



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	06-15
Applicant:	Pacific BCQ
Assessment Manager:	Pacific BCQ
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	20 Cypress Court, Minyama and described as Lot 311 on RP200132 – the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by the Assessment Manager, to refuse part of the Development Application for Building Work in relation to the construction of a proposed carport. The part refusal was at the direction of Sunshine Coast Regional Council as Concurrence Agency who believes the carport does not comply with and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014.

Date and time of hearing:	26 February 2015, 11:00am
Place of hearing:	The subject site – initially at 20 Cypress Court, Minyama followed by an off-site hearing at Council Chambers at 1 Omrah St, Caloundra
Committee:	Georgina Rogers – Chair
Present:	Richard Duke – Property owner Cherie Duke – Property owner Gary Sheffier – Council representative (attended off site Chambers meeting only) Don Grehan – Assessment Manager

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 proposed carport subject to the following condition:

1. The landscape area between the southern side boundary alignment and the proposed carport to be landscaped with appropriate vegetation which will provide screening to the height of the carport and not impact on any existing structures or underground services.

Background:

The appeal is against a Decision Notice issued by the Assessment Manager (Pacific BCQ) on 22 January 2015 to refuse a Development Application for Building Works – Carport. The Assessment Manager was directed to refuse the Application for the proposed 5.4 x 6.0m carport by the Council as Concurrence Agency on 13 November 2014. The proposed carport is an integral part of an Application for a new Class 1 dwelling.

Council issued a refusal on the following grounds:

“The CARPORT does not comply and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014 Performance Outcomes PO2 for garages, Carports and Sheds

- (a) Preserve the amenity of adjacent land and dwelling houses;*
- (b) Do not dominate the streetscape.”*

The subject site is greater than 700m² allotment situated within an established Residential neighbourhood of similar sized allotments and dwellings. The Development Application is for a new two storey dwelling, with attached carport to the south-east corner of the site.

The road frontage faces west into a cul-de-sac, the site being second from the end. To the east is a canal and to the north is an adjoining neighbour.

To the south is an adjoining neighbour, 21 Cypress Court and a 2.0m high fence divides the properties. This neighbour fronts the end of the cul-de-sac.

The adjoining neighbour to the south was verbally consulted by the Council and allegedly objected to the proposed carport. Council made contact with the neighbour prior to Council issuing its Concurrence Agency response. No written confirmation of the neighbour’s objection was able to be provided to the Committee by Council at the site hearing.

The subject site has been cleared in preparation for construction of the new dwelling and a pool is under construction.

The proposed carport is shown to be 6.0m wide x 5.4m long. It is proposed to be setback 1.88m from the southern boundary and 700mm from the road boundary alignments. It is proposed to be approximately 700mm higher than the existing dividing fence.

The neighbourhood consists of predominantly large one and two storey dwellings with high front and dividing fences and carports within the 6.0m front boundary setbacks.

Pacific BCQ, as the appeal Applicant, on behalf of the Property owners, lodged an appeal with the Building and Development Committee Registrar on 9 February 2015.

A site inspection meeting was held at 11.00 am on 26 February 2015 which was attended by the Chair, Property owners and Assessment Manager to view the proposal and affected area. The Council was requested to attend but declined. A subsequent post site inspection meeting was held at the Council Chambers which all parties attended.

The Applicant, Council representative and Property owners made representations at the hearing in relation to the refusal of the proposed carport.

The Applicant and Property owners made representations on the following key items:

- The carport is to be used for vehicle parking;
- The site is on the eastern side of the street, which is a cul-de-sac, and the driveway is adjacent to this. The site is one back from the end of the cul-de-sac. There is very little on street parking as the street is narrow;

- The adjoining neighbour's property to the south has a habitable area adjacent to the proposed carport. This is located behind a 2.0m high solid, brick fence and is setback from the fence on their side;
- The carport is setback 1.88m from the dividing fence on the southern side of the site;
- The Property owners offered to landscape this area with suitable vegetation to screen the neighbour's view of the carport;
- The carport is shown to be approximately 700mm higher than the existing dividing fence;
- The adjoining neighbour verbally requested the owners to erect an open screen on top of the dividing brick fence;
- The adjoining neighbour to the south was not approached by the Assessment Manager in relation to the approval for the carport;
- The Property owners will be erecting a 2.0m high solid fence along the front boundary alignment of the site, which will provide privacy for their site;
- The character of the carport has been designed as an integral part of the design, character and amenity of the proposed dwelling;
- The proposed carport is of a lesser scale than the proposed dwelling which is two storey;
- The Assessment Manager believes that by requesting third party input from the adjoining property owner, Council as the Concurrence Agency has by default elevated the level of assessment to the equivalent of Impact Assessment which is contrary to Schedule 4 of the SPR 2009.

