



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal number:	28-10
Applicant:	Mr Mitchell Price
Assessment manager:	Sunshine Coast Regional Council
Concurrence agency: (if applicable)	N/A
Site Address:	1482 David Low Way, Yaroomba and described as Lot 151 on RP 83442 — the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against decision dated 14 April 2010 by Sunshine Coast Regional Council, as the assessment manager, to refuse a development application for building works for the siting of a carport.

Date of hearing:	9:00am on Wednesday 2 June 2010
Place of hearing:	The subject site
Committee:	Ms Kari Stephens – Chairperson Mr Peter Folker – General Referee
Present:	Mr Fred Vicary – Sunshine Coast Regional Council representative Mr Mitchell Price – Applicant Mr Brett England – Suncert Building Consultants, private certifier Mr Darren Magee – Darren Magee Constructions Pty Ltd

Decision

The Committee, in accordance with section 564 of the SPA **confirms** the decision appealed against and dismisses the appeal.

Background

The site is located on the western side of David Low Way, in the suburb of Yaroomba. The site is located to the north of the Hyatt Regency Hotel, and just south of the intersection with Boward Close. It has an area of approximately 607m² and is of a regular, rectangular shape.

The site is generally flat, although this is the result of retaining walls, primarily located on the northern boundary. The ground level at the front of the site is comparatively even with the level of the David Low Way. The subject site is occupied by a single-storey residential dwelling. The dwelling is set well back from the road

frontage. The carport, the subject of this appeal, is already constructed and located on the site.

The subject site is located in an established residential area occupied by a range of detached residential dwellings, comprising both single and double storey buildings. The site is bounded by detached houses on the northern (side) and western (rear) boundaries. The land to the south is a Council reserve.

The proposed (existing) carport is located adjacent to the northern boundary and is 2.5m from the front (eastern) boundary. The area between the carport and the front boundary is landscaped with native ginger and bamboo species. In time, these plants will form a visual screen along the front boundary. A 1.8m high, rendered fence has been erected along the front boundary line. The carport is an open structure with a curved metal roof. A new driveway and manoeuvring area have recently been established in conjunction with the carport.

The assessment manager's decision notice (dated 14 April 2010) states that the type of development is a "preliminary approval for building works - siting variation (deck, carport and retaining wall)". The Committee was able to confirm during the hearing (via Council's Mr Fred Vicary) that this wording is incorrect and the siting variation applies only to the carport.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 4 May 2010.
2. A site inspection of the site and the locality, undertaken by the Chairperson and General Referee.
3. The assessment manager's decision notice dated 14 April 2010.
4. Verbal and written submissions from the parties at the hearing.
5. The 2000 Planning Scheme for the former Maroochy Shire Council (the Maroochy Plan 2000) – in particular, Code 4.1 Code for Development of Detached Houses and Display Homes.
6. The Queensland Development Code (QDC) – Part MP1.2.
7. The SPA
8. The *Sustainable Planning Regulation 2009*

Findings of Fact

The Committee makes the following findings of fact:

The assessment manager's decision to refuse the application is based on alleged non-compliance with provisions of the Code for the Development of Detached Houses and Display Homes, in particular Element 1, Performance Criterion P2, which states:

P2 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) views and vistas;*
- (b) building character and appearance;*
- (c) casual surveillance.*

In addition to the above, at the hearing, the assessment manager made the following points to support the decision to refuse the siting variation for the carport in its current location, including:

1. The carport was already constructed at the time of the site inspection (i.e. before building approval was issued);
2. the siting variation is not necessary (because there is sufficient space to locate the structure on the site without impinging on the 4.5m setback);
3. there are few approved setback relaxations in the general area.

Helpfully, the assessment manager admitted that the impact of the carport in its current location on adjoining properties is likely to be minimal, and that the design and the appearance of the carport was aesthetically pleasing and that a 4.5m setback would comply.

At the hearing, the appellant made a number of points to support the location of the carport in its current location, including:

1. The carport was an existing structure that had been re-roofed and relocated within the site;
2. The front landscaping, once grown, would sufficiently screen views of the carport from the road;
3. That additional landscaping could be provided along the southern boundary (adjacent to the driveway) to further screen the structure from northbound traffic;
4. That commercial uses are operating on the opposite side of the road, and hence there is limited impact on amenity as a result of the carport;
5. That the carport was intended to be set back 4.5m, but was erected in its current location in error;
6. Whilst relocation of the carport is physically possible, to do so would incur additional costs.

The carport, as currently sited, is clearly visible when approaching the subject site from the South. The David Low Way is a well trafficked road and is one of the principal tourist routes of the local government area.

The nature of the immediate area can be characterised by a predominance of detached dwellings set amongst well-vegetated front yards, and tree-lined road reserves. Existing built form structures within the 6m road setback are rare and are not considered to be part of the general character of the area.

There is sufficient area between the existing house and the front property boundary to relocate the carport, so it complies with a front setback of 4.5m.

Based on an assessment of these facts, it is the Committee's decision that the decision notice being appealed against be **confirmed** and the appeal is dismissed.

Reasons for the Decision

The Committee accepts that the Maroochy Plan 2000 is a performance-based planning scheme, and compliance with an acceptable measure is only one way of meeting the performance criteria. In this regard, the performance criteria requires that structures positively contribute to the streetscape and have regard to a number of elements including views and vistas, building character and appearance, and casual surveillance.

The Committee finds that the carport structure is unlikely to have a "positive" impact on the streetscape, and will have a negative impact on views and vistas, although such impact will most likely be minor, particularly once the screening vegetation reaches mature height. However, the location of the carport is not consistent with the building character and appearance of the general locality, and the relaxation as sought, will be in conflict with the established building character and appearance of the area.

The Committee is of the opinion that for the most part, siting variations within the front setback, should be granted in mitigating circumstances which result because of topographical constraints, or the location of existing structures or similar. No such circumstances exist in this appeal. The land is flat, and there is sufficient area to locate the carport whilst maintaining a compliant setback.

The Committee accepts that an honest error in relation to the siting of the carport appears to have been made. However, this error does not provide sufficient justification for the siting relaxation of the carport. It is relevant to note that the carport was erected before the application for building works was decided. Had the appellant waited for the appropriate approvals to be in place, the error in relation to the siting is unlikely to have occurred.

The Committee is of the opinion that there are no overriding or compelling reasons that would justify the relaxation. There is sufficient room between the existing dwelling and the front property boundary to appropriately locate the carport, whilst complying with a 4.5m setback. Furthermore, the location of the carport, at 2.5m from the front property boundary, is not consistent with the established building character and appearance of the area.

Kari Stephens
Building and Development Committee Chair
Date: 21 June 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:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248