



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

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| Appeal Number: | 89/2011 |
| Applicant: | Mr Donald Henderson |
| Assessment Manager: | Coastal Building Certifications |
| Concurrence Agency: (if applicable) | Sunshine Coast Regional Council (Council) |
| Site Address: | 17 Dalby Street Maroochydore and described as Lot 109 on RP 95973 – the subject site |

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the assessment manager's decision, dated 10 November 2011, to refuse a Development Application for building works for the siting of a carport.

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| Date of hearing: | 17 January 2012 at 10 AM |
| Place of hearing: | The subject site |
| Committee: | Ms Kari Stephens – Chair |
| Present: | Mr Don Henderson and Mrs Diane Henderson – Applicant Mr Graeme Jackson – Applicant's neighbour Mr Allan Thompson – Concurrence Agency, Sunshine Coast Regional Council |

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, Coastal Building Certifications, to REFUSE a development application for the siting of a carport; and **replaces** it with the following decision: –

The Committee, in accordance with section 564 of the SPA directs the Assessment Manager to approve the Development Application, subject to compliance with the following conditions: –

- a) the roof the carport shall be constructed so it integrates with the existing house by having architectural reference to the shape, pitch and colour of the roof of the existing house.
- b) Landscaping is to be provided along the eastern side of the driveway between the front property boundary and the existing eaves of the house. Trees and shrubs are to have a minimum height of 1m at the time of planting, and shall be of a type/species to achieve visual screening of the carport within two years. Such landscaping shall comply with the Maroochy Plan Code for Landscaping Design.

Background

The subject site is located at 17 Dalby Street Maroochydore, and comprises an area of approximately 549m². The property is located on the southern side of Dalby Street, near a sharp corner in the road. At the rear of the site, is an open stormwater drain, which generally runs in an east-west direction towards Cornmeal Creek.

The subject site is improved by a single-storey brick and tile dwelling which is located approximately 5.9m from the front property boundary. An existing concrete driveway is located adjacent to the western boundary. The owners of the property currently park their vehicles on this driveway, in front of the existing dwelling house.

There is no garage associated with this dwelling, although a single garage space was originally allocated within the original house. Anecdotal evidence suggests that this was never used as a garage, and the garage door has subsequently been replaced with a brick wall and window.

The dwelling is constructed too close to the western boundary to allow vehicular access to the rear or side of the property. The eastern side of the property accommodates Council's stormwater infrastructure, and is protected by an easement. This negates the erection of permanent structures (such as a carport) within the easement area.

The proposal is to provide a double carport located over the existing driveway, close to the western boundary of the house. The plans included with the application show that the carport will have a zero boundary to the front of the property, and have a total width of 5.25m. The proposed carport is to be open on three sides, with the rear of the carport being formed by part of the front wall of the existing house.

The house which adjoins the property on the western boundary is undergoing renovations, and a new 1.8m high fence has recently been established along this common boundary.

The appeal documentation is supported by letters of support from the owners of two properties in the immediate vicinity, including a letter of support from George Owen who lives at 10 Dalby Street directly opposite the site, and a letter of support from Graeme Jackson, who is the adjoining neighbour on the western side (and who also attended the hearing). Both letters stated they had no objection to the erection of the carport as proposed.

At the hearing on site, the Council provided a written statement, whilst the applicant provided a verbal statement. Subsequent to the hearing, the applicant provided a written statement.

Material Considered

The material considered in arriving at this decision comprises:

- 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal, received by the Registrar on 14 November 2011.
- A site inspection of the site and the locality, undertaken by the Chairperson.
- The Concurrence Agency response dated 30 August 2011.
- The decision notice by coastal building certifications (refusal) dated 10 November 2011.
- Verbal and written submissions from the parties at the hearing, and a written submission provided by the applicant thereafter.
- The 2000 planning scheme for the former Maroochy Shire Council – in particular, code 4.1 Code for the Development of Detached Houses and Display Homes.
- The Queensland Development Code (QDC) – part MP 1.2.
- The *Sustainable Planning Act 2009* and its regulations.

Findings of Fact

The Committee makes the following findings of fact:

The Certifier's decision to refuse the application is based on Council's concurrence agency response that the application should be refused. The reasons for the refusal are based around alleged non-compliance with provisions of the Code for the Development of Detached Houses and Display Homes, in particular Element 1, performance criteria 2(b) which states:

"Buildings and structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

(a)

(b) building character and appearance;"

In a performance-based planning scheme, such as the Maroochy Plan 2000, applications are required to comply with performance criteria (as above). Demonstration that the proposal meets the performance criteria can be done either by meeting the acceptable measures that relate to that criteria, or proposing "alternate" measures that are different to the acceptable measures, but nevertheless meet the performance criteria.

The relevant acceptable measures (as they relate to carports and garages) are included here (right):

As specified in acceptable measure A2.4, the minimum street setback for carports is 4.5m. The proposal is for a carport with a setback of zero metres, so it does not meet the acceptable measure.

The question then becomes: does the alternative measure proposed (i.e. zero setback) meet the performance criteria, by contributing positively to the streetscape in light of the relevant issues, being building character and appearance?

There are numerous other examples in the immediate area of carports and garage structures located within the front boundary setback. Council have confirmed that many, if not most of these examples do not have the relevant Council approval, and therefore exist unlawfully.

