



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	53 - 16
Applicant:	Mrs Sally Ryan & Mr Tim Ryan
Assessment Manager:	Suncoast Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	11 Carwoola Crescent, Mooloolaba, Qld 4557, Lot 60 AM 83316 – the subject site

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 performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome PO2 (a), (b), and (d).

Date and time of hearing:	19 December 2016 at 2:00 pm
Place of hearing:	The subject site
Committee:	Mr. Andrew Parker – Chair Mr. Richard Prout – Member
Present:	Mrs. Sally Ryan – Applicant and Property Owner Mr. Tim Ryan – Applicant Mr. Blake Bell – Town Planning Consultant – Murray and Associates Mr. Peter Chamberlain – Council representative Mr. Steve Rosenius – Council representative

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 Class 10a Carport.

Background

The subject site is a 703 m² allotment located at 11 Carwoola Crescent, Mooloolaba, and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is almost rectangular (slightly irregular) in shape with a street frontage of approximately 20 metres.

The original dwelling on the site was the subject of major building renovations and alterations during 2016. The original dwelling had included a double garage facing Carwoola Crescent, and the recent building alterations have created a new double garage in generally the same location as the original.

The original dwelling was compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2. The current dwelling is also compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2.

As part of the redevelopment of the site, the property owners engaged Elenel Design to prepare construction drawings for a carport to be located in front of the new garage with a front road boundary setback of 188mm to Carwoola Crescent.

At the completion of the building works for the alterations to the dwelling, the owners lodged a new Development Application for Building Work with Suncoast Building Approvals (Assessment Manager) for the Class 10a Carport.

However the proposed carport did not comply with Acceptable Outcome AO2.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

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;

As such the Assessment Manager lodged a request for referral agency response for building work with Council on 30 September 2016. The Council issued a Concurrence Agency Response on 25 November 2016 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.

An application for appeal Form 10 was received by the Building and Development Dispute Resolution Committees Registrar from the Applicants on 02 December 2016.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice, grounds for appeal and correspondence accompanying the appeal received by the Committees Registrar on 02 December 2016;
2. Assessment Manager Decision Notice, Permit No: SBA #16-2636, dated 29 November 2016, refusing the carport as directed by Council;
3. Sunshine Coast Council Application Form – 2016/2017 Planning and Environment Request for Referral Agency Response for Building Works, dated 30 September 2016, lodged by Suncoast Building Approvals (Assessment Manager);
4. IDAS Form 1 - Application Details – c/- Suncoast Building Approvals;
5. The following drawings:
 - Roof Plan, Floor Plan with boundary setbacks dated 04.01.16, amended 22.01.16, Job No. 15074 prepared by Elenel Design;
 - Elevation Views dated 04.01.16, amended 22.01.16, Job No. 15074 prepared by Elenel Design;
 - Roof Plan, Floor Plan with boundary setbacks dated 04.01.16, amended 19.05.16, Job No. 15074 prepared by Elenel Design;
 - Elevation Views dated 04.01.16, amended 19.05.16, Job No. 15074 prepared by Elenel Design;

6. Cover Letter from Suncoast Building Approvals dated 30 September 2016 for Concurrence Agency Referral Application;
7. Report supporting carport location by Murray & Associates, dated 26 September 2016. This document includes Engineering Drawings dated February 2016, Job No. SCC-0742, Pages 01, 02, 03 and 04 prepared by Empire Engineering; Six (6) Letters of Support from neighbouring landowners (as listed separately below); Photos of proposed carport showing already constructed; Photos showing examples of similar surrounding Built Form;
8. Letter dated 17 September 2016 from the owner of 31 Carwoola Crescent confirming that there is no objection to the proposed carport;
9. Letter dated 17 September 2016 from the owner of 9 Carwoola Crescent confirming that there is no objection to the proposed carport;
10. Undated letter from the owner of 5 Carwoola Crescent confirming that there is no objection to the proposed carport;
11. Letter dated 23 September 2016 from the owner of 39 Carwoola Crescent confirming that there is no objection to the proposed carport;
12. Undated letter from the owner of 7 Carwoola Crescent confirming that there is no objection to the proposed carport;
13. Undated letter from the owner of 13 Carwoola Crescent confirming that there is no objection to the proposed carport;
14. Information Request from Council to Assessment Manager dated 07 October 2016;
15. Email from Council to Owner and Assessment Manager dated 10 November 2016;
16. Concurrence Agency Response from Council dated 25 November 2016 instructing Assessment Manager to refuse Development Application for Building Work;
17. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*, completed by Applicants;
18. Further report supporting carport location by Murray & Associates, dated 30 November 2016. This document includes Engineering Drawings dated February 2016, Job No. SCC-0742, Pages 01, 02, 03 and 04 prepared by Empire Engineering; Six (6) Letters of Support from neighbouring landowners (as listed separately above); Photos of proposed carport showing already constructed; Photos showing examples of similar surrounding Built Form;
19. Verbal submissions at the hearing from all parties to the appeal;
20. Sunshine Coast Council Development Information Site Report for the subject site;
21. The Sunshine Coast Planning Scheme 2014;
22. The Queensland Development Code MP 1.2 (QDC MP 1.2);
23. The *Sustainable Planning Act 2009* (SPA);
24. The *Building Act 1975* (BA).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 703 m² allotment located at 11 Carwoola Crescent, Mooloolaba, and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014;
2. The allotment is almost rectangular (slightly irregular) in shape with a street frontage of approximately 20 metres;
3. The site has a Unitywater sewer main which runs almost parallel with the front eastern boundary. The carport has been constructed over the top of the sewer main. With the exception of the sewer main, the allotment is not constrained;
4. The following buildings were noted onsite at the hearing:
 - A dwelling with a double lockup garage approved by a Private Certifier on 07 March 2016; and
 - A swimming pool, approval status unknown; and
 - The subject carport, constructed without the necessary Development Permit for Building Works being first obtained;
5. The current dwelling includes a double garage facing Carwoola Crescent and is compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the QDC MP1.2;
6. The current dwelling provides complying off street parking in accordance with Acceptable Outcome AO8(a) (Access and Car Parking) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:
 - (a) *for a lot exceeding 300m² – at least 2 (two) car parking spaces with at least one space capable of being covered.*
7. The streetscape in Carwoola Crescent and the immediate surrounding area consists of residential dwellings with a mixture of open fronted allotments and up to 1.8 m high front and side boundary fences/walls with soft landscaping and with buildings generally setback between 4.5m to 6m from the road boundaries;

