The Application

The proposed open carport is intended to provide weather protection for the Applicant's boat.

The appeal relates to the decision of the Assessment Manager to refuse the Application.

The decision was based on the original Site Plan (ID 18937894 Version 1, dated 30/06/2015) submitted with the Application. The original design shows:

- a 6800mm by 5200mm carport oriented on the subject site in a north east/south west direction and abutting the front and western side property boundaries;
- access to the carport directly from Cootamundra Drive at the south western corner of the site, independent of the existing driveway at the south eastern corner of the site;
- the carport height being 4150mm.

Amended plan provided to the Committee after the hearing

Following the hearing, the Applicant forwarded an amended Site Plan and elevation (undated and unnumbered) to the Committee for its consideration by email dated 6 October 2015.

The amended Site Plan shows:

- a 6640mm by 5200mm carport oriented on the site in a north west/south east direction and parallel to the front facade of the dwelling;
- access to the carport via the existing driveway at the south eastern corner of the site;
- the carport height reduced by 400mm to 6750mm, which at the hearing, the Applicant advised the Committee is the minimum height required to accommodate the boat, and a setback of 1500mm from both the front and western side property boundaries;
- provision of a 'trellis as green screen' for the length of the western side property between the front face of the dwelling and the front boundary;
- provision of a landscape buffer along the front boundary of the subject site for the length of the carport to reduce the impact of the structure from the street.

The Assessment Manager advised the Committee by email dated 12 October 2015, that "even if the carport was reorientated and the height reduced by a minimum of 400mm it would still not be favoured by Council."

The Committee considers that the amended Site Plan meets Performance Outcome PO2 of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6 in that:

- the impact of the structure on the neighbouring property to the west will be reduced through suitable landscape buffering;
- the impact of the structure on the streetscape will be reduced through provision of a 1500mm wide landscaped buffer along the frontage of the site for the length of the carport; and

- with the provision of the landscape buffers to the west and the frontage of the subject site, the visual continuity and pattern of buildings and landscape elements will not be compromised.

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 13 July 2015.
2. Oral submissions by the Applicant and the representative of the Assessment Manager at the hearing.
3. The Committees' on site inspection of the subject site and immediate locality.
4. The Assessment Manager's email dated 8 September 2015, responding to the Committee's request for advice about the chronology of the Application and the date that it received the Application.
5. The Applicant's email ("Amended Site Plan") dated 6 October 2015, responding to the Committee's invitation to submit an amended proposal on which the appeal is to be decided.
6. The Assessment Manager's email dated 12 October 2015, responding to the amended Site Plan.
7. The *Building Act 1975* (BA).
8. The *Sustainable Planning Act 2009* (SPA).
9. The Sunshine Coast Planning Scheme 2014 (SCPS 2014).

Findings of Fact

The Committee makes the following findings of fact:

1. The Application is for a carport to provide weather protection for the owner's boat.
2. The Applicant advised the Committee that the 3750mm height of the carport is the minimum height required to accommodate the boat.
3. The open carport the subject of the appeal has already been erected on the subject site in the location shown on the original design submitted in the Application without the necessary development permit.
4. The subject site has an area of 727 square metres and is located in a low density residential estate of predominantly single storey detached brick and tile dwellings.
5. Cootamundra Drive is a two lane collector road providing access to numerous local residential streets and cul-de-sacs to the east of the site. Cootamundra Drive at this location is not conducive to on-street parking due to its configuration and high traffic

volume.

6. There is a 225mm diameter sewer main traversing the subject site.
7. The Assessment Manager refused the Application on 29 June 2015 for non-compliance with the Dwelling House Code 9.3.6, Part 9, Performance Outcome PO2 of the SCPS 2014.
8. The Assessment Manager issued a Decision Notice refusing the Application on 29 June 2015.
9. The Applicant lodged an appeal against the Decision Notice with the Building and Development Committee Registrar on 13 July 2015.
10. The Applicant submitted an amended proposal to the Committee by email dated 6 October 2015 following the hearing on 2 September 2015. The Assessment Manager advised the Committee by email dated 12 October 2015, that *“even if the carport was reorientated and the height reduced by a minimum of 400mm it would still not be favoured by Council.”*

Reasons for the Decision

The amended Site Plan provided to the Committee on 6 October 2015, meets Performance Outcome PO2 of the Dwelling House Code 9.3.6 of the SCPS 2014 in that:

- the impact of the structure on the neighbouring property to the west will be reduced through suitable landscape buffering;
- the impact of the structure on the streetscape will be reduced through provision of a 1500mm wide landscaped buffer along the frontage of the site for the length of the carport; and
- with the provision of the landscape buffers to the west and the frontage of the subject site, the visual continuity and pattern of buildings and landscape elements will not be compromised.

Robin King-Cullen
Building and Development Committee Chair
Date: 21 October 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
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