



## Building and Development Tribunals – Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>16-11</b>
<b>Applicant:</b>	Nicola Debbie Field
<b>Assessment Manager:</b>	Sunshine Coast Regional Council (Council)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	10 Agnew Road, Mount Mellum and described as Lot 10 on RP814920 – the subject site.

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Council as the assessment manager, dated 10 February 2011, to refuse a development application for building works for the siting of a carport.

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<b>Date of hearing:</b>	10am on Tuesday 12 April 2011
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Mr Phil Dance – Chairperson
<b>Present:</b>	Mr Richard Prout – Council representative Ms Nicola Field – Appellant Mr Sam Flaherty – BA Group, designer Mr Dean Parry – RED Building Mt Scott Bailey – Resident

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### **Decision:**

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of Council to direct the refusal of a development application for siting of a carport; and replaces it with the following decision:

The Committee, in accordance with section 564 of the SPA **directs** the assessment manager to **approve** the development application, subject to compliance with the following conditions:

1. The higher (western) of the two existing vehicle crossovers is to be removed in its entirety, with the area to be re-established with lawn and other landscaping.
2. The space between the carport and the boundary, and to the extent it is permitted by the local laws of the Council, the footpath, shall be landscaped so as to provide vegetative screening of the carport when

viewed from Agnew Road.

3. Boundary landscaping shall be extended to the east to occupy all of the remaining available space between the carport and the remaining driveway. All landscaping required by these conditions shall comprise species calculated to provide a dense visual barrier to a height of at least three metres at maturity, and shall be maintained in good condition at all times.
4. The carport roof shall be finished in materials and colours to match the adjoining dwelling.

### **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 3 March 2011.
2. A site inspection of the site and the locality, undertaken by the Chairperson on 12 April 2011.
3. Council's decision notice dated 10 February 2011.
4. Verbal and written submissions from the parties at the hearing.
5. The Caloundra City Plan 2004, in particular, the Detached House Code 8.5.
6. The Queensland Development Code (QDC) – Part MP1.2.
7. The *Integrated Planning Act 1997*
8. The SPA.

### **Findings of Fact**

The Committee makes the following findings of fact:

- Council's decision to refuse the application is based on alleged non-compliance with Specific Outcome O5 (Frontage Setbacks in the Rural Precinct) of the Detached Housing Code 8.5 of the Caloundra City Plan 2004, as:
  - The proposed development does not maintain an open visual landscape dominated by natural elements rather than built structures; and
  - (The proposed development) does not ensure that future road requirements are not compromised.
- The subject site is an irregularly shaped allotment with an area of 2100m<sup>2</sup> and a frontage of approximately 67.5m to Agnew Road.
- The existing dwelling is set back approximately 6.0m from Agnew Road at its nearest point.
- It is proposed to extend the existing dwelling, including increasing its height to two storeys, but maintaining the 6.0m setback for the dwelling proper.
- The car port proposal, which is the subject of the appeal, would be connected to the extended dwelling and located within the 6.0m setback.

### **Reasons for the Decision**

In relying on the specific outcomes of the Detached House Code of the planning scheme, it is instructive to also consider the overall outcomes of that code. These include:

- “(b) detached houses and associated buildings are compatible with surrounding development; and  
(c) detached houses and associated buildings are sited and designed to protect residential amenity and maintain streetscape character.”

While there are ample opportunities to provide covered car parking arrangements elsewhere on the site (as pointed out by the Council), the location sought by the appellant is the most convenient and logical. While it is located within the 6.0m setback, it allows for removal of one of two bitumen driveways serving the property, and to return that area to effective landscaping.

Also, the immediate locality displays a park residential or rural residential character rather than a more traditional rural character. Accordingly, the built environment is quite evident locally. This supports the view of the Committee that the car port will not be incompatible with surrounding development.

With respect to residential amenity and streetscape character, the Committee is of the view that the goal of protecting residential amenity applies to the site of the development as well as neighbouring and nearby properties. The amenity enjoyed at the property will be enhanced, as the proposed carport location is the most logical and convenient outcome in terms of its relationship to the dwelling.

With respect to the residential amenity of other dwellings, the Committee is of the view that the carport, when screened by appropriate landscaping and an existing stone pitched retaining wall, will not adversely affect the amenity enjoyed at any other property.

With respect to streetscape character, any true rural character is presently compromised by the localised enclave of smaller allotments and commensurate built environment, including dwellings, sheds, driveways, fences and gates.

The subject property has a frontage of about 67.5m to Agnew Road. The property does not have a fence along this frontage and a good deal of landscaping has been installed along the boundary. The conditions imposed by this decision will ensure that the side of the carport, (about 6.0m-) when viewed from the street, will be softened by landscaping. The condition about extending landscaping to the east to abut the remaining driveway will also obscure views of the carport for motorists driving west along Agnew Road.

The specific outcome of the planning scheme relied upon by the Council in its refusal is Specific Outcome O5 (Frontage Setbacks in the Rural Precinct) Code 8.5 Detaching Housing Code which provides as follows:

*“In the Rural Precinct, the detached house and associated buildings are set well back, or otherwise buffered from frontages to State-controlled roads, existing or likely future heavy vehicle haul routes and any other road in order to:*

- (a) avoid or minimise noise and dust nuisance;*
- (b) maintain an open visual landscape dominated by natural elements (rather than built structures); and*
- (c) ensure that future road requirements are not compromised.”*

The existence of a stone pitched retaining wall which will partially obscure the carport, and both existing and new landscaping required by conditions, will all serve to buffer the carport from the road such that a relatively open visual landscape will be retained. In this it is noted that the carport affects only 6.0m of a total frontage length of about 67.5m.

The Council representative did not claim knowledge of any future road requirements and it would seem most unlikely in all the circumstances that there would ever be any such requirement. Indeed, the removal of one of the two constructed driveways servicing the property might have a beneficial effect on the operation of the road into the future.

There was no reliance on any need to minimise noise or dust nuisance.

The carport is supportable, subject to the imposition of conditions as required by this decision.

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**Phillip Dance**  
**Chairperson, Building and Development Dispute Resolution Committee**  
**Date: 25 May 2011**

## **Appeal Rights**

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Tribunal 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**