The Council representative provided the following reasons for refusal:

- Prior to 21 May 2014, the Sunshine Coast Planning Scheme 2014 was not in place and the construction of the proposed carport in this location could have been approved. Under the new Planning Scheme this is no longer the intent;
- Under the Sunshine Coast Planning Scheme 2014, Part 1.6, Table 1.6.1, the proposed carport could be assessed under 9.3.6 Dwelling house code or under the Queensland Development Code MP 1.2 alternative provisions (QDC MP 1.2). The Council maintained that it should only be assessed under the Dwelling house code.
- A Council officer telephoned the adjoining Property owner to the south, adjacent to the proposed carport, and was verbally told that they were opposed to the construction of the carport in the proposed location. There is no evidence of written communication between Council and the neighbouring Property owner to confirm the neighbour's verbal opposition;
- A Council officer had visited the subject site;
- Council does not view the existence of the 2.0m high dividing solid brick fence as relevant to the Application's assessment;
- The adjoining Property owner has a study and front entry adjacent to the proposed carport;

Following these representations, and viewing the subject site, both Council and the Applicant were asked to consider what they would be willing to accept as a negotiated outcome. This was not a consideration for the Council. The Applicant and Property owner offered appropriate landscaping as an option.

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 9 February 2015;
2. Decision Notice – Part refusal issued by Pacific BCQ dated 22 January 2015;
3. Concurrence agency response – Refusal by Sunshine Coast Regional Council Dated 13 November 2014;
4. Council advice regarding the verbal opinion of the adjacent neighbour with respect to the proposed carport sought by Council per phone, prior to issuing their Concurrence Agency response;
5. Verbal representations provided by the Applicant; Property owners and Council representative at the hearing;
6. Observations undertaken regarding similar structures in the surrounding neighbourhood;
7. Written and photographic submissions;
8. Sunshine Coast Planning Scheme 2014 extract Part 1, Section 1.6 - Building work regulated under the planning scheme, pp.9-10;
9. Sunshine Coast Planning Scheme 2014 extract Part 9, Section 9.3.6 – Assessment Criteria, Table 9.3.6.3.1 Criteria for self assessable and assessable development, P02, pp.9;
10. The Dwelling House Code of the Sunshine Coast Planning Scheme 2014
11. The *Building Act 1975* (BA);
12. The *Sustainable Planning Act 2009* (SPA)
13. The Queensland Development Code MP 1.2 (QDC MP 1.2)
14. Additional information provided by Council to the Committee on 27 February 2015 subsequent to the hearing which was distributed to all appeal parties.

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is greater than 700m² allotment situated within an established Residential neighbourhood of similar sized allotments and dwellings. The Development Application is for a new two storey dwelling, with attached carport to the south-east corner of the site.
- The road frontage faces west into a cul-de-sac, the site being second from the end. To the east is a canal and to the north is an adjoining neighbour.
- To the south is an adjoining neighbour, 21 Cypress Court and a 2.0m high fence divides the properties. This neighbour fronts the end of the cul-de-sac.
- The adjoining neighbour to the south was verbally consulted by the Council and allegedly objected to the proposed carport. Council made contact with the neighbour prior to Council issuing its Concurrence Agency response. No written confirmation of the neighbour's objection was able to be provided by Council to the Committee at the hearing.
- The subject site has been cleared in preparation for construction of the new dwelling and a pool is under construction.
- Street parking is limited within the cul-de-sac and the provision of additional off street parking is desirable;

