



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	05/2010
Applicant:	Mr Richard Sheehy
Assessment Manager:	Sunshine Coast Regional Council
Concurrence Agency: (if applicable)	Not applicable
Site Address:	5 Pildara Street, Wurtulla and described as Lot 164 on W9328 – the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the assessment manager's decision, dated 14 January 2010, to refuse a development application for building works for the siting of a carport.

Date of hearing:	21 April 2010
Place of hearing:	Council Chambers, 1 Omrah Avenue, Caloundra
Committee:	Ms Kari Stephens – Chairperson
Present:	Mr Richard Prout – Sunshine Coast Regional Council Mr Richard Sheehy – Applicant

Decision:

The Committee, in accordance with section 564 of the SPA **sets aside** the decision of Sunshine Coast Regional 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 roof of the carport shall be constructed to match the colour of the roof of the house.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar.
2. A site inspection of the site and the locality, undertaken by the Chairperson.
3. The assessment manager's decision notice dated 14 January 2010.
4. Verbal and written submissions from the parties at the hearing.
5. The Planning Scheme for the former Caloundra City Council – in particular, Code 8.5 Detached House Code.
6. The Queensland Development Code (QDC) – Part MP1.2.
7. The *Sustainable Planning Act 2009* and its regulations.

Background

- The subject site is currently occupied by a single-storey dwelling. It is located in an established estate occupied predominantly by older-style dwellings, mainly single storey in height. Limited redevelopment and refurbishment of some houses in the locality is evident. The site is bounded by detached houses on each of the side and rear boundaries.
- The site is located on the western side of the street, near the cul-de-sac end of Pildara Court. The land is flat and has an area of approximately 602m². The site is generally a rectangular shape with the rear boundary slightly larger than the street frontage, which accounts for the curvature of the cul-de-sac.
- A double carport is currently located in front of the main facade of the house, and extends to the front property boundary, resulting in a zero setback to the street. The Council states this carport was approved in 1992 by the former Caloundra City Council.
- During a site inspection, it was found that there are 12 houses with vehicular access to Pildara Court. Of these 12 houses, seven have structures built within the 6m setback, the majority of these being carports not dissimilar to that on the subject site.
- The proposed carport is intended to replace the existing carport in size and location. The roof structure is proposed to be changed from the existing flat roof, to a pitched roof with a 22.5° fall, which will match the roof pitch of the existing house. The proposed roof will be made from a colorbond material, to match the roof colour of the existing house. The existing steel posts on the front property boundary will be replaced with rendered block piers to match the existing house. The proposed carport, like the existing carport, will be open on three sides.

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 provisions of the Caloundra City Plan 2004's Detached House Code, in particular Specific Outcome 07 (garages and carports) which states:

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;*
- b) views and vistas; and*
- c) building amassing and scale as seen from neighbouring premises.*

- Specifically, the Council's decision notice goes on to state the following reasons for refusal:
 - *The proposed carport will have a dominating appearance when viewed from the street given that the building is located within the prescribed setback and located forward of the line of the dwelling; and*
 - *the carport will be inconsistent with the existing and proposed streetscape character; and*
 - *the carport will detract the outlook from surrounding properties due to the buildings massing and scale.*
- In addition to the above, Council's reasons for refusal states that the allotment is not constrained and has complying off-street parking in accordance with the code; and the location of the existing buildings on site are such that an alternative design is available to both comply with the planning scheme provisions and have covered car parking spaces which do not unduly impact upon the streetscape.
- Notwithstanding the above, it is uncontentionous that the existing carport has an existing and valid 1992 approval. The requirements for carport and garage setbacks were introduced some 12 years later as part of the Detached House Code within the 2004 City Plan.
- The *Sustainable Planning Act 2009* protects lawfully constructed buildings. Specifically section 683 states:

"to the extent a building or other work has been lawfully constructed or effected, neither a planning instrument nor an amendment of the planning instrument can require the building or work to be altered or removed.
- As such, the carport was lawfully approved and constructed, and the provisions of the Detached House Code cannot now require that building work to be altered or removed.
- The proposed carport is a replacement of an existing lawful structure. There is no material change, as the carport is not the start of a new use, nor does it replace a use that has been abandoned, nor is there a material increase in the intensity or scale of the use, as its size and location remain consistent with the existing.
- The only discernible change relates to the pitch of the roof, which, from an urban design perspective, is considered to increase the visual appeal of the proposed building by matching the roofline of the existing house.

Reasons for the Decision

Based on an assessment of these facts, it is the Committee's decision that the decision notice being appealed against be **set aside** and that the building works application for the siting of a carport be **approved**, subject to compliance with the following condition:

1. The roof of the carport shall be constructed to match the colour of the roof of the house.

The proposed carport is the replacement of an existing lawful structure. There is no material change from the existing structure, to the proposed. The *Sustainable Planning Act 2009* protects lawfully constructed buildings.

There will be no change to the existing situation in terms of views and vistas.

In the opinion of the Committee, the modernisation of the carport, and the increase in roof pitch, will improve the building character and appearance, from that which currently exists on the site.

Kari Stephens
Chairperson
Building and Development Committee Chair
Date: 12 May 2010

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 Infrastructure and Planning
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