



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal number:	42-10
Applicant:	Rob McCready for and on behalf of Head Constructions Pty Ltd (t/a Altum Constructions)
Assessment manager:	Suncert Building Consultants
Concurrence agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site address:	26 Horseshoe Bend, Buderim and described as Lot 4 on RP 94697 - the subject site

Appeal

Appeal under section 527(1)(b) of the *Sustainable Planning Act 2009* (SPA) against the decision, dated 22 March 2010, of Council, as the concurrence agency, to refuse an application relating to a proposed building structure (garage and storage area) to be constructed within the required front road boundary setback on the subject site.

Date of hearing:	10.00 am — Thursday, 16 September 2010
Place of hearing:	The subject site
Committee:	Georgina J Rogers – Chair
Present:	Rob McCready – Applicant Brett England – Assessment manager Nathan Lacey – Suncert Building Consultants (Building certifier) Richard Prout – Council representative

Decision:

The Committee, in accordance with section 564 of SPA **sets aside** the decision appealed against, to refuse the development application for building works, namely a building structure (garage and storage area) within the required front road boundary setback.

The Committee **directs** the assessment manager to re-assess the development application for building works subject to the following conditions:

1. The garage is to be setback a minimum of 2750mm to outermost projection from the Horseshoe Bend road boundary alignment.
2. The storage area is to be removed from within the 2750mm front road boundary setback area of Horseshoe Bend, and the area is to be landscaped to a standard consistent within the neighbourhood.

Background

An on-site hearing was attended by the appellant, assessment manager, building certifier and a Council representative.

The neighbourhood is a well established suburban area with a mix of older, new and renovated residential dwellings.

The site is a rectangular lot fronting south to Horseshoe Bend. The lot falls steeply down from the road with contours indicating a difference of approximately 14m.

There is an existing dwelling on site which has a building approval for its renovations. The renovations included the rebuilding of the existing carport and storage area into a garage and storage area. The carport and storage area were referred to the concurrence agency for assessment.

The carport has been reconstructed as a garage in the location of the previous carport. The storage area has been constructed in the location of the previous outdoor storage area, but is slightly smaller and forms part of the new garage. These were constructed without obtaining concurrence agency advice or a building approval.

The Committee observed that the neighbourhood generally has very low traffic volume. It was determined that retaining the carparking in its existing location was a suitable solution due to the steepness of the site.

The following correspondence and documentation was reviewed and taken into consideration:

- 16 September 2010 – Appeal hearing held on site
- 15 March 2010 – Council as concurrence agency – refusal of development application for building works (siting provisions)
- 22 March 2010 – Suncert Building Certifiers – Notice of decision to refuse request to change development approval, based on concurrence agency advice.
- 11 June 2010 – Building and Development Dispute Resolution Committees Form 10 – Application for appeal/declaration – submitted by applicant.
- Plans and documentation relating to appeal.
- Codes for Residential Development and Use – Maroochy Plan 2000 – provided by concurrence agency.
- Additional information provided by assessment manager, council and builder.

As a result of the assessment manager's refusal of the building development application (based on concurrence agency advice), the applicant chose to appeal the decision to the Building and Development Dispute Resolution Committee, by notice of appeal, received on 11 June 2010.

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 Registrar on 11 June 2010.
2. Development application decision notice with conditions from the assessment manager, dated 22 March 2010.
3. Concurrence agency advice from Council dated 15 March 2010.
4. Site plan and plan of the garage and storage area.

5. Verbal submissions from the applicant and reasons for requesting the garage and storage area to be constructed on site in its current location.
6. Verbal submissions from the concurrence agency, including reasons why the proposed garage and storage area should not be approved in its current state as constructed on site without approval.
7. Verbal submissions from the assessment manager stating why the existing garage and storage area should be permitted to remain as constructed in its current location.
8. The SPA.
9. The *Building Act 1975* (BA).
10. The *Building Regulation 2006*.
11. The Queensland Development Code (QDC).
12. The Building Code of Australia (BCA)
13. Maroochy Plan 2000 – Codes for Residential Development and Use.
14. Google maps aerial and street views.
15. Other plans and documentation relating to the subject site.

Findings of Fact

The Committee makes the following findings of fact:

1. It was determined that the owners applied for a building approval for a new carport and storage area to be constructed in the location of the existing carport and storage area. The carport was constructed as a garage by definition and the storage area was attached. The certifier applied to the concurrence agency on 17 November 2009 for the proposed carport and storage area. The assessment manager issued a staged building approval which excluded the carport and storage area on 17 November 2009.
2. The concurrence agency refused the application based on siting provisions including:
 - a) views and vistas
 - b) building character and appearance
 - c) casual surveillance
 - d) an adequate area suitable for landscaping being provided for at the front of the lot.
3. It was determined that the carport as constructed was fully enclosed with garage door and therefore by definition a garage and the storage area was attached and additional to the garage.
4. Advice was given that the roof pitch of the newly constructed garage and storage area is 15 degrees and greater than the previous roof pitch of the carport.
5. The garage and storage area's finished floor level is approximately 2500mm below the footpath ground level. This is retained by an existing rock wall. Therefore the views and vistas across the sight are not significantly affected by the new roof line.
6. The landscaping to the front of the site extends marginally onto the footpath area.
7. The site area is greater than 450m² therefore QDC MP1.2 – 'Design and siting standard for lots 450m² and over applies. The site area is closer to 900m².

Reasons for the Decision

1. Part MP1.2 of the QDC sets out Performance Criteria (P1 - P8) in relation to design and siting of buildings and structures which a local government must consider and be satisfied that the application

meets the intent of each criterion for that application. In addition, the development must not unduly conflict with the intent of each of the Performance Criteria:

P1. The location of a *building or structure* facilitates an acceptable streetscape, appropriate for –

(a) the bulk of the building or structure

The new garage replacing the carport has been shown to be of a similar size with an increased roof pitch. The bulk of this structure is not inconsistent with the bulk of the existing dwelling on the site, and is more sympathetic than similar structures within the immediate neighbourhood. The inclusion of the storage area however does bring the bulk of the building close to the front road boundary alignment. Due to the retaining wall on the road boundary alignment, landscaping within this area has been restricted.

(b) the road boundary setbacks of neighbouring buildings or structure

The road boundary setback of neighbouring buildings and structures has not been impacted by the garage. The inclusion of the storage area brings the structure closer to the front road boundary alignment than adjoining neighbours and those within the immediate neighbourhood, thereby making the setback to the storage area structure inconsistent within the neighbourhood.

(c) the outlook and views of neighbouring residents

The outlook and views of the neighbouring residents have had minimal impact with the construction of the garage. The garage is significantly constructed below the road level and views are able to be maintained across the building.

(d) nuisance and safety to the public.

The garage has minimal contribution to the nuisance and safety of the public. The garage is setback approximately 2750mm from the front road boundary alignment, at a level of 2500mm below the footpath level. Screening across the alignment would provide greater safety to the public due to the difference in ground level from the footpath to the site.

2. Based on the above facts it is considered that the appeal is upheld with conditions. The decision held in this application is separate to any other applications which may be made over the property at this time or in the future.
3. The QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the Code in relation to the building structure (garage) in its current location, the Committee found that there were grounds to allow for the garage as constructed to be allowed, with the removal of the storage area. The Committee also found that there were potential alternate locations for the storage area to be provided on site.

Georgina J Rogers
Building and Development Committee Chair
Date: 24 September 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
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248