



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

**Appeal Number:** 3—09—075

**Applicant:** Christi Carluccio

**Assessment Manager:** Sunshine Coast Regional Council

**Concurrence Agency:** N/A  
(if applicable)

**Site Address:** 273 Duke Road and described as Lot 2 on SP 167249 — the subject site

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### **Appeal**

Appeal under section 4.2.9(1)(a) of the *Integrated Planning Act 1997* (IPA) against the decision of the Sunshine Coast Regional Council to refuse a development application for a siting variation for a class 10a garage.

Council reasonably believes that the proposed development application for a class 10a garage does not comply with, and cannot be conditioned to comply with the Maroochy Plan 2000 performance criteria of Code 4.1, Element 1, P3 namely:-

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

*(a) views and vistas;*

*(b) building character and appearance;*

*(c) 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.*

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**Date of hearing:** 11:00am Monday 26 October 2009

**Place of hearing:** The subject site

**Tribunal:** Mr Leo Blumkie – Chair

**Present:** Christi Carluccio – Applicant  
Mr Fred Vicary – Sunshine Coast Regional Council  
Mr Leo Blumkie - Chairperson

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2) (c) of the IPA, **sets aside** the decision appealed against and **directs** that the Assessment Manager delete the reason for refusal namely "*the proposed development does not comply and cannot be conditioned to comply with the following Maroochy Plan 2000 performance*

*criteria of Code 4.1, Element 1, P3)*" and **approve** the application subject to the proposal being changed from a Class 10a garage to a carport which satisfies the following conditions:-

- Wholly within the property (survey of front alignment required before finalising design);
- Maximum dimensions of 6m x 6m;
- Positioned in the same location as that proposed for the garage;
- Hip roof, pitched to match the existing house;
- Materials and colour scheme to match the existing house;
- Maximum height (2100mm clearance or approx 2.4m to gutter line) so as to achieve an acceptable box gutter detail between the carport and the existing house;
- Three sides to be open or enclosed with grill type enclosure, including personnel door (all maximum 10% solid when viewed from the horizontal position).
- Complete design to the satisfaction of Sunshine Coast Regional Council.
- Compliance with all other matters required under Queensland building legislation.

## **Background**

The subject site, 273 Duke Road, Doonan, described as Lot 2 on RP 167249 is zoned Sustainable Rural Residential under the Maroochy Plan 2000.

The Maroochy Plan 2000, under acceptable measures A3.1 for sites in the Sustainable Rural Residential precincts, requires a street setback of 10.0 metres for buildings including garages and carports.

The site is steep and falls away from the road.

The site is 1ha in area and is developed with a new dwelling constructed in approximately 2004.

Council granted a siting variation, on the 5 February 2003, for a reduction in the required 10.0 metre setback, hence, the existing house is setback 6.0 metres from the road frontage.

At the time the variation was granted, the Council representative advised, at the hearing, that Council was aware that vehicle accommodation was not included as part of the main dwelling. However, Council was not concerned, as the site had ample room to construct a garage/carport beside or behind the main dwelling.

On the 9 July 2009 application was made to Council for a siting variation to allow a class 10a garage to be erected within the required 6.0 metre setback.

On the 27 July 2009 Council forwarded an Information Request to the applicant asking for additional justification as to why a garage should be approved when a carport would have less impact.

The applicant advised weather protection and security was required.

On the 15 September 2009 the Applicant was advised by Decision Notice that Council had decided to refuse the application.

An appeal was lodged with the Registrar Building and Development Tribunals on 2 October 2009.

On the 21 October 2009 the Acting Registrar advised that:-

- the Sunshine Coast Regional Council in writing that an appeal had been lodged regarding the Decision Notice on the subject property; and
- the Applicant and Assessment Manager in writing that a Tribunal had been established to consider the appeal.

On the 21 October 2009 the Chairperson advised the Applicant and Assessment Manager in writing, the date, time and location for the hearing.

The hearing commenced at 11.00am on site.

The Council representative forwarded an e'mail report to the Tribunal on the 26 October 2009, which referred to all the issues discussed and presented at the hearing.

