



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	03 –15
<b>Applicant:</b>	Barry Elsley
<b>Assessment Manager:</b>	Building Surveying Professionals (Qld) Pty Ltd
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council (Council)
<b>Site Address:</b>	2 Windsor Ave Moffat Beach and described as Lot 85 on RP 51692 – the subject site

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### Appeal

Appeal under section s526 of *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Building Development Application (The Application) for a proposed carport structure. The decision followed a Concurrence Agency response by the Council, directing refusal of the Application due to noncompliance with performance criteria in relation to the design and siting of the structure.

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<b>Date and time of hearing:</b>	Wednesday 11 February 2015 at 10.00am
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Debbie Johnson - Chair Steve Craven - Member
<b>Present:</b>	Barry Elsley – Applicant and property owner Gary Sheffield - Sunshine Coast Regional Council representative

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Assessment Manager to refuse the Application.

### Background

The subject site and surrounding lots are well established having been developed many years ago. Several of the homes in the location have been demolished and the land redeveloped in recent years. Other properties have seen renovation and extensions undertaken. The nature strip is unusually wide (about 7.5 metres) and wider on the west (Applicant's) side than it is on the other. The streetscape benefits from these wide footpaths and is further enhanced by the predominance of the 6m wide property line setback being observed on both sides of the street.

The Applicant has owned this site for more than 40 years using the home primarily for holidays over this period. There is an existing garage underneath the home however it is small, the height is low, and the driveway relatively steep, making the garage relatively inadequate by today's standards. The Applicant considered his development options to provide additional car parking on the site and decided to propose a double carport in the open area between his home and the street frontage boundary, while retaining the existing garage and driveway. There are two properties in the street that have in recent times, lawfully erected carports in this street setback area.

The Applicant applied to the Assessment Manager for a development permit for building works (The Application) associated with the proposed carport. As the proposed carport was sited within the 6m street frontage setback area, the Application was referred to Council for a concurrence agency response with respect to the design and siting of the structure.

On 6 January 2015, Council determined to refuse the design and siting of the proposed carport stating:

*The carport does not comply and cannot be conditioned to comply with the Sunshine Coast Planning Scheme's (Dwelling House Code) Performance Outcomes PO2 for Garages Carports and Sheds, specifically listing the following elements:*

- (a) Preserve the amenity of adjacent land and dwelling houses;*
- (b) Do not dominate the streetscape;*
- (d) Maintain the visual continuity and pattern of the buildings and landscape elements within the street.*

On 15 January 2015, the Assessment Manager subsequently refused the Application as directed by the Concurrence Agency.

On 28 January 2015, the property owner appealed the Assessment Manager's Decision Notice by completing a Form 10 –Application for Appeal/Declaration. This was lodged with the Committees Registrar on 28 January 2015.

The Applicant's grounds for appeal stated that the immediate neighbours had been consulted about the proposed carport and they had provided written support for the works. The Applicant further stated that the proposed carport would not dominate the streetscape due to proposed and existing landscape treatments and the fall of the land. With respect to maintaining the visual continuity and pattern of buildings within the street, the Applicant argued that there are other carports that have been built recently in the street setback area.

A hearing was held with all parties on the subject site on Wednesday 11 February 2015 at 10.00am. At the hearing, the Applicant expressed his dissatisfaction with the Application drawings, specifically that they show Hardiplank cladding on the side walls, where he prefers an open carport. However, the Applicant did not have alternative drawings to provide to the Committee for consideration and did not offer to have further drawings prepared to illustrate these preferences.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 28 January 2015.
2. Oral submissions by the Applicant and the Council representative at the hearing.
3. Written submission by the Council representative as tabled at the hearing.
4. Written submission (Sketch Drawing) by the Applicant tabled at the hearing.
5. The Committee's onsite inspection of the subject site and immediate locality.
6. Property details as available through the Council's website.
7. The Sunshine Coast Planning Scheme 2014.
8. The Queensland Development Code MP 1.2.(QDC MP 1.2)
9. *The Sustainable Planning Act 2009 (SPA)*
10. *The Building Act 1975 (BA).*
11. The Building Regulation 2006 (BR).
12. The National Construction Code 2014.
13. Historic aerial photographs of the subject site as viewed through Google Maps.