Alternate locations for the carport were discussed at the hearing.

Vehicular access to the site is somewhat constrained due to an existing stormwater pipe and associated easement on the eastern side of the site. In addition, Dalby Street angles away sharply near the eastern property boundary, and that section of the road is line-marked with a single unbroken line. These two elements constrain the available locations for the driveway. It is not suitable to move the driveway to the eastern side of the property because it would fail to protect Council's stormwater infrastructure in the first instance, and would be a safety concern in the second instance. Helpfully, the Council agreed that the location of the driveway (in its current position adjacent to the western boundary) was the safest and most appropriate location for vehicular access.

It is considered there is no other suitable location for the erection of a carport, other than where proposed by the applicant. There is insufficient side access to provide a garage a carport on the western side of the house or at the rear of the property. The eastern side of the property is equally constrained, because of the sharp bend in the road, and the existing stormwater easement.

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| <p>Garage setbacks:</p> <p>A2.3 In Residential (other than Sustainable Rural Residential), Centre, Industrial, Special Purpose and Master Planned Community Precincts:</p> <p>(a) the minimum street setback for garages (including corner lots) is 6 metres; and</p> <p>(b) garages doors facing the street (ie- within 0 to 45 degrees of parallel to the street) have a maximum aggregate width of:</p> <ul style="list-style-type: none">• 6m, or• 50% of the allotment frontage width, <p>(which ever is the lesser).</p> <p>OR</p> <p>Carport setbacks:</p> <p>A2.4 In Residential (other than Sustainable Rural Residential), Centre, Industrial, Special Purpose and Master Planned Community precincts the minimum street setback for carports (including corner lots) is 4.5 metres.</p> |
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Concerns were expressed by Council about the visual impact of the carport given its proximity to the road reserve (with a zero setback). However, I find these concerns to be somewhat subjective, and not necessarily supported by others, especially in the context of the letters of support. Both the adjoining neighbour (on the western boundary), and the neighbour directly opposite (across the road), are in support of the proposal. These two properties are the ones that would be the most affected by the proposed carport, and their acceptance and support of the proposal, tends to negate Council's concerns about the visual impact.

The 1.8m high fence on the common western boundary will screen a significant proportion of the carport when viewed from that direction. Views from the north-east (particularly traffic driving along the bend in Dalby Street) will see a full view of the carport. However this is not to say the view of the carport will necessarily detract from the appeal of the streetscape. The structure is open sided, and of a lightweight construction. It is considered that the addition of screening landscaping along the eastern edge of the driveway (which can be included as a condition) will assist in mitigating any negative impacts on amenity.

The subject site has a frontage of 20.9m, of which the proposed carport comprises 5.25m (approximately 25%). The built form of the carport, when compared to the overall width of the frontage, is insufficient in my view, to significantly impact on building character and appearance. The proposed carport will have no negative impacts on safety of the immediate area, being open sided and able to facilitate views between public and private areas. Nor is the amenity of the area likely to be affected, as the carport will not lead to over-looking, shadowing, loss of privacy or increased noise or nuisance from that which currently exists. Furthermore, both affected neighbours have provided letters of support, indicative of the lack of perceived impact from their perspectives. Finally, the character and appearance of the area is one in transition, containing a wide and varied range of detached houses. Many of the houses in the area will continue to be renovated to suit the changed needs of today's families, or will be rebuilt as new housing stock. I do not find the proposed carport to be offensive to the area's character in the context of its changing demographics and mix of housing stock.

Council also expressed the concern that approval of this carport would set a precedent for other structures to be approved within the front setback in the locality. However, I am not swayed by this concern, as each application needs to be considered on its own individual merits. An approval of a carport on this site, does not necessarily mean that all other applications for carports in the locality will be approved. In each future case, the proposal will need to demonstrate compliance with the relevant performance criteria.

Every application needs to be considered on its merits, and in this instance, I am satisfied there is no other suitable location for the provision of a carport, and those neighbours most likely to be affected (next door and across the road) have provided their written support. Furthermore, the inclusion of a condition requiring the planting of suitable landscaping will sufficiently soften and screen the built form when viewed from the north-east.

Based on an assessment of these facts, it is the Committee's decision that the decision notice being appealed against be **set aside** and that the building works application for the siting of a carport be **approved**, subject to the compliance with the following conditions:

- a) the roof the carport shall be constructed so it integrates with the existing house by having architectural reference to the shape, pitch and colour of the roof of the existing house.
- b) Landscaping is to be provided along the eastern side of the driveway between the front property boundary and the existing eaves of the house. Trees and shrubs are to have a minimum height of 1m at the time of planting, and shall be of a type/species to achieve visual screening of the carport within two years. Such landscaping shall comply with the Maroochy Plan Code for Landscaping Design.

Reasons for the Decision

The conditions as set out above will ensure that the carport is not intrusive when viewed as part of the streetscape. The two property owners who are most likely to be affected by the proposal, have both given letters of support for the proposed carport. There is no other suitable location for the erection of a carport on the subject site, other than where proposed.

In my opinion, the proposal, as amended by these conditions, will comply with the relevant performance criteria of the planning scheme Code for the Development of Detached Houses and Display Homes.

Building and Development Committee Chair
Date: 13 February 2010

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:

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