



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	11-14
Applicant:	Leanne and Ashley Watts
Assessment Manager:	Neil Barralet (Assessment Manager)
Concurrence Agency:	Sunshine Coast Regional Council (Council)
Site Address:	41 Mandara Drive, Wurtulla described as Lot 285 on CG803593 – 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 building works for the siting of a new carport. The decision followed a Concurrence Agency response directing refusal of the siting of the carport.

Date and time of hearing:	9.00am, 13 th May 2014
Place of hearing:	41 Mandara Drive, Wurtulla
Committee:	Chris Schomburgk – Chair
Present:	Leanne and Ashley Watts - Applicants Jim Shingles – Coastal Patios – Applicant's builder Vince Whitburn - Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564(2)(c) of the SPA **sets aside** the refusal appealed against and replaces it with the following decision:

The Application is approved subject to the following conditions:

- The design and siting of the carport is to comply with drawings prepared by Coastal Patios and dated 23/1/14.
- The carport is to remain open-sided at all times.
- The carport roof is to be no higher than the top of the eaves of the existing house roof.
- The proposed front fence and sliding gate are to be erected no later than 2 months after the completion of the carport.

Background

The subject site comprises 636m² and is located within an established suburb of predominantly single storey, detached houses. The suburb is an older suburb in which there is considerable re-development and refurbishment of older houses.

The northern part of Mandara Drive, in which the subject site is located, is effectively a long cul-de-sac with a number of smaller culs-de-sac running off it. Persons travelling further north along Mandara Drive must inevitably return past the subject land.

The subject site contains a brick house with a double garage under the main roof. However, as the Applicants explained, the existing garage entries are relatively narrow and do not provide adequately for their 4WD vehicle. The proposal plans show a proposed carport measuring 6m x 6m.

The Application was made to Council, as Concurrence Agency, for a siting variation which sought approval for a new carport at the front of the house, within the 6m setback area and abutting the western boundary of the subject land. In that way, it was intended to utilise the existing driveway, so that the new carport would be in front of the existing double garage.

Council refused the Application on 5th March 2014 relying upon the following grounds for refusal:

- *The carport does not comply and cannot be conditioned to comply with the Caloundra City Plan 2004, Specific Outcome O7 Garages and Carports.*
 - O7 – garages and carports do not dominate the streetscape and preserve the amenity of adjacent land and dwellings having regard to:*
 - (a) Building character and appearance.*
 - ~~*(b) Views and vistas*~~
 - (c) Building massing and scale as seen from neighbouring premises*

The reference to the Specific Outcome is a reference to the Detached House Code in the planning scheme.

The Assessment Manager, issued a Decision Notice dated 31st March 2014 refusing the Application based on Council's advice. The Applicants lodged a 'Form 10 – Appeal Notice', grounds for appeal and accompanying correspondence with the Committees Registrar on 4th April 2014.

Prior to the appeal hearing, the plans were amended to move the carport off the western boundary by approximately 1.5m, but still utilising the existing driveway. This is the plan considered by the Committee for the purposes of the hearing and this decision. The proposed carport is to be built with a new front fence and sliding gate as part of an overall refurbishment of the premises.

There are a number of other carports and garages within the front setback in Mandara Drive and surrounding streets, but none in the immediate vicinity of the subject land. The lawfulness and dates of approval of these other structures is not known, but they contribute to the overall streetscape of the locality, if not the immediate part of Mandara Drive either side of the subject site.

The adjacent property to the west has a recently-built 1.8m high rendered block wall along its frontage with a sliding gate (also 1.8m high) for vehicular entry to the premises. That rendered block wall extends southward down the common boundary with the subject site, providing privacy to both premises. The property to the immediate east has a 1.8m high timber fence along its frontage, with no opening to Mandara Drive, as it is a corner lot with vehicular access off Lyrebird Place. The subject proposal is to provide a 1.8m high fence along the subject land's frontage, with a sliding gate to provide vehicular entry to the site.

The Applicants explained at the hearing that there was no practical opportunity to provide the carport anywhere else on the site, as there was a sewer easement along their eastern boundary, and Unity Water had indicated it would not approve a carport over the easement.

The proposed design is for the roof of the carport to be a flat roof no more than 2.4m high, which is the same height as the underside of the existing roof of the house. That is, the proposed carport roof will not protrude above the existing roof height, and will be only approximately 600mm above the proposed front fence height.

The carport is to be open on all sides, with the exception of where it joins the existing garages. The structure will be approximately 1.5m off the western boundary and approximately 500mm off the front boundary.

After the hearing, the Applicant submitted a letter signed by the owners of the property to the west, noting that they agree to the proposed carport. These owners are the persons most likely to be affected by the proposed carport.

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 4th April 2014.
2. The Concurrence Agency response dated 5th March 2014 from Council
3. The Development Application Decision Notice from the Certifier dated 31st March 2014.
4. Verbal submissions made by the Applicant and Builder at the hearing.
5. Verbal submissions made by Council at the hearing.
6. *Sustainable Planning Act 2009* ("SPA").
7. Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.
8. Queensland Development Code MP 1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m² and over (QDC MP1.2)
9. Letter of support from the owners of adjoining land to the west.

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is within an older established suburb where many houses have been the subject of redevelopment and/or refurbishment. Included in that refurbishment are a number of solid 1.8m high front fences or walls, with sliding gate openings.
- The properties either side of the subject site have such fences / walls.
- An Application was made to Council, as Concurrence Agency, for a siting variation for the Carport.
- Concurrence Agency advice directed a refusal of the Application. The reasons for refusal were stated as:

The carport does not comply and cannot be conditioned to comply with the Caloundra City Plan 2004, Specific Outcome O7, Garages and Carports.

O7 – garages and carports do not dominate the streetscape and preserve the amenity of adjacent land and dwellings having regard to:

(a) Building character and appearance.

(b) ~~Views and vistas~~

(c) Building massing and scale as seen from neighbouring premises.

- The proposed carport was relocated prior to the appeal hearing to be approximately 1.5 m off the western boundary and approximately 500mm off the front (street) boundary.
- The Applicants propose a 1.8m high fence along the front boundary, with a sliding gate for vehicular entry, as part of the overall refurbishment of the premises.

- The proposed carport is to have a flat roof no higher than the roof (eaves) of the existing house, such that it will not protrude above the existing roof line.

Reasons for the Decision

Having regard to the above, the Committee considers that, subject to conditions, the proposed carport satisfies Specific Outcome O7 Garages and Carports of the Detached House Code of the Caloundra City Planning Scheme.

The proposed carport and fence will not negatively impact on the building character and appearance of the locality – to the contrary, it is likely to have a positive impact.

The proposed carport, open as it is on all sides and no higher than the existing house roof line, will not dominate the streetscape, and will not negatively affect the amenity of adjacent land and dwellings.

Chris Schomburgk
Building and Development Committee Chair
Date: 23rd May 2014

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 Planning and Environment Court 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) 3237 0403 Facsimile (07) 3237 1248