



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	93 - 10
Applicant:	Nicole White
Assessment Manager:	Sunshine Coast Regional Council
Concurrence Agency: (if applicable)	
Site Address:	53 Saleng Crescent, Warana and described as Lot 221 on W95514 – the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the decision dated 2 December 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:	28 January 2011 10:30am
Place of hearing:	The subject site
Committee:	Ain Kuru – Chair
Present:	Nicole White – Applicant Alan Thompson – Sunshine Coast Regional Council

Decision:

The Committee finds that the carport does not meet Specific Outcomes 07 of the Detached House Code in the Caloundra City Plan 2004 as it dominates the immediate streetscape and impacts on the amenity of the adjoining property.

The Committee notes that streetscape in the area has to a degree already been compromised by carports and garages built close to the street frontage, and that these were approved prior to the City Plan coming into effect. It also observed that there are a number of newer houses in the area, and that many of these had considerable bulk which is also impacting on the streetscape of the area.

The Committee notes that in the context of the above, adequate landscaping of the street frontage and property boundary as recommended by Council will address Specific Outcome 07, though is not convinced that this will achieve overall design outcomes for the neighbourhood sought by Council.

Therefore the Committee **sets aside** the decision appealed against and **directs** the Assessment Manager to approve the application for Preliminary Building Work subject to the following conditions:

- 1 Landscaping to Council's satisfaction be provided to the street frontage in front of the carport. The Committee notes that Council may require such landscaping to extend into the road reserve;
- 2 That a new crossover and driveway be constructed providing access to the garage from the side, as shown in the drawing provided by Alan Thompson in **Attachment 1**, and that the existing crossover be removed and the kerb re-instated; and
- 3 Landscaping to Council's satisfaction and in consultation with the adjoining property owner be provided along the eastern boundary of the carport.

The Committee notes the owner was not aware of the City Plan requirements in respect of siting carports and would have relied on nearby examples of similar work and the advice of the licensed builder who undertook the work. In this regard the Committee suggests Council assist the applicant by providing advice on obtaining building approval for the carport and other non-approved work on the site, and how to lodge a complaint against the builder with the Building Services Authority. Given Council's concern about the integrity of City Plan being compromised by illegal building work, it should also consider pursuing this matter itself.

Background

The applicant purchased a carport and a builder recommended by the supplier erected it. The Council received a complaint about the carport and subsequently discovered that it had been erected without building approval, and noting that a siting relaxation would also be required as the carport was within 6 metres of the road boundary setback. The applicant was requested to either remove the carport or gain the necessary approvals for it.

The applicant subsequently made application to the Council, and the application was refused on the grounds that the carport did not satisfy the requirements of the Caloundra City Plan as it dominates the streetscape and impacts on the amenity of adjacent land and dwellings.

The applicant subsequently appealed the decision to the Building and Development Dispute Resolution Committee on the grounds that an exemption is sought based on the Queensland Development Code, which contains provisions allowing a reduced frontage setback for an open carport.

Material Considered

The material considered in arriving at this decision comprises:

- 1 Decision Notice (2 December 2010, Sunshine Coast Regional Council, ref PBA10/0173);
- 2 Form 10 Application for Appeal (2 December 2010, Building and Development Dispute Resolution Committee);
- 3 Written Submission (28 January 2011, Sunshine Coast Regional Council);
- 4 Relevant legislation including the *Sustainable Planning Act 2009* and the *Building Act 1975*; and
- 5 Caloundra City Plan 2004.

Findings of Fact

- 1 The garage is assessable building work under the *Sustainable Planning Act 2009* and *Building Act 1975* for which there is no Development Permit;
- 2 The garage is constructed approximately 230 mm from the street frontage;
- 3 The *Caloundra City Plan 2004* contains alternative siting provisions for carports to the *Queensland Development Code* pursuant to section 33 of the *Building Act 1975*.
- 4 The carport does not meet the acceptable solutions (ie the quantifiable standard) for self-assessable development under section 07 *Carports and Garages* of the *Detached House Code* as the minimum road boundary setback is less than 6 metres.
- 5 Therefore the carport must be assessed against the following Specific Outcomes (ie the qualitative statement) of the City Plan:

Garages and carports do not dominate the streetscape and preserve the amenity of adjacent land and dwellings having regard to:

(a) building character and appearance;

(b) views and vistas; and

(c) building massing and scale as seen from neighbouring premises.

Reasons for the Decision

Need for Carport

The applicant advised that the house does not have a carport. However the Council noted that the existing garage is no longer used for vehicle parking and appears to have been had been converted into a habitable room, for which there is no building approval.

Queensland Development Code

The applicant understands that the minimum setback under the Caloundra City Plan but seeks an exemption based on the Queensland Development Code. However the Queensland Development Code is not the lawful standard as the Council has prescribed its own standard under the City Plan.

Domination of the Streetscape

The carport is a clearly visible element of the streetscape, as are several other buildings and structures in the vicinity, as well as the area in general. Nicole White advised that the carport location is similar to many other existing carports found in the locality and has provided numerous examples in considerable detail of similar garages.

Alan Thompson advised that these other buildings and structures were approved prior to the introduction of the Caloundra City Plan or could be illegal. Nicole White pointed out there was a nearby two-storey house which had a significant impact on the streetscape and Alan advised that two storey dwellings were permitted by the planning scheme and there were also siting concessions for corner lots.

It is clearly Council's intent in the Planning Scheme that garages and carports do not dominate the streetscape. Because the carport is clearly visible in the street, the building does not meet this outcome. Under SPA, there is no discretion to depart from the planning scheme unless there are over-riding grounds as provided in the Act. There are none in this case.

Alan Thompson suggested the impact on the streetscape could be reduced if the frontage was landscaped (and this could possibly include landscaping in the street verge) and the driveway relocated. A sketch showing how this could be achieved was provided to the Committee and is included in **Attachment 1**.

The Committee noted that while this would screen the carport and address Specific Outcome 07 of the Code, it would result in landscaping at the front of the house being replaced by a driveway and therefore was not sure whether this would achieve overall design outcomes for the neighbourhood sought by Council.

The Committee also noted that there appeared to be considerable redevelopment pressure in this area and that its character was changing with the construction of much larger houses. In addition, the current Specific Outcome is designed to protect the visual amenity of residential areas by preventing the construction of carports within the frontage setback. However these provisions might not be practical in older established areas given that many older houses have only one garage while car ownership has increased since that time.

Preserve the Amenity of Adjacent Land

The carport is constructed close to the eastern boundary and impacts on the adjoining property. While this area is grassed and not actively used, it nevertheless impacts on the amenity of this property. In this regard it compromises the setting and outlook of the adjoining property.

Ain Kuru
Building and Development Committee Chair
Date: 23 February 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
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