



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	14 –15
Applicant:	Matthew & Candice Schemioneck
Assessment Manager:	Suncoast Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	26 Coronation Avenue, Golden Beach (described as lot 612 on RP 79899) – the subject site

APPEAL

Appeal under section s526 of the *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 amenity and streetscape.

Date and time of hearing:	Tuesday 30 June 2015 at 10.00am
Place of hearing:	The subject site
Committee:	Steve Craven – Chair Debbie Johnson – Member John Carroll – Member
Present:	Gary Sheffield – Council representative
Absent:	Matthew Schemioneck – Applicant and property owner – could not attend

DECISION:

The Building and Development Dispute Resolution Committee (Committee) –

- In accordance with section 564(2)(c) of the SPA, **sets aside** the decision of the Assessment Manager and approves the Development Application.
- In accordance with section 564(1) of the SPA, directs the Assessment Manager to set reasonable and relevant conditions that in particular ensure that –
 - The building is built inside the southern property boundary and road frontage.
 - The power connection is consistent with the Overhead Service Clearances in the Queensland Electricity Connection and Metering Manual.
 - Fire rating is provided as required.
 - Maximum building height is reduced to 3.6m as nominated in AO2.1 of the Dwelling House Code.

BACKGROUND

The subject site and surrounding lots are well established, with the locality having established many years ago. Over the years, many of the homes in the locality have been replaced with new housing and others have been renovated or extended. It therefore presents as a mix of housing styles, though almost all on Coronation Avenue are low-set. Its footpath is unusually wide (about 6 metres), which is common to many of Caloundra's more established localities. The streetscape benefits from these wide footpaths and is further enhanced by the predominance of the 6m wide property line setback generally being observed on both sides of the street.

In the section of Coronation Avenue between McLean and Earnshaw Streets – in which the subject property sits – there are 4 properties with carports and other structures constructed between their respective houses and the street.

The subject site contains a low-set house that originally appears to have comprised a rear garage, with access to it via concrete tracks between the house and the southern boundary. At an indeterminate time, an extension was made between the house and that boundary, toward the rear of the house, which prevented maintenance of the rear access, leaving space for 2 open, tandem parking spaces on the concrete tracks. According to the Applicant, that extension occurred prior to the Applicant's purchase of the property in 2013.

Following a development permit for building works by the Assessment Manager in January 2015, a second addition was constructed in the space between the house and boundary, this time between the first addition and the front of the house. This left only one of the open parking spaces, though part of it protruded into the house setback. Granting this permit may have been contrary to acceptable outcome AO8 of the Sunshine Coast Region Planning Scheme's Dwelling House code, which requires provision of on-site parking as follows: *for a lot exceeding 300m² - at least 2 (two) car parking spaces with at least one space capable of being covered*. Nevertheless, the permit was granted. Prior to the current Application being submitted, the property had one uncovered parking space.

The Applicants determined that their only option for accommodating 2 cars on the property was to construct a double carport in front of the most recent extension. The Applicant proceeded to construct that carport without development approval for building works. An Application for that approval has since been made and it is this Application which is the subject of the appeal.

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.

By letter dated 24 March 2015, Council directed Suncoast Building Approvals to refuse the Application on amenity and streetscape grounds, stating:

The carport does not comply and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014 Performance Outcomes PO2 for Garages Carports and Sheds

- (a) Preserve the amenity of adjacent land and dwelling houses;*
- (b) Do not dominate the streetscape;*

On 21 April 2015, the Assessment Manager subsequently refused the Application as directed by the Concurrence Agency.

On 18 May 2015, the Building and Development Committee Registrar received an appeal by the Applicant against the Assessment Manager's Decision Notice.

The Applicant's grounds for appeal stated –

There are several other carports in close proximity/neighbouring our property that are very similar to what we have applied for. See pics attached.

HEARING

A hearing was held with all parties on the subject site at 10.00am, Tuesday 30 June 2015. The Applicant could not attend the hearing and while the Applicant's wife was present, she did not want to make representations on their behalf. The Committee members advised the Applicant's wife that the Committee would continue with their assessment and invite the Applicant to make written representations. The Applicant subsequently did provide a written submission on 6 July 2015 and this has been duly considered as part of the appeal.

During the hearing, the Committee noted a number of issues of relevance to the decision, so followed that up with a request to the Applicant for additional information. Below is a list of the requested material:

- The status of the building approval for the southern side extensions, which have been built. The Committee understood that an Application may have been made to the certifier, but it is not known if it had been approved. This is relevant because, as it exists, it eliminates car parking options other than the one for which approval is sought. The Committee seeks advice about whether the extensions can be approved in their current form.
- A survey confirming the location of the southern boundary, required to confirm the width of the road frontage and the proximity of the carport to the southern boundary.
- Confirmation of carport height. As built, the carport's southern edge appears to be higher than the 2.4 metres shown on the elevations and the height of the northern end is not shown. It should be noted that Acceptable Outcome AO2.1(b) in the Dwelling House Code nominates 3.6 metres.
- Information on a couple of building matters. Appreciating that the Committee's role is to review the siting variation, there are nevertheless building issues that may influence siting, nominally –
 - Solutions to fire rating on the southern boundary (which may affect siting or the wall structure);
 - Structural issues (to avoid contact with the roof of the other extension, the purlin at the trailing edge of the roof has been severely cut);
 - Disposal of stormwater drainage (depending on the survey, the roof gutter may be over the boundary); and
 - Siting of the power connection to the street (which sits close to the leading edge of the carport).
 - Evidence of support from neighbours, which the Applicant mentioned had been obtained.