Application Process

1. The original dwelling on the site was the subject of major building renovations and alterations during 2016. As part of the redevelopment of the site, the property owner's engaged Elenel Design to prepare construction drawings for a carport to be located in front of the new garage with a front road boundary setback of 188mm to Carwoola Crescent.
2. The owners lodged a new Development Application for Building Work with Suncoast Building Approvals (Assessment Manager) for the Class 10a Carport;
3. The proposed carport did not comply with Acceptable Outcome AO2.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

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;*
4. The Assessment Manager lodged a request for referral agency response for building work with the Council on 30 September 2016 along with plans detailing the location and design of the proposed carport; a report by Murray & Associates, supporting the proposed location of the carport; and 6 (six) letters from various neighbours in the street supporting the proposal;

5. Section 33 of the BA (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) 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. Table 9.3.6.3.1 of the Dwelling House Code clearly states that Acceptable Outcomes AO2.1(a) is an alternative provision to the QDC;
6. The Council issued an Information Request on 7 October 2016 to the Assessment Manager stating:

The application has been assessed and considered for refusal, as the proposal does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO2 (a), (b) and (d).

You are invited to discuss the Performance Outcomes Performance Criteria, to ascertain if further information can be submitted, which may help in achieving a compliant re-design.
7. Council attended the subject site on 9 November 2016 to hear verbal submissions in response to Council's Information Request;
8. Council issued an email to the owner and Assessment Manager on 10 November 2016 advising that Council's position as advised in the Information Request of 7 October 2016 remained unchanged;
9. The Council issued a Concurrence Agency Response on the 25 November 2016 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 (a), (b) and (d) for Garages, Carports and Sheds, namely:

In accordance with section 289(1) the reasons for refusal are as follows:

The proposed development does not comply with and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014, Part 9, 9.3.6 Dwelling House Code, Performance Outcomes PO2 – Garages, carports and sheds:

(a) preserve the amenity of adjacent land and dwelling houses;

(b) do not dominate the streetscape;

(d) maintain the visual continuity and pattern of buildings and landscape elements within the street.
10. The Assessment Manager issued a Decision Notice on 29 November 2016, refusing the Class 10a Carport as directed by Council;
11. The Committee received the application for appeal, Form 10 from the applicants on 2 December 2016.

Reasons for the Decision

The Committee confirms the decision of the Assessment Manager to refuse the Class 10a Carport for the following reasons:

The Committee is of the view that the proposed development is not compliant with Performance Outcome PO2 (b) and (d) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 for the following reasons:

PO2 (b) do not dominate the streetscape

The streetscape in Carwoola Crescent consists of residential dwellings with a mixture of open fronted allotments and up to 1.8m high front and side boundary fences/walls with soft landscaping, with all buildings generally setback between 4.5m and 6m from the road boundaries.

The overall width of the proposed carport is approximately 7.5m measured from outer eave edge to outer eave edge, which in turn presents a 6m wide opening (measured between support posts) facing directly to the street frontage. As the carport is entirely set forward of the line of the dwelling with only a 188mm front road boundary setback, the proposed carport will have a dominating appearance when viewed from the street.

PO2 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street

As previously stated, the existing pattern of buildings in Carwoola Crescent consists of residential dwellings with a mixture of open fronted allotments and up to 1.8 m high front and side boundary fences/walls with soft landscaping, with all buildings generally setback between 4.5m and 6m from the road boundaries.

As the proposed carport is entirely set forward of the line of the dwelling with only a 188mm front road boundary setback, the proposed carport will not maintain the visual continuity and pattern created by the existing buildings within the street.

However, the Committee is also of the view that the proposed development does satisfy Performance Outcome PO2 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 for the following reason:

PO2 (a) preserve the amenity of adjacent land and dwelling houses

The proposed carport preserves the amenity of adjacent land and dwelling houses because :

- It has been designed to integrate with the new dwelling, adopting similar roof pitch and lines, and using materials that provide an attractive finish; and
- The size does not untowardly contribute to excessive site coverage, helping to maintain adequate private open space on the subject lot; and
- It is set back from the property right side boundary a distance of 1.653m, thus it is positioned well clear of the windows to habitable rooms of the dwelling on the adjacent land; and
- It is not excessive in height, and therefore will not unduly overshadow the adjacent land.

Andrew Parker
Building and Development Committee Chair
Date: 22 December 2016

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