



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	61-12
Applicant:	Lee Elson
Assessment Manager:	Noosa Building Certifiers
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	15 Petrel Street Peregrin Beach and described as Lot 678 on P93128 5425 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a siting variation for a proposed carport at the subject site. The decision was based on a Concurrence Agency response from Council who refused the Building Development Application on the basis that it did not comply with parts of the Noosa Plan Divisions 11 and 17; Table 14.44 of the Building Works Code, 14.95 Siting, Setbacks 01.

Date of hearing:	10.00am Wednesday 23 January 2013
Place of hearing:	The subject site
Committee:	Robin King-Cullen, Chair Louise McDonald, General Referee
Present:	Lee Elson - Applicant Jan Andrew, Design Gumbo -architect for Applicant Terry Neller - Noosa Building Certifiers Paul Riley - Sunshine Coast Regional Council representative

Decision:

The Building Development and Dispute Resolution Committee (Committee), in accordance with section 564(2)(c) of the SPA **sets aside the decision** of the Assessment Manager on 15 November 2012 to refuse the siting variation and approves the proposed carport subject to the following conditions:-

1. Erection of a 1.8 metre high timber fence to the Petrel Street frontage as shown on Drawing No. WD01 dated September 12.
2. The road frontage of the site is to be landscaped in accordance with Specific Outcome 01 of the Landscaping Code (Division 17 of the The Noosa Plan) to screen the carport from the street.

3. Height and pitch of the carport roof are not to exceed the height and pitch shown on Drawing No. WD01 dated September 12.
4. The carport is not to be enclosed at any time.
5. The carport is to be constructed of lightweight, non-reflective materials and muted colours that will reflect the natural surrounds and character of the area, as stated in the letter accompanying the relaxation of setback application from Design Gumbo dated 10 October 2012.

Please note that this approval is to be treated as a Preliminary Approval in accordance with section 241 of the SPA and that the issue of a Development Permit is a matter for the Private Certifier following the assessment of any other conditions that may be required in accordance with the *Building Act 1975*.

Background

The appeal concerns the decision of Council as Concurrence Agency to refuse a Building Development Application (Application) for a siting variation to enable an open double carport to be constructed with 0 mm setback from the front road boundary and with 400 mm setback from the southern side boundary of the subject site. The site has an area of 511 square metres and is located in Petrel Street, Peregian.

The site slopes down from the road frontage and contains an existing single garage under a two storey dwelling. The dwelling is constructed with a 5900 mm setback from Petrel Street, a 2210 mm setback from the southern side boundary, and a 1700 mm setback from the northern side boundary.

The Council refused the Application for building works lodged by the Assessment Manager on 5 November 2012 on the grounds that it did not comply with the following parts of the Noosa Plan Divisions 11 and 17 :

“Table 14.44 of the Building Works Code, 14.95 Siting, Setbacks 01:

“The proposal does not maintain the visual continuity and pattern of buildings and landscape elements within the street and visually dominates the street.” The Noosa Plan Division 11 – Building Works Code.

The Applicant lodged an appeal on the 7 December 2012 to the Building and Development Committee Registry and a Committee hearing was held on site at 10.00am Wednesday 23 January 2013.

The Applicant states that *“the design (of the carport) will actually improve the visual continuity and pattern of buildings in the street; and particularly improves the landscape elements”* in the following ways:

- Designed to be open with no enclosing walls, skillion roof on posts, low pitch, minimal thickness roof structure, insulated panel roof sheeting to reduce noise from rain and allow for safe maintenance and cleaning, and non-reflective materials and muted colours that will reflect the natural surrounds;
- The property’s existing side boundaries are too narrow to locate any parking beside the house;
- The slope of the driveway and existing deck make the existing garage difficult to access;
- The existing split level site topography and driveway slope will allow for the opposed carport to be set down and partially hidden
- The new owner intends to construct a high front fence that will further reduce the visual impact;
- The new owner intends to landscape and improve the current vegetation and streetscape which will also minimise the impact;
- While there are no similarly located carports in the immediate neighbouring properties, there are several in the neighbourhood. There are also many large covered gatehouse structures on front boundaries;
- Both adjacent neighbouring properties have high front fences and extensive vegetation; and
- By permitting the carport to be constructed as proposed the driveway code objectives of on-site vehicle accommodation and standing areas, increasing safety on and off site, and minimising adverse effects of further on-site parking in a narrow street , will be achieved.

The Applicant and his representative provided the following additional verbal submissions at the hearing:

- the Applicant's family own two vehicles; and
- difficulties are currently experienced in safely loading the family's young children into a vehicle on site.

At the hearing the Council representative outlined the Council's current approach to siting relaxation Applications. He commented that the draft Sunshine Coast Planning Scheme continues to apply similar requirements regarding setbacks. He agreed that there was no suitable alternative location for a carport on the site.

Material Considered

The material considered in arriving at this decision comprises:

- (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 7 December 2012.
- (b) Copy of the Council response to the Assessment Manager directing refusal of the Application dated 5 November 2012.
- (c) Copy of Development Application Decision Notice dated 15 November 2012 from the Assessment Manager to the Applicant stating that the Application has been refused.
- (d) Verbal and photographic submissions made by the Applicant and his representative and the Assessment Manager at the hearing.
- (e) Verbal submissions made by Council at the hearing.
- (f) Email correspondence to the Registrar dated 23 January 2013 from the Applicant's architect and accompanying Site Plan WD02 dated Jan 13).
- (g) The Noosa Plan Division 11 – Building Works Code.
- (h) The Noosa Plan Division 17 - Landscaping Code
- (i) The *Sustainable Planning Act 2009* (the SPA)
- (j) The *Building Act 1975* (BA)

Findings of Fact

The Committee makes the following findings of fact:

- The subject site has an existing single enclosed garage.
- The existing garage is insufficient to house the family's two vehicles.
- There is inadequate clearance to either side boundary to enable construction of a carport in an alternative location on site.
- No alternative space can be utilised to house the two vehicles.
- Access for the second vehicle is currently from the road, which is narrow and heavily trafficked.
- The street is dominated by 1800-2000 mm high fences along the front boundaries.
- It was determined that the construction of an open carport of the design proposed along with the concurrent construction of a front boundary fence and associated landscaping, would maintain the visual continuity and pattern of buildings and landscape elements within the street and would not visually dominate the street.

Reasons for the Decision

The Committee considers that the Application satisfies Specific Outcome 01 (d) of Division 11 - Building Works Code of The Noosa Plan in that it would “*maintain the visual continuity and pattern of buildings and landscape elements within the street*” if designed and constructed in accordance with the conditions set out by the Committee..

Robin King-Cullen
Building and Development Committee Chair
Date: 31 January 2013

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
PO Box 2457
Brisbane, QLD 4001
Telephone (07) 3237 0403 Facsimile (07) 3237 1248