



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	49 - 12
<b>Applicant:</b>	Costa Constructions Pty Ltd
<b>Assessment Manager:</b>	Sunshine Coast Regional Council (Council)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	27 Thomas Street Maroochydore and described as Lot 15 on RP 132502 — the subject site

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### Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a preliminary Building Application (siting provisions) for an attached carport within the road boundary setback area.

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<b>Date of hearing:</b>	10.00am Monday 12 November 2012
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Debbie Johnson – Chair
<b>Present:</b>	Dean Costa – Applicant Tracey Potts – Property Owner Michael Rolton – MRA Building Design Alan Thompson – Sunshine Coast Regional Council

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### Decision:

The Building and Development Dispute Resolution Committee (Committee) in accordance with section 564 (2)(c) of the SPA **sets aside the decision** appealed against and **replaces it with the following decision:**

- The design and siting of the carport and the associated landscaping areas are to comply with the architectural drawings prepared by MRA Building Design. These drawings are identified as Project No 12007WD Amend-B, Sheets 01-06 inclusive, dated 22 August 2012.

### Background

The subject site is located within an established residential area predominately comprising detached homes that are approximately 35 years old. A few homes in this area have been demolished to make way for larger and more contemporary dwellings. Many have simply been renovated and extended as is the case in this instance. The current owners purchased the property with this intention to meet their family needs.

The site is effectively level and has an area of 610sq/m. The land would be rectangular in shape save one anomaly. The south western corner is truncated, as would be expected for a corner lot. However, the site is not a corner lot as there are equivalent sized rectangular shaped properties to both the north and the south. Two home sites abut the rear boundary and the existing home faces west addressing the street.

The existing dwelling is two storey with three bedrooms, a single garage and small workshop. The building is of a composite construction featuring rendered brickwork and light weight cladding. To date the home owners have completed substantial renovations and in the back garden they have added a large covered outdoor area and an in ground pool. This rear garden area has been securely fenced to protect their children, one of whom has special needs. Similarly this area secures the family pet dog.

The dwelling is predominately setback 5.0m from the road boundary alignment, however due to the boundary anomaly, this setback is reduced to 1m where the corner has been truncated.

It was intended that a large carport be built to the front and therefore the western side of the residence. The home owner is a tradesman who requires a covered area with sufficient length to park his vehicle complete with trailer. Similarly the family has a second car for their personal use. The proposed carport area is clear of the secured rear yard and the main entry to the home.

As the proposed carport was to be built within the road boundary, application was made, on or about 26 March 2012, to the Council as a Concurrence Agency, for consideration of a siting variation. On 17 April, Council issued an Information Request to the Applicant for further information stating that the Application is recommended for refusal as:

- a) A complying garage appears to already exist at the premises;
- b) Provision exists on the property to site a carport with complying setbacks;
- c) The performance criteria of Maroochy Plan 2000, Code 4.1, Element 1 P2 has not been addressed.

It does not appear that the Applicant formally responded to the above Information Request. On 22 August 2012, Council cancelled the Application and replaced it with a new Application which was a Development Application for preliminary building works. This Application was subsequently refused by Council on 3 September 2012. The Applicant lodged a Form 10- Application for Appeal / Declaration which was signed on 25 September and received by the Committee Registrar on 26 September 2012.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for Appeal/Declaration dated 25 September 2012', grounds for appeal and correspondence accompanying the appeal received by the Committee Registrar on 26 September 2012.
2. Recent and historic photographs of the subject site.
3. Verbal submissions by the Applicant, the owner, the building designer and the Council representative at the hearing.
4. The proposed approved architectural plans for the subject site.
5. Property details as available through Council's website.
6. The Maroochy Plan 2000.
7. The Queensland Development Code Part MP1.2 (QDC MP1.2)
8. The *Sustainable Planning Act 2009* (SPA)
9. The *Building Act 1975* (BA)

10. The Building Regulation 2006 (BR)
11. The National Construction Code 2012

## Findings of Fact

The Committee makes the following findings of fact:

The proposed carport structure has been designed to integrate with, and positively contribute to, the overall aesthetics of the existing home. The adjoining property to the north, which is most likely to be affected by the carport structure, has also built a single carport within the road boundary setback.

The QDC MP1.2 determines the design and siting standard for single detached housing on lots 450sq/m and over and defines, and consequently differentiates between a carport and an open carport as follows:

**Carport** means a class 10a *building*, other than a *garage*, providing covered vehicular parking.

**Open Carport** means a *carport* with –

- (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another *building* or a side or rear allotment boundary; and
- (b) not less than one-third of its perimeter open.

Using the abovementioned definitions, the proposed structure is best described as an open carport.

The QDC Acceptable Solution A1 (a) in part states:

For a detached dwelling, garage or a carport the minimum setback is -

- (i) 6m;

QDC A1 (c) states:

For open carports, the minimum road setback may be less than required by A1 (a) if-

(i) the aggregate perimeter dimension of walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the lines of supports) of that part of the carport within the same setback; and

(ii) there is no alternative on site location for a garage or carport that-

(A) complies with A1(a); and

(B) will allow vehicular access having a minimum width of 2.5M

In this instance the open carport would comply with A1(c)(i) but not with A1(c)(ii).

Where development does not meet all of the given acceptable solutions, assessment must be made against the QDC performance criteria. When assessing development against performance criteria, the acceptable solutions are no longer relevant.

QDC P1 states:

The location of a building or structure facilitates an acceptable streetscape, appropriate for-

- (a) the bulk of the building or structure; and
- (b) the road boundary setbacks of neighbouring buildings or structures; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

In addition to the QDC, local planning schemes may impose additional or alternative requirements.

The Maroochy Plan 2000 provides alternative siting requirements to those found in the QDC. Therefore, neither the Acceptable Solutions nor the Performance Criteria of the QDC apply to this development.

The Maroochy Plan defines a carport as follows:

**Carport** refers to a class10 building providing covered vehicular parking with:

- (a) two sides or more open; and
- (b) not less than one third of its perimeter open.

A side is taken to be open where the roof covering adjacent to that side is not less than 500mm from another building or a side or rear lot boundary;

Using the above mentioned definition, the proposed structure is best described as a carport. Maroochy Plan's Code for Residential Development 4.1, Element 1, Acceptable Measure A2.4 states:

Carport Setbacks

In Residential (other than Sustainable Rural Residential). Centre, Industrial, Special Purpose and Master Planned Community Precincts the minimum street setback for carports (including corner lots) is 4.5metres.

As the proposed development does not comply with this acceptable measure, assessment must be made against the relevant performance criteria for this element which states:

P2 Buildings and structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

- (a) views and vistas;
- (b) building character and appearance
- (c) casual surveillance; and
- (d) an adequate area suitable for landscaping being provided for at the front of a lot.

**Reasons for the Decision**

The subject site and surrounding land for some distance is effectively flat. Similarly, as the land has been completely developed, there are no vantage points or lines of sight available to appreciate views or vistas in this instance.

The carport has been competently designed to not only suit the existing dwelling but also to enhance it.

The carport will not obscure any of the window or door openings along the front of the home. Therefore the opportunity for casual surveillance will not be undermined by the carport structure. By contrast, residents may erect a 2m high fence along their property boundaries without triggering an Application.

The Applicant's architectural plans have indicated a landscape design for the front area of the site and these plans demonstrate that there is sufficient remaining area to achieve a quality landscape outcome.

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**Building and Development Committee Chair**  
**Date: 14 December 2012**

## **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  
GPO Box 2457  
Brisbane QLD 4001  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**