



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	19-15
<b>Applicant:</b>	Gregory Phillip Davey
<b>Assessment Manager:</b>	Suncoast Building Approvals (Michael Grummett, Building Certifier )
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Council (Council)
<b>Site Address:</b>	35 Meta Street, Mooloolaba, and described as Lot 69 RP 115937 — the subject site

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### Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse a Class 10a carport. Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building as it did not meet and could not be conditioned to meet the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO2 for Garages, Carports and Sheds.

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<b>Date and time of hearing:</b>	3 July 2015 at 10.00am
<b>Place of hearing:</b>	The subject site,
<b>Committee:</b>	Richard Prout – Chair
<b>Present:</b>	Gregory Phillip Davey – Applicant Steve Rosenius – Council representative

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### 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 to refuse the Class 10a carport at the direction of Council, and approves the building with the following conditions:

- The proposed carport shall be sited and built in accordance with Attachment A Drawing;
- The overall height of the proposed carport shall be built in accordance with the elevation view provided by JAC, Jeff Clifton Drafting, Job Number MB-1-P1 Drawing Number 1 of 1, dated August 2015;
- The proposed carport shall remain as an open building i.e. shall not incorporate any doors, gates or wall cladding etc.;
- The colours of the proposed carport shall match and complement the colours of the existing dwelling;
- The Applicant shall, prior to any building work commencing onsite, apply to the Council for the proposed alteration to the existing driveway crossover i.e. increased width (Operational Work Application);

- The existing front road boundary brick wall shall not be increased in height and shall remain partly open and any proposed front road boundary gates shall be designed to match the existing front road boundary gates i.e. shall be open in nature;
- The site shall be landscaped in accordance with the above endorsed plan (Attachment A) within 40 business days from the date the occupation of the proposed carport commences;
- The proposed landscaping shall be retained and maintained for the life of the building in order to soften the visual impact of the building when viewed from the street;
- The Applicant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for Building Work.

## **Background**

The subject site is a 607m<sup>2</sup> allotment located at 35 Meta Street, Mooloolaba and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is rectangular in shaped with a 20.10m street frontage.

The existing three bed room dwelling on the site was approved by Maroochy Shire Council on the 23 July 1987 and includes a single lockup garage with a 7.2m front road boundary setback and a zero metre side boundary setback along the eastern boundary. The existing dwelling is complying with the setback provisions of the planning scheme and the Queensland Development Code MP 1.2 (QDC MP1.2).

The Applicant is proposing a number of additions to the dwelling and in order to achieve additional off street covered parking is proposing a new double carport to the front of the dwelling with a maximum front road boundary setback of 50mm.

As such the Applicants lodged a Development Application for Building Work (the Application) with Suncoast Building Approvals (Assessment Manager) in May 2015 for the proposed renovations to the dwelling including a Carport with a 50mm front road boundary setback from Meta Street.

The carport did not comply with the Acceptable Solution AO2.1 Garages, Carports and Sheds of the Dwelling House Code 9.3.6 of the Sunshine Coast Council Planning Scheme 2014.

The Assessment Manager lodged a request for referral agency response for building work with the Council on the 15 May 2015. The Council issued a Concurrence Agency Response on the 2 June 2015 instructing the Assessment Manager to refuse the Application as it did not meet, and could not be conditioned to meet, the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO2 for Garages, Carports and Sheds.

The Applicants lodged a Form 10 – Application for appeal/declaration, against the Assessment Manager's Decision Notice, with the Building and Development Committees Registrar on the 16 June 2015.

## **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 16 June 2015;
2. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
3. Sunshine Coast Council Application Form – 2014/15 Regional Strategy and Planning, Request for Referral Agency Response for Building Work, dated 15 May 2015;
4. Sunshine Coast Council, Information Request – *Sustainable Planning Act 2009* dated 25 May 2015;
5. Sunshine Coast Council, Concurrence Agency Response – Building Development Application for Building Work (Design & Siting) dated 2 June 2015;

6. Decision Notice issued by Suncoast Building Approvals dated 15 June 2015;
7. Email from Assessment Manager to Applicant dated 25 May 2015 with attached Sunshine Coast Council, Information Request;
8. Email from Applicant to Assessment Manager dated 27 May 2015 responding to Council Information Request;
9. Email from Assessment Manager to Sunshine Coast Council with Applicant response to Council Information Request, requesting they complete the assessment of the Application, dated 29 May 2015;
10. The following drawings:
  - Proposed Alterations and Extensions, Keen Residence, 35 Meta Street, Mooloolaba, Elevation Views, dated November 10;
  - Proposed Alterations and Extensions, Keen Residence, 35 Meta Street, Mooloolaba, Site Plan/Plan View, dated November 10;
  - Amended carport design from, JAC, Jeff Clifton Drafting, Job Number MB-1-P1 Drawing Number 1 of 1, Dated August 2015;
  - Amended carport design (Site Plan only) untitled received by Committee 31 August 2015 (Attachment A).
11. Survey Plan RP 115937, dated 15 February 1968;
12. Letter of support dated 14 May 2015 from the owner of 37 Meta Street, Mooloolaba;
13. Verbal submissions at the hearing from all parties to the appeal;
14. Sunshine Coast Council Planning Scheme 2014;
15. Sunshine Coast Council Planning Scheme 2014 - Dwelling House Code 9.3.6;
16. The *Sustainable Planning Act 2009* (SPA);
17. The *Building Act 1975* (BA).