## Findings of Fact

The Committee makes the following findings of fact:

The QDC MP 1.2 determines the design and siting standard for single detached housing on lots 450sq/m and over.

The QDC defines and consequently differentiates between a carport and an open carport as follows:

**Carport** means a class 10a building, other than a garage, providing covered vehicular parking.

**Open Carport** means a carport with –

- (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another building or a side or rear allotment boundary; and
- (b) not less than one-third of its perimeter open.

Using the abovementioned definitions, the proposed structure is best described as an open carport.

The QDC Acceptable Solution A1 (a) in part states:

*For a detached dwelling, garage or a carport the minimum setback is -*

*(i) 6m;*

*QDC A1 (c) states:*

*For open carports, the minimum road setback may be less than required by A1 (a) if-*

- (i) the aggregate perimeter dimension of walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the lines of supports) of that part of the carport within the same setback; and*
- (ii) there is no alternative on site location for a garage or carport that-*
  - (A) complies with A1(a); and*
  - (B) will allow vehicular access having a minimum width of 2.5M*

In this instance the open carport would not comply with A1(c)(i) or A1(c)(ii).

Where development does not meet all of the given acceptable solutions, assessment must be made against the QDC performance criteria. When assessing development against performance criteria, the acceptable solutions are no longer relevant.

QDC P1 states:

*The location of a building or structure facilitates an acceptable streetscape, appropriate for-*

- (a) the bulk of the building or structure; and*
- (b) the road boundary setbacks of neighbouring buildings or structures; and*
- (c) the outlook and views of neighbouring residents; and*
- (d) nuisance and safety to the public.*

In addition to the QDC local planning schemes may impose additional or alternative requirements. The Sunshine Coast Planning Scheme 2014 provides alternative siting requirements to those found in the QDC. Therefore, neither the Acceptable Solutions nor the Performance Criteria of the QDC apply to this development.

The Sunshine Coast Planning Scheme 2014 does not separately define a carport rather it is captured in the definition for a Dwelling House as follows:

*A residential use of premises for one household that contains a single dwelling.*

*The use includes out-buildings and works normally associated with a dwelling house and may include a secondary dwelling.*

The Planning Scheme's Dwelling House Code contains specific siting provisions for garages, carports and sheds as follows:

<b>Garages, Carports and Sheds</b>			
<b>Performance Criteria</b>		<b>Acceptable Outcomes</b>	
<b>PO2</b>	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 buildings and landscape elements within the street.	<b>AO2.1</b>	Where located on a lot in a residential zone, a garage, carport or shed:- (a) is setback at least 6 metres from any road frontage; (b) does not exceed a height of 3.6 metres; and (c) has a total floor area that does not exceed 56m <sup>2</sup> .

Where a proposal does not meet all of the relevant Code's acceptable outcomes, it must meet the associated performance outcomes.

For this proposal, the siting of the carport does not satisfy AO2.1 (a) below:

*Where located on a lot in a residential zone, a garage, carport or shed:-  
(a) is setback at least 6 metres from any road frontage;*

Therefore, this proposal must be assessed and determined to be compliant against all four parts of the performance criteria stated in PO2 and re-stated 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 buildings and landscape elements within the street.*

### Amenity and Streetscape

To the extent relevant to this appeal, the stated amenity and streetscape performance outcomes are related. For both elements, amenity standards for adjacent residents are influenced by a distinctly open streetscape largely uncluttered by front yard visual incursions, such as fences and carports. It is noted that this character is slightly lessened by the carports erected on the properties at number 1 and number 6 Windsor Avenue.

The following photograph illustrates the visual environment. The proposed carport would, to a significant extent, detract from that environment and dominate the streetscape because it would occupy a substantial part of the front setback area. In this location, the setback area contributes to the amenity of adjacent land and dwelling houses.



Windsor Avenue, looking north (source: Google Earth)

## Landscape

From the architectural plans provided it can be calculated that the 6 metre wide carport would cover 45% of the 13.2 metre frontage. Similarly, taking into account the proposed 1.25 metre wide gate structure between the carport and northern boundary, this proportionally increases to 56%. With respect to site cover, the carport has a floor area of 35.4m<sup>2</sup> that is calculated to be 48% of the 73.2m<sup>2</sup> front yard area. Moreover, the combination of carport, existing and proposed driveways and entry pathway, with a total area of 62.8m<sup>2</sup>, would cover 86% of the front yard. Consequently, the very limited remaining area is unlikely to achieve satisfactory compliance against performance outcome PO2(c): *“maintain an adequate area suitable for landscapes adjacent to the road frontage”*.

