



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	3—09—098
Applicant/Appellant:	Patricia Gimpel
Assessment Manager:	Caloundra Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	37 Parari Street Warana and described as Lot 209 on W95548 – the subject site

Appeal

Appeal under section 564 of the *Sustainable Planning Act 2009* (SPA) against the decision of the assessment manager to refuse a siting variation for the proposed car port at the subject site. The decision was based on a concurrence agency response from Council.

Date of hearing:	Monday 15 February 2010 11.00am -11.50am
Place of hearing:	37 Parari Street Warana, the subject site
Committee:	Robin King-Cullen - Chair
Present:	Robin King-Cullen – Tribunal Chair Gary Sheffield – Council’s representative Patricia Gimpel – Appellant Wendy Forsyth – Neighbour at 39 Parari Street (attended until approx 11.20am) Joy Stark – Neighbour at 35 Parari Street (attended until approx 11.20am)

Decision:

The Committee, in accordance with section 564 (2) (a) **confirms** the decision appealed against.

Background

The Proposal

The matter concerns the decision of Council as concurrence agency to refuse an application for siting variation to enable a double carport to be constructed within 500mm of the front road boundary setback and 150mm from the southern side boundary.

The subject site, having an area of 619 square metres, is located in Parari Street, Warana.

The subject site is relatively flat and contains a single storey dwelling constructed prior to 1985 with a 6500mm setback from Parari Street. A narrow structure on the southern boundary was approved in 1998 by a private building certifier as a "carport", but is not used for (nor is suitable for) car accommodation.

In support of her application, the appellant states that:

- (a) the property does not have any car accommodation;
- (b) neighbours on both sides of the property have no objection to the erection of the carport;
- (c) at least 10 other properties on the street currently have carports in front of their residences; and
- (d) the carport will be sympathetic with the design of the house and in keeping with other residences in the street.

In relation to (b) above, the neighbour to the north (Wendy Forsyth) and the neighbour to the south (Joy Stark) both attended the hearing and confirmed their support for the carport.

In relation to (c) above, the Committee Chairperson sought further information from the Council regarding existing carports within the 6 metre setback in Parari Street. The Council officer's investigation identified 5 carports erected within the 6 metre setback in Parari Street and provided the following information in relation to these structures:

- In 3 instances the structures were approved between 2001 and 2003 (before Caloundra City Plan 2004);
- In one instance the structure was erected without the necessary approvals; and
- In relation to 4 Parari Street, the carport structure was approved with a front setback of 3010mm from the front boundary as a variation to an earlier proposal and taking into account the site history and development on nearby allotment.

The only possible alternative location for a carport on site is adjacent to the northern boundary. This location was examined at the hearing and while the complying carport at this location appeared possible in terms of setbacks and dimensions, the location of a driveway crossing would possibly prejudice the existing storm water drains and water meter, and possibly the existing street tree. Ms Gimpel was not in favour of this option due to visibility issues and additional costs including costs of a new driveway and crossover and costs of relocating the garden shed and other improvements at this location.

Mr Sheffield subsequently advised by email dated 16 February 2010 that *"approval may be granted to a complying carport adjacent to the northern boundary if the following is carried out:*

- *The driveway is constructed to the current Engineer's guidelines;*
- *No line of sight issues are evident after a careful evaluation;*
- *An application is put in;*
- *The applicant is aware that if any capital works are required to be carried out, or a major service provider has to carry out works, there is a possibility that only 1 driveway will get replaced."*

Concurrence Agency Decision

The concurrence agency (Council) response to the application dated 4 December 2009 refused the application on the grounds that

1. The development does not comply with Specific Outcome 07 (Garages & Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 as:
 - The proposed carport will have a dominating appearance when viewed from the street given that the building is located within the prescribed setback and located forward of the line of the dwelling;
 - The carport will be inconsistent with the existing and proposed streetscape character; and

- The carport will detract the outlook from surrounding properties due to the building's massing and scale.
2. The development does not comply with Specific Outcome 08 (Parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004, as the existing complying off-street car parking has been converted to habitable rooms without the required development approvals having been obtained.
 3. The allotment is not constrained and the location of the existing buildings onsite are such that an alternative design is available to comply with the Planning Scheme provisions and to have covered car parking spaces which do not unduly impact upon the streetscape.

Material Considered

The material considered in arriving at this decision comprises:

1. Copy of application drawings for "Proposed Pavilion and Carport" dated 29/11/00 (sheets 1-7), and letter from Patricia Gimpel dated 12 November 2009 seeking permission for the carport.
2. Copy of the referral agency response dated 4 December 2009 from Council to Caloundra Building Approvals directing refusal of the application.
3. Copy of development application decision notice dated 18 December August 2009 from Caloundra Building Approvals to Patricia Gimpel stating that the application had been refused.
4. Form 10 – Building and Development Dispute Resolution Committee - Application for appeal/declaration received on 18 January 2010 against the refusal, including attachments.
5. Verbal submissions made by Patricia Gimpel at the hearing.
6. Verbal submissions made by neighbours Wendy Forsyth and Joy Stark at the hearing.
7. Verbal submissions made by Gary Sheffield at the hearing.
8. Written submission by Gary Sheffield dated 10 February 2010 setting out reasons why the Council directed refusal of the application.
9. Email correspondence from Gary Sheffield dated 6 February 2010.
10. Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.
11. The QDC.
12. The *Building Act 1975*.
13. The IPA and SPA.
14. The Building Code of Australia.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The premises do not currently have undercover parking.
2. The previous garage within the dwelling was converted to habitable rooms with the necessary development approval in 2002. In the written submission to the Committee from Council dated 10 February 2010 it is stated that at the time of the 2002 approval, "there was no requirement under Council's planning scheme that prevented this from occurring".
3. A complying single carport can be erected on the northern property boundary, subject to certain design constraints regarding access.

Reasons for the Decision

The Tribunal considered that:

1. The Development does not comply with Specific Outcome 07 (Garages & Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 as:
 - The proposed carport will have a dominating appearance when viewed from the street given that the building is located within the prescribed setback and located forward of the line of the dwelling; and
 - The carport will detract the outlook from surrounding properties due to the building's massing and scale.
2. The location of the existing buildings onsite is such that an alternative design is available to comply with the Planning Scheme provisions.

Robin King-Cullen
Building and Development Dispute Resolution Committee Chair
Date: 10 March 2010

Appeal Rights

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

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