### **Material Considered**

The material considered in arriving at this decision comprises:-

1. 'Form 10 – Appeal Notice', grounds for appeal drawings, photos, extracts and correspondence accompanying the appeal lodged with the Registrar on 2 October 2009.
2. Decision Notice issued by the Assessment Manager dated 15 September 2009.
3. Verbal submissions from the Applicant at the hearing.
4. Verbal submissions from the Council representative at the hearing.
5. Code 4.1 Element 1, P3 of the Maroochy Plan 2000.
6. E'mail submission from Sunshine Coast Regional Council dated 26 October 2009.
7. *Building Act 1975*.
8. *Building Regulation 2006*.
9. The IPA.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

- The site is 1Ha in area, zoned Sustainable Rural Residential under the Maroochy Plan 2000.
- The site is steep and falls away from the road.
- The road reserve is 30.176 metres in width at the front of the property. The bitumen width is 5.5 metres in width. The front boundary is 15 metres from the edge of the bitumen.
- A wire brace is located on the front right-hand side of the property, which provides support to the power pole in the road reserve.
- Code 4.1 Element 1 P3 of the Maroochy Plan 2000 requires a 10.0 metre street setback for buildings including garages and carports.
- A variation has been granted by Council to allow a 6.00 metre setback from the street boundary.
- No covered vehicle accommodation forms part of the existing dwelling.
- A shed is located behind the dwelling and is accessible via a steep driveway behind the existing dwelling.
- The front left-hand side of the property has substantial vegetation.
- Water run off from the road reserve flows through the left-hand side of the property in heavy downpours.
- The location of the proposed garage is some 1.5 metres below the road reserve when measured at the front boundary line.

## Reasons for the Decision

- The applicant requires covered and secure vehicle accommodation for 2 vehicles in close proximity to the dwelling. This is considered a reasonable request.
- The applicant apparently did not include this requirement in the brief when the dwelling was being designed in 2003. Council, in granting the variation from a 10 metre to a 6 metre front boundary setback, did not insist on car accommodation at the time, as there were numerous other locations on site for garages etc.
- It is agreed that other locations on site are not in close proximity to the existing dwelling, interfere with fire fighting access to the rear of the property and would obstruct access to the brace to the power pole.
- It would appear that at the design stage the house could have been moved to the left 6 metres and an enclosed garage could have been located on the right hand end of the dwelling - i.e. all beyond the 6 metre required setback.
- The Tribunal agrees with Council, that an enclosed garage within the 6 metre setback would not satisfy the performance criteria of Code 4.1 Element1,P3 as it would;-
  - not maintain the preferred views and vistas envisaged by Council (particularly if the vegetation on the road reserve had to be removed),
  - set a precedence for enclosed buildings within the preferred street setback, and not be in keeping with the preferred building character and appearance envisaged by Council, as required in Code 4.1.
- The Council in their correspondence dated 27 July 2009 indicated a carport would be considered acceptable in the preferred location.
- An open carport would allow views through the structure to the vegetation on the property.
- A hip roof (pitched to match the dwelling) would reduce the bulk of the structure and still provide the weather protection required.
- In order to achieve security it could be enclosed with an open grill type material on three sides and still appear as an open carport.
- The size of the carport should only be determined after the survey of the front alignment has been carried out. Adequate storage for 2 vehicles is a carport 6 metres x 6 metres - hence that should be the maximum size permitted.
- Materials and colour scheme should match the dwelling so as to maintain building character and appearance.
- The carport should be as low as possible - 2100mm vehicle clearance if possible. It is acknowledged that the detail for the box gutter adjacent to the existing dwelling may determine the height of the structure.
- In order to satisfy performance criteria P3 - the carport should be positioned in the same location as that proposed for the garage.
- It is acknowledged that a carport would be approximately 1.5 metres below the road reserve when measured at the front alignment, and hence, only the top portion would be visible from the road.

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**Leo Blumkie**  
**Building and Development Tribunal Chair**  
**Date: 11 November 2009**

## **Appeal Rights**

Section 4.1.37 of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**