



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number: 41-10

Applicant: Mr John Wust

Assessment Manager: Sunshine Coast Regional Council (Council)

Site Address: 111 Kirra Road, Maroochy River and described as Lot 8 on SP 170725—the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Council to refuse a development application for building works for the siting of a carport.

Date of hearing: 10:00am on Thursday 29 July 2010

Place of hearing: The subject site

Committee: Mr Phil Dance – Chair

Present: Mr John Wust – Appellant
Mr Allan Thompson – Council
Mr Roy Saint – Consultant Engineer, Roy Saint Consulting

Decision:

The Committee, in accordance with section 564(2)(c) of the SPA **sets aside** the decision by Council and **replaces** it with the following decision:

The application for preliminary approval of building work – siting variation, is approved subject to the following conditions:

- 1(a) A vegetative screen shall be established within the property, adjacent to the Kirra Road frontage, commencing at the westernmost corner of the lot, and extending to a point not less than three (3) metres from the western edge of the driveway which gives access to the road.
- (b) This vegetative screen shall be planted within a corridor of not less than three (3) metres in width, with the southern (road) edge of the corridor being, either, the property boundary, or the constructed fence line. This is to be determined at the discretion of the applicant. (If the property boundary is selected as the southern edge, the fence line will fall within the corridor).

- 2(a) A vegetative screen shall be established within the property, adjacent to the Kirra Road frontage, between the projected western extremity of the carport and the eastern edge of the driveway which gives access to the road.
- (b) This vegetative screen shall be planted within the space between the property boundary and the constructed driveway such that it is represented on both sides of the existing fence structure.
3. The vegetative screens specified in 1 and 2 above shall comprise species endemic to the area and be selected and planted (in terms of density) so as to provide an effective visual screen to not less than four (4) metres in height at maturity.
4. A development permit – building work, may not be issued until initial planting of the vegetative screens specified above has been effected.
5. The vegetative screens, once established shall be maintained so as to provide an effective visual screen in accordance with these conditions at all times that the carport (with siting variation) remains in existence.

Background

The property is an irregularly shaped parcel of 4002m² located within the Kirra Road Sustainable Rural Residential Precinct in Planning Area 23 – Maroochy River Plans.

The locale has been progressively subdivided over the years. It is thought by the parties that the subject site was created in the late 1980's, and it seems that the dwelling existing on the land was constructed at about that time. More recent subdivisions have occurred in the locality, and it seems that residential use of lots has generally followed fairly closely after creation of lots. Thus, the development evident on more recent stages might be characterised as more modern and perhaps more prestigious than older development, although not too much should be taken from this generalization. This might be seen as a trend rather than a rule.

An application was lodged with Council seeking preliminary approval for building work - siting variation, for a carport. The carport is in fact constructed, and is partially within the required setback from the road frontage.

The Council refused the application for siting variation as the development does not comply with and cannot be conditioned to comply with the following Maroochy Plan 2000 performance criterion of Code 4.1, Element 1, P3:

"P3 Buildings are sited to maintain the amenity of adjacent land and dwellings having regard to:

- (a) Overshadowing;*
- (b) Privacy and overlooking;*
- (c) Views and vistas;*
- (d) Building character and appearance;*
- (e) Building massing and scale as seen from neighbouring premises;*
- (f) The typically open or forested rural landscape in which buildings are a minor element;*
- (g) Maintaining an open visual landscape dominated by natural elements; rather than built structures; and*
- (h) Buffering from unsealed roads, heavily trafficked roads and existing or likely future heavy vehicle haul routes in order to avoid or minimise noise and dust nuisance."*

The subject site has a frontage of about 92 metres to Kirra Road. A rock retaining wall is contained within the lot, adjacent to its road frontage. This wall rises to a maximum height of about 1.2 metres at a point approximately adjacent to the western extremity of the (constructed) carport which is the subject of the appeal. A "colourbond" type fence (which is a full visual screen), is erected above the rock wall. The fence is 1.8 to 2.0 metres in height.

The carport which is the subject of the appeal is 1.78 metres from the property boundary at its eastern end,

and 3.36 metres from the property boundary at the western end. The roof of the carport is visible above the fence, extending perhaps 0.3 metre to 0.5 metre above the top of the fence.

At the hearing, Council's representative tabled a report intended to better clarify the basis of the Council's refusal of the application.

Also at the hearing, the appellant tabled a letter of support from a neighbour who resides at 114 Kirra Road which is across the road from the subject site.

Multiple copies of both documents were at hand and these were exchanged and the parties were given time to peruse the respective documents. The parties confirmed that they were content to proceed with the appeal hearing forthwith.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice lodged with the Registrar on 9 June 2010, and attachments.
2. Council decision notice dated 28 May 2010.
3. Code 4.1 of the Maroochy Plan 2000, and other relevant elements of the plan.
4. The report dated 27 July, prepared by Council.
5. The letter of support from the resident of 114 Kirra Road.
6. The SPA.