It is possible that elements of the current proposal could change to make an Application to the Council for a driveway crossover, however the current design indicates a full width driveway from the proposed carport to the street and retention of the existing garage and driveway. While neither the driveway nor the entry pathway are subject to assessment by the Committee, both impact aspects that the Committee is obliged to consider. Specifically, these are aspects of streetscape and visual continuity, pattern of buildings and landscape elements within the street.

The Council considers residential driveway applications against performance outcome PO9 of the Dwelling House Code. Acceptable outcome AO9 refers to standard drawings that specify one driveway per allotment and measures between 2.5 and 5.0 metres wide from the property boundary to the street channel. From the information provided on the architectural plans, the combined driveway width is approximately 10.0 metres wide (measured at the allotment frontage) reducing to 6.5m wide at the roadside kerb. In considering an approval for a driveway crossover of this width Council would assess the Application against PO9 criteria which states:

*The design and management of access, parking and vehicular movement on the site facilitates the safe and convenient use of the dwelling house by residents and visitors.*

The committee is unable to determine the likely outcome of a future Application being made to Council for the driveway as is currently proposed. Therefore the Committee has taken into account the extent of concrete or hardstand area that is indicated on the plans in considering areas available for landscaping.

The Committee has formed the view that insufficient front yard would remain to achieve compliance with the performance criteria stated at PO2(c).

## Visual Continuity

As with the streetscape, the pattern of buildings and landscape elements in Windsor Avenue is set by predominantly highset and 2 storey houses, wide footpaths and large, open front yards, characterised by few front fences and few structures in the front setback area. Maintenance of those elements, as required by performance outcome PO2(d), in essence requires maintenance of open front yards.

Account has been taken of the two building approvals facilitating carports in the front setback area – at properties number 1 and 6 Windsor Avenue. The Council’s representative indicated that each of these developments were assessed and approved under the provisions of the superseded planning scheme rather than the current scheme that prevails in this instance. It is the Committee’s view that these developments modify the streetscape and pattern of buildings and landscape elements in the street, but in the context of the 15 properties fronting Windsor Avenue, not irreparably so; they have not re-characterised either aspect.

Assessed on the merits of the proposal’s impact on the street as it is, it is the Committee’s view that it would not *“maintain the visual continuity and pattern of buildings and landscape elements within the street”*.

## Letters of Support

The Committee considered the letters of support submitted by four neighbours, which were of a pro-forma type. While supportive, such letters can be completed to retain good relationships with a neighbour rather than to express true opinions about a proposal. They should not influence nor replace a thorough assessment against the appropriate performance outcomes.

## **Reasons for the Decision**

The Committee considered the relevant performance criteria as stated in the Dwelling House Code provisions and is of the view the proposed carport structure would dominate the existing streetscape given the nature strips are wide and the houses are typically setback back a further 6m. The likely impact on the streetscape in this location is demonstrated clearly by two nearby properties in the same street. In both instances there has been carports built to the street frontage, completely at odds with every other property in the street. These developments were approved under previous planning scheme provisions.

The Committee also considered the visual impact of the proposed driveway crossover and found that, in combination with the existing driveway, it would be approximately 10.0 metres wide at the property's frontage. As the front boundary is only 13m wide the nature strip would be predominately concrete or other hard stand material. By contrast, the nature strip of the current subject site is currently lawn. Insufficient space would remain for satisfactory landscaping. Although a separate decision on an Application for a crossover may eliminate the existing driveway, the Committee would retain its view.

Assessed against performance outcome PO2 of the Council's Dwelling House Code, the proposed carport would –

- (a) Not satisfactorily preserve the amenity of adjacent land and dwelling houses;
- (b) To a significant extent, dominate the streetscape;
- (c) Not maintain an adequate area suitable for landscapes adjacent to the road frontage; and
- (d) Not maintain the visual continuity and pattern of buildings and landscape elements within the street.

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**Debbie Johnson**  
**Building and Development Committee Chair**  
**Date: 19 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  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 1800 804 833 Facsimile (07) 3237 1248**