## **Findings of Fact**

The Committee makes the following findings of fact:

### **Subject Site**

1. The subject site is a 607m<sup>2</sup> allotment located at 35 Meta Street, Mooloolaba and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014;
2. The allotment was created on the 15 February 1968;
3. The following building was noted onsite:
  - A dwelling and single lockup garage approved by Maroochy Shire Council on the 23 July 1987.
4. The site has a Unitywater sewer main running parallel with the rear property boundary, and located approximately 1.2m inside the allotment boundary;
5. The streetscape in Meta Street consists of residential dwellings with mixture of open fronted allotments or 1.8 m high front boundary fences/walls with soft landscaping and buildings setback 6 m from the front road boundary;

6. There are two properties in the street that have buildings located within the front road boundary setback namely;
- Number 34 Meta Street – Sails forming covered parking to the front road boundary; and
  - Number 51 Meta Street – Carport built to the front road boundary.

Council has confirmed that none of the above buildings have a Development Approval for Building Work.

### **Application Process**

1. The Applicant lodged a Development Application for Building Work with the Assessment Manager in May 2015 for a Class 10a carport located 50 mm from the front road boundary with Meta Street and approximately 3.5 m from the a side western boundary;
2. The carport did not comply with Acceptable Solution AO2.1 Garages, Carports and Sheds of the Dwelling House Code 9.3.6 of the Sunshine Coast Council Planning Scheme 2014;
3. The Assessment Manager lodged a request for referral agency response for building work with the Council on the 15 May 2015, against Performance Outcome PO2, Garages, Carports and Sheds of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6;
4. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the *Building Act 1975* allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover. Acceptable Outcome AO2.1 of the Dwelling House Code 9.3.6 of the Sunshine Coast Council Planning Scheme 2014 clearly states AO2.1 is an alternative provision to QDC;
5. The Council, issued an Information Request on 25 May 2015, advising the Assessment Manager that the Application was being considered for refusal namely:

*Council's current position in relation to the proposal is to recommend **refusal**.*

*Council has not **refused** the application in the first instance, in case the applicant (as discussed) wishes to withdraw the application **or** submit an additional alternative proposal that may also require consideration by Council.*

*The allotment is constrained, and the location of the dwelling and proposed carport, is such that an alternative location for the carport maybe available, to not significantly encroach upon the Planning Scheme provisions; to have covered parking space/s which do not unduly impact upon the streetscape.*

*As the proposed carport is located within the prescribed front road boundary setback, and is located forward of the line of the dwelling, please provide amended drawings/detail showing the following:*

- *Carport location changed thus reducing the impact of the building on the street, with significantly increased setback at the front boundary, reducing the impact of the building on the street.*

*Alternatively*

*Demonstrate how the proposed development can generally comply with the Sunshine Coast Council Planning Scheme 2014, Part 9, Dwelling house code 9.3.6, Performance Outcomes PO2, as given below:*

*Garages, carports and sheds:-*

- (a) preserve the amenity of adjacent land and dwelling houses;*
- (b) do not dominate the streetscape;*
- (c) maintain an adequate area suitable for landscapes adjacent to the road frontage; and*
- (d) Maintain the visual continuity and pattern of the buildings and landscape elements within the street.*

6. The Assessment Manager forwarded Council's Information Request to the Applicant by email on the 25 May 2015;
7. The Applicant responded to the Assessment Manager on the 27 May 2015 by email advising that he wished to continue with the assessment of the application unchanged;
8. The Assessment Manager forwarded the Applicant email to Council on the 29 May 2015 requesting Council to proceed with the Application as submitted;
9. The Council issued a Concurrence Agency Response on 2 June 2015 against the provisions of Performance Outcome PO2, Garages, Carports and Sheds of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6 directing the Assessment Manager to refuse the garage for the following reasons:  
*The carport does not comply and cannot be conditioned to comply with Sunshine Coast Planning Scheme 2014, Dwelling house code 9.3.6, Part 9, Performance Outcome PO2.*  
*Garages, Carports and Sheds:-*
  - (a) *preserve the amenity of adjacent land and dwelling houses;*
  - (b) *do not dominate the streetscape;*
  - (c) ~~*maintain an adequate area suitable for landscapes adjacent to the road frontage; and*~~
  - (d) *Maintain the visual continuity and pattern of the buildings and landscape elements within the street.*
10. The Assessment Manager issued a Decision Notice on the 15 June 2015 refusing the carport as directed by the Concurrence Agency;
11. The Applicants lodged a Form 10 -Application for appeal/declaration on the 16 June 2015 with the Committees Registrar.

### **Reasons for the Decision**

The Committee conditionally sets aside the decision of the Assessment Manager to refuse the carport at the direction of Council for the following reasons:

- At the hearing, the appeal parties discussed a number of options which included:
  - Relocating the location of the carport;
  - Methods for increasing the landscape screening along the street frontage of the allotment; and
  - Access to the allotment via a second driveway crossover.
- The hearing was suspended to allow the Applicant the opportunity to develop a revised site plan, elevation views, and landscape plan for Council to consider;
- The Applicant submitted an amended design to Council and the Committee on the 24 August 2015;
- The Council advised the Committee on the 25 August 2015 that they were satisfied with the amended design and location for the carport;
- The Applicant submitted a further amended Site Plan to Council and the Committee on the 31 August 2015;
- The Council advised the Committee on the 31 August 2015 that they were satisfied with the amended location for the carport.

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**Richard Prout**  
**Building and Development Committee Chair**  
**Date: 1 September 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  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 1800 804 833 Facsimile (07) 3237 1248**