



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	07-14
Applicant:	Andrew Paszkowski and Tanya Paszkowski
Assessment Manager:	Building Surveying Professionals (Qld)
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	3 Oceanic Drive Warana and described as Lot 286 W 95511 – the subject site

Appeal

Appeal under section 526 of *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a siting variation for the proposed carport at the subject site. The decision was based on a concurrence agency response from Council.

Date and time of hearing:	23 April 2014 at 11.00am
Place of hearing:	The subject site
Committee:	Robin King-Cullen – Chair
Present:	Andrew Paszkowski and Tanya Paszkowski – Applicants Vincent Whitburn – Sunshine Coast Regional Council Stewart Magill - Building Surveying Professionals (Qld) Pete Sparkes – Adams and Sparkes Town Planning Rebecca Reitano - Adams and Sparkes Town Planning

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager to refuse the application and **replaces** it with the following decision:

The Application is approved subject to the following condition:

- (a) approval by Unity Water of the “Build over Sewer” application for the development generally as proposed in drawing numbers 13127A/01, 113127A/02, 113127A/03, 113127A/04 and 113127A/05 dated 12/11/2013; and
- (b) compliance with all other relevant building assessment provisions.

Background

The matter concerns the decision of Council as Concurrence Agency to refuse an application for siting variation to enable:

- (a) a double carport to be constructed within 220mm of the front road boundary and 715mm from the southern side boundary; and
- (b) a gazebo to be constructed within 3003mm of the front road boundary.

In council's opinion, the development "*does not and cannot be conditioned to comply with the Caloundra City Plan 2004 Specific Outcome 07 Garages and Carports.*"

The subject site

The subject site, having an area of 546 square metres, is located in Oceanic Drive Warana.

The subject site slopes slightly up from Oceanic Drive and contains a double storey dwelling constructed with a 5800mm setback from Oceanic Drive and a 3300mm setback from the western side boundary. An existing rendered block work fence approximately 1800mm high is constructed along the westernmost length of both the north and south side boundaries and along the majority of the front boundary except for the driveway opening.

The carport is proposed to be constructed immediately in front of the existing double garage. The gazebo is proposed to be constructed behind the front boundary fence in front of the existing dwelling approximately midway between the dwelling and the fence.

Oceanic Drive at this location comprises both single and two storey dwellings. The area could be described as in transition, with some older houses being replaced or upgraded. The existing dwelling on the subject site appears to be of more recent construction than those adjoining.

There is significant landscaping in Oceanic Drive in the vicinity of the subject site and also on both adjoining properties.

Build over sewer application

A Unity Water sanitary sewer line traverses the frontage of the site in an east west direction approximately 1050mm from the front road boundary and within the road reserve. The carport is proposed to be constructed over the sewer main invert connection point and requires a "Build over Sewer" application. The Committee was advised that such an application has been made.

The Committee cannot make a determination regarding the Unity Water application as the outcome is pending and had not been determined at the time of the hearing.

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 Committees Registrar on 10 March 2014.
2. Verbal submissions by all parties at the hearing.

3. Written submission from Building Surveying Professionals (Qld) Pty Ltd dated 23 April 2014 tabled at the hearing.
4. The relevant provisions of the Caloundra City Plan, in particular Code 8.5 Detached Housing Code
5. *Sustainable Planning Act 2009 (SPA)*.

Findings of Fact

The Committee makes the following findings of fact:

- The subject application seeks approval to erect a double carport within 220mm of the front road boundary and 715mm from the southern side boundary; and to erect a gazebo within 3003mm of the front road boundary.
- The provisions of Code 8.5 Detached House Code of the Caloundra City Plan 2004 apply to the proposal, in particular Specific Outcome 07 Garages and Carports.
- The proposal does not meet the Acceptable Solution S7.2 of Code 8.5 as the minimum road boundary setback is less than 6m. As a result, the application must be assessed against Specific Outcome 07 which requires that 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”
- By letter dated 24 December 2013, Council notified the Assessment Manager of the need for the following further information to enable the proper consideration and determination of the response: *“Supply a letter from the owner at No 5 Oceanic Drive Wurtulla that there is no objection to the construction of the proposed carport at No 3 Oceanic Drive.”*
- An undated letter from PH Holding Group Pty Ltd was submitted as part of the appeal documents and states *“as the owner of 5 Oceanic Drive, Warana, PH Holding Group Pty Ltd hereby confirms that it has no objection to the construction of the proposed carport at 3 Oceanic Drive Warana.”*
- Objection or non-objection from adjacent owners to an application such as the one subject of the appeal is not identified as a matter for consideration in either the SPA or Caloundra City Plan 2004.
- In its Concurrence Agency response to the application dated 13 February 2014, Council directed the application be refused as:
 - *As per submitted plans, the carport position is proposed to be constructed over Unity Water Sewer Main Invert connection point and requires a “Build over Sewer” application, and*
 - *The carport and gazebo does not comply and cannot be conditioned to comply with the Caloundra City Plan 2004 Specific Outcome 07 Garages and Carports.*

- *“detached house” means a use of premises for residential accommodation comprising a detached dwelling unit on one site. The term includes:
(a) an outbuilding which is subordinate to the dwelling unit;*

07 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 – the proposed character of the carport and the gazebo will have a dominating appearance when viewed from the street given that it is located within the prescribed 6m setback and located forward of the line of the existing dwelling;

(b) views and vistas- the building will not preserve views and vistas; and

(c) building massing and scale as seen from neighbouring premises – the carport and gazebo will detract from adjacent properties due to the building massing and scale.

- The Council’s representative at the hearing was unable to explain further to the Committee the grounds on which Council decided to refuse the application.

Reasons for the Decision

- The Council’s decision to refuse the application was based on alleged non-compliance with Specific Outcome 07 of Code 8.5 Detached House Code.
- The proposed structures, although located within 6m of the road boundary, are of a compatible design with the existing dwelling and are not considered to create a more dominating appearance when viewed from the street than does the existing dwelling.
- The proposed structures are not considered to have an adverse impact on views and vistas.
- The proposed structures are not considered to detract from adjacent properties due to the building massing and scale, taking into account the significant landscaping in Oceanic Drive in the vicinity of the subject site and also on both adjoining properties.
- The Council’s representative could offer no reason not to approve the application.

Robin King-Cullen
Building and Development Committee Chair
Date: 16 May 2014.

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
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