The physical circumstances of the land and locality were also taken into consideration in reaching the decision.

Findings of Fact

The Committee makes the following findings of fact:

1. The carport requiring the siting relaxation is already constructed. (Its existence is not relevant to the determination of the appeal).
2. The carport is located approximately 1.78 metres from the road frontage at its eastern extremity, and approximately 3.36 metres from the boundary at its western extremity.
3. The visually dominant streetscape element along the frontage is a "colourbond" type fence of approximately 1.8 to 2.0 metres height, constructed above a rock retaining wall.
4. The constructed fence line is within the property alignment.

Reasons for the Decision

The overall purpose of the "Code of the Development of Detached Houses and Display Homes" which is relied upon by the Council is:

"To facilitate and encourage the development of a range of Detached house and Display home types and densities at suitable locations across the Shire, in ways that integrate new premises with:

- *the natural landscape;*
- *the character and amenity of surrounding premises;*
- *movement networks; and*

- *utility and community infrastructure, and which ensures such development does not adversely impact on environmentally sensitive areas within the Shire.*

(2) *That the height, siting and design of Detached houses and Display homes in Rural Residential Precincts achieves an acceptable level of amenity for residents and maintains a visual character where buildings are set within and subservient to an open or forested landscape.*

The particular performance criterion relied upon by the Council is:

"P3 Buildings are sited to maintain the amenity of adjacent land and dwellings having regard to:

- (a) *Overshadowing;*
- (b) *Privacy and overlooking;*
- (c) *Views and vistas;*
- (d) *Building character and appearance;*
- (e) *Building massing and scale as seen from neighbouring premises;*
- (f) *The typically open or forested rural landscape in which buildings are a minor element;*
- (g) *Maintaining an open visual landscape dominated by natural elements; rather than built structures; and*
- (h) ~~*Buffering from unsealed roads, heavily trafficked roads and existing or likely future heavy vehicle haul routes in order to avoid or minimise noise and dust nuisance.*~~

The siting of the dwelling and the carport on the land is at the crest of a hill. The site at that crest is dominated by a "colourbond" type fence which is erected atop a rock retaining wall. The effect of this is to make the carport barely visible to motorists approaching from the east.

Approaching from the west, the carport is somewhat more visible but is certainly not dominant in the streetscape.

When viewed from across the street, only the very top portion of the carport is visible and again, it is not dominant in the streetscape.

It is noted that the neighbour directly opposite has expressed support for the appellant in this matter.

The locale is rural residential, and inspection shows that structures are generally set back from road frontages as required by the planning scheme. Nevertheless, the introduction of structures, driveways, fences, vehicles and exotic flora all contribute to a quite highly modified landscape.

The carport, given its particular siting characteristics, does not detract in any significant way from the landscape as it exists locally, or the character and amenity of surrounding premises – see overall purpose of code.

Similarly, the carport does not significantly change the visual character of the site and locale. Notably, it could not be said that the existing lawful dwelling and fence are set within and subservient to an open or forested landscape. The carport will not further erode that position in any significant way and does not threaten achievement of the relevant purpose of the code.

With respect to the particular performance criterion relied upon by the Council, the carport will barely affect:

- views and vistas, and building character and appearance; and
- building massing and scale as seen from neighbouring properties.

With respect to items (f) and (g) of the element, the carport has only a very minor effect on the local landscape which is already quite heavily modified by development.

The general intent statement for the Sustainable Rural Residential Precinct is also relevant to this decision. That statement includes the following:

“More generally, the built environment in the Precincts should be sited, designed and finished so that it respects and remains visually subordinate to the natural environment by:

- *Keeping buildings and other structures generally below the height of the dominant tree canopy,*
- *Retaining as much of the remnant vegetation as possible and revegetating degraded areas,*
- *Maintaining natural drainage flowpaths and flow characteristics as much as possible,*
- *Minimising alteration and other disturbance of natural land form and topography in the design, siting and construction of buildings, other structures, roadways and other engineering works; and*
- *Ensuring bushfire and any geological risks are adequately addressed.”*

With reference to this provision, the carport:

- Is below the height of the prevailing tree canopy;
- Does not displace remnant vegetation and, through conditions, affords an opportunity to revegetate;
- Does not upset existing stormwater management or landforms, or introduce bushfire or geological sites.

The carport is visible in the streetscape, particularly for motorists approaching from the west. While it is not dominant or at odds with the streetscape, there is opportunity for screening to reduce its visual presence. Accordingly, conditions have been imposed which are intended to produce a softer, negative screen to help blend the carport and its immediate surrounds into the natural surrounds.

Phil Dance
Building and Development Committee Chair
Date: 9th August 2010

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
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