The Applicant supplied the building approval only and did not respond to the remaining issues.

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 18 May 2015, including proposal drawings and photographs of carports elsewhere in the locality.
2. Written submissions by the Applicant and the Council representative at the hearing.
3. Written submission by the Applicant after the hearing on 6 July 2015.
4. Oral submission by the Council representative 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 and street view 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 comply with both A1(c)(i) and A1(c)(ii).

However, 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 deals with car accommodation in two sections –

- *Siting provisions in PO2; and*
- *Access and parking standards in PO8.*

The following addresses each.

PO2: Siting Provisions

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

Garages, Carports and Sheds			
Performance Criteria		Acceptable Outcomes	
PO2	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.	AO2.1	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 ² .

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) and (c), which state:

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;*

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 largely open streetscape, generally uncluttered by front yard visual incursions, such as fences and carports. However, this character is slightly lessened by the carports erected on the front boundaries at 32, 36 and 27 Coronation Avenue and within the front setback area at 28 Coronation Avenue. These structures affect the character of the section of street closer to McLean Street, but they nevertheless have an influence on the section of the street in which the subject site is located.

Because the proposed carport is an open structure with two timber columns on the road frontage and a relatively low profile roof and supporting beam, it is not a particularly dominant structure. Nevertheless, in this location, the wide footpath and setback areas, as well as low house heights, create a largely open character that contributes to the amenity of adjacent land and dwelling houses. In that context, the carport would, to a significant extent, detract from that open environment and contribute to a partial visual dominance of the streetscape. It occupies a significant part of the front setback area and at approximately 4.0 metres high (there is no overall

height nominated on the application drawings), protrudes above the height of the house on the subject property and most other houses in the street.

Therefore, to deal in part with the visual dominance issue, the maximum height should be reduced to 3.6 metres, which would achieve consistency with acceptable outcome AO2.1(b) of the Dwelling House Code.

Landscape

The following paragraph makes calculations of the extent of frontage and front yard occupied by the carport. They rely on estimates because the proposal drawings are not comprehensively – or perhaps accurately – dimensioned.

The 6 metre wide carport, including roof, covers 40% of the 15 metre frontage. With respect to site cover, the carport has a floor area of 38m², so it covers 42% of the 90m² front yard.

Therefore, the remaining 52m² of front yard achieves satisfactory compliance with performance outcome PO2(c): “*maintain an adequate area suitable for landscapes adjacent to the road frontage*”.

Visual Continuity

As with the streetscape, the pattern of buildings and landscape elements in Coronation Avenue is set by predominantly lowset houses, wide footpaths and large, open front yards, 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.

However, the carports at 28, 32, 36 and 27 Coronation Avenue have an influence. It may be that they have not been approved – or may have been approved before the planning scheme had carport provisions – but they influence the street’s visual continuity to an extent.

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*”, though the impact is not serious.

PO8: Access and Car Parking

The Dwelling House Code contains specific access and parking provisions, as follows:

Access and Car Parking			
Performance Criteria		Acceptable Outcomes	
PO8	Sufficient parking spaces are provided on the site to cater for residents and visitors	AO2.1	On-site car parking is provided in accordance with the following:- (a) for a lot exceeding 300m ² —at least 2 (two) car parking spaces with at least one space capable of being covered; or (b) for a lot not exceeding 300m ² —at least 1 (one) covered car parking space. Note—car parking spaces may be provided in a tandem configuration provided that all spaces are wholly contained within the <i>site</i> such that parked vehicles do not protrude into the road reserve

As mentioned earlier, prior to this Application, the subject site did not satisfy these parking criteria. It exceeds 300m², but it did not have two parking spaces and while the single space was capable of being covered, it would have required a siting variation because the roof would have been within 6 metres of the front boundary.

The current Application satisfies acceptable outcome AO2.1.

REASONS FOR THE DECISION

The Committee considered the relevant performance criteria in the Dwelling House Code provisions. Because of the open character evident in the street, it is of the view that the proposed carport would, to a limited extent, detract from the street's open character, contribute to a partial visual dominance of the streetscape and compromise the visual continuity and pattern of buildings and landscape elements in the street. However, the extent of impact is considered acceptable.

The combination of past house extensions has conspired to create a situation where the only way to satisfy acceptable outcome AO2.1 is through constructing a carport in the front yard, such as that proposed in this Application. It may be that those extensions were the result of building work approvals that did not properly account for the Dwelling House Code, but the approvals stand and the Committee needs to take these into consideration in making their decision in this appeal.

Because the amenity, streetscape and visual continuity impacts are acceptable, the Committee holds the view that the need for on-site car accommodation warrants approval of the Application.

Assessed against performance outcomes PO2 and PO8 of the Council's Dwelling House Code, the proposed carport would –

- Satisfactorily preserve the amenity of adjacent land and dwelling houses.
- Not significantly dominate the streetscape.
- Maintain an adequate area suitable for landscapes adjacent to the road frontage.
- Maintain the visual continuity and pattern of buildings and landscape elements within the street.
- Provide at least 2 (two) car parking spaces with at least one space capable of being covered.

Steve Craven
Building and Development Committee Chair
Date: 27 August 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:

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