- The neighbourhood consists of predominantly large one and two storey dwellings with high front and dividing fences and carports within the 6.0m front boundary setbacks, similar in amenity and character to what is proposed.
- The Applicant proposes to construct a Class 1A Dwelling and Attached Class 10B carport, the siting of which, would result in a minimum road boundary setback of 700mm from the outermost projection to the western road boundary alignment fronting Cypress Court and 1.88m from the outermost projection to the southern boundary alignment of the adjoining neighbour at 21 Cypress Court. The proposed carport is shown to be 6.0m wide x 5.4m long. It is proposed to be approximately 700mm higher than the existing dividing fence.
- A Building Development Application was lodged by the Property owners through the Assessment Manager dated 5 May 2014 for the above work.
- The Assessment Manager made a Request for Referral Agency Response for Building Works to the Council on 9 October 2014, which included the proposed construction of a carport within the 6.0m setback area to be 700mm setback from the western road boundary alignment fronting Cypress Court.
- The Council requested additional information on 15 October 2014 by requesting a letter and contact details from the adjoining owners at 21 Cypress Court confirming that they had sighted the proposed drawings.
- The Assessment Manager advised the Council on 10 November 2014 that the Property owners declined to provide the adjoining owner's consent and that the response be decided based on the relevant assessment criteria.
- On 13 November 2014 the Council refused the carport on the grounds:
 - *“the CARPORT does not comply and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014 Performance Outcomes P02 for Garages, Carports and Shed*
 - *Preserve the amenity of adjacent land and dwelling houses;*
 - *Do not dominate the streetscape;”*
- The Assessment Manager issued a Decision Notice on 22 January 2014, refusing the Application in part relating to the carport, as directed by the Concurrence Agency
- Pacific BCQ, as the appeal Applicant, on behalf of the Property owners, lodged an appeal with the Building and Development Committee Registrar on 9 February 2015.
- The Dwelling House Code of the Sunshine Coast Planning Scheme 2014 contains no specific Acceptable Outcomes or Performance Outcomes in relation to road boundary setbacks for corner allotments.
- Acceptable Solution A1(b) and Performance Criteria P1 of the QDC MP 1.2 specifically address road boundary setbacks for lots greater than 450 sq.m in size.
- Section 30 of the BA defines the relevant laws and other documents for assessment of building work inclusive of any relevant local law, local planning instrument or resolution made under section 33.
- Section 33 of the BA states that:
 - (2) A planning scheme or Priority Development Area (PDA) instrument may include provisions (*alternative provisions*) that, for relevant work, are alternative or different to the QDC boundary clearance and site cover provisions.
 - (3) However, a planning scheme or PDA instrument may include alternative provisions only if the provisions are a qualitative statement or quantifiable standard.
 - (4) If there are alternative provisions for relevant work, the QDC boundary clearance and site cover provisions only apply to the extent the alternative provisions do not apply to the work.

(5) Alternative provisions cannot be made other than under a planning scheme or PDA instrument.

Qualitative statement means a statement about a performance or outcome sought to be achieved when applicable buildings or structures are completed.

Quantifiable standard means a standard that achieves a performance or outcome sought under a qualitative statement.

- Section 78A of the SPA states that:
 1. A local planning instrument must not include provisions about building work, to the extent the building work is regulated under the building assessment provisions, unless permitted under the Building Act.
 2. To the extent a local planning instrument does not comply with subsection (1), the local planning instrument has no effect.
- Sections 30 and 33 of the BA state that, subject to section 33, the provisions relating to boundary clearance and site cover for a single detached class 1 building or a class 10 building or structure are otherwise regulated via the QDC MP 1.1 and 1.2 as applicable.

Reasons for the Decision

- The Committee is satisfied that the Dwelling House Code, does not identify those elements intended, under Sections 33(1) and 33(2) of the BA, as alternative provisions to the QDC as the requisite building assessment provisions for siting and;
 1. The siting provisions contained within the Dwelling House Code are not representative of a qualitative statement or quantifiable standard.
 2. The building assessment work provisions contained within the Dwelling House Code make no provision for siting in relation to allotments which are otherwise specifically regulated under the QDC MP1.1 and 1.2.
- The Committee is satisfied that the Dwelling House Code of the Sunshine Coast Regional Plan has no effect, given that the building assessment work rightly nominated within the within the Dwelling House Code as alternative siting provision to the QDC makes no allowance for siting in relation to allotments which are otherwise specifically regulated under the QDC MP1.1 and 1.2.
- The Committee is satisfied that Mandatory Part 1.2 of the QDC is the applicable building assessment provision regulating boundary clearances.
- Giving due consideration to the bulk of the building and the road boundary setbacks of neighbouring buildings; the outlook and views of neighbouring residents; and nuisance and safety to the public, the Committee is satisfied that a road boundary setback to the carport of 700mm, together with the nominated condition, will not result in an unacceptable streetscape.

Georgina Rogers
Building and Development Committee Chair
Date: 17 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
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