



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	01-14
<b>Applicant:</b>	Gary Latimer
<b>Assessment Manager:</b>	Building Approvals and Advice Pty Ltd (Assessment Manager)
<b>Concurrence Agency:</b>	Sunshine Coast Regional Council (Council)
<b>Site Address:</b>	221 Oceanic Drive Bokarina Q 4575 and described as Lot 261 on B 96011 – the subject site

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### Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application for a Building Approval (Application) relating to the construction of an attached carport. The decision followed a Concurrence Agency response for the siting of the carport structure.

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<b>Date and time of hearing:</b>	9.00am, 5 February 2014
<b>Place of hearing:</b>	221 Oceanic Drive Bokarina (the subject site)
<b>Committee:</b>	John Dunn – Chair Chris Schomburgk – Member
<b>Present:</b>	Gary Latimer – Applicant Gary Sheffield – Council representative

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### Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision by the Assessment Manager to refuse the Application.

### Background

The subject site, having an area of 600 square metres, is located on the ocean (eastern) side of Oceanic Drive, Bokarina.

The subject site is relatively flat and contains a two storey dwelling constructed around the 1980s with approximately a 6.00m setback from Oceanic Drive and approximately 6.15m from the south side alignment. The existing double garage has not been enclosed for habitable purposes and is located approximately 2.07m from the north side alignment.

The proposal is to extend the garage roof to create a carport in line with the garage with a setback of 0.60m from the Oceanic Drive frontage. The proposed carport presents a gable end with a height of approximately 4.20m at the ridge.

Caloundra City Plan 2004, Code 8.5, section O7 states that 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; and
- b) Views and vistas;
- c) Building massing and scale as seen from neighbouring premises.

Council as Concurrence Agency, advised the Assessment Manager that the Application had been refused in their letter dated 4 December 2013 specifically referring to items (a) and (c) of the above Code as their reason for refusal.

The Assessment Manager, following Council's advice subsequently issued a Decision Notice of refusal to the Applicant dated 13 December 2013.

An Application for appeal/declaration – Form 10 was lodged by the Applicant with the Registrar of the Committees on 10 January 2013.

A hearing was held on the subject site at 9am on 5 February 2014. Prior to the hearing, the Committee members drove around the surrounding area and noted numerous similar carports in the surrounding streets and approximately 13 structures, predominately shade sail structures, along the length of Oceanic Drive (approximately 2.00km in length).

At the hearing, the Applicant advised the reason for the requested inline carport-garage was convenience for housing his vehicles and trailers and that in his view, the design was consistent with other structures in the area. He considered that no other location on the site was suitable because of future extensions proposed for different parts of the site.

The Applicant presented photographs at the hearing that identified approximately 40 similar structures in the area and submitted these photographs to the Committee after the hearing on 14 February 2014.

At the hearing, Council provided background into 5 precedents in the area – Street numbers 196, 200, 201, 218 and 247 in Oceanic Drive. No 200 almost directly across Oceanic Drive from No 221 (the subject site) has a pre-1985 approval. Council further advised that there were no approvals for carports under the Caloundra City Plan 2004 and that an application at 218 Oceanic Drive had been refused. Council has the view that not allowing new structures within the prescribed road boundary setback will continue to maintain the amenity of the Oceanic Drive area – property values and the general public expectation of the Caloundra City Plan.

Council also considered in its refusal advice that a carport could be constructed on other parts of the site without the need for a siting variation.

During the hearing it was discovered that QDC MP 1.4 – Building Over or Near Relevant Infrastructure may have been applicable requiring yet another Concurrence Agency referral. A site inspection indicated that a sewer access chamber was located adjacent to the proposed carport and a Unity Water (UW) search was not available to determine whether or not the proposed carport was going to be constructed over underground infrastructure. A UW search submitted to the Committee on 5 February 2014 confirmed the carport was going to be constructed over a UW sewer.

After the hearing, Council confirmed that it was aware of the UW sewer at the time of the decision to refuse the Application and that the grounds for the refusal were reliant upon Code 8.5, Specific Outcome O7 only. After the hearing, Council also confirmed that of the 13 properties identified by the Committee along Oceanic Drive, 8 structures have approvals however none have an approval under the Caloundra City Plan.

## **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 Committees Registrar on 10 January 2014.
2. The *Sustainable Planning Act 2009* (SPA)
3. The referral agency response dated 4 December 2013 from Council to Building Approvals and Advice Pty Ltd directing refusal of the Application.
4. The Decision Notice dated 13 December 2013 from Building Approvals and Advice Pty Ltd to Gary Latimer stating that the Application has been refused.
5. Verbal submissions made by the applicant at the hearing.
6. Verbal and written submissions made by Council at the hearing.
7. Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.
8. Queensland Development Code MP 1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m<sup>2</sup> and over (QDC MP1.2)
9. Queensland Development Code MP 1.4 – Building Over or Near Relevant Infrastructure (QDC MP 1.4)
10. Email correspondence from the Applicant to the Committee dated 5 February 2014 with a list of adjoining owners who had consented to the proposal.
11. Email correspondence from the Applicant to the Committee dated 5 February 2014 – attachment with a Detailed Infrastructure Plan for 261B96011 221 Oceanic Drive identifying Unity Water sewer main.
12. Email correspondence from Council to the Committee dated 10 February 2014 – historical background of 13 structures identified in Oceanic Drive.
13. Email from Unity Water dated 12 February 2014 to the Applicant, Council and Committee regarding Unity Water requirements.
14. Email correspondence from the Applicant to the Committee dated 14 February 2014 – photographs of other carports in the areas surrounding the subject site.

## **Findings of Fact**

The Committee makes the following findings of fact:

- The subject site currently has a double garage which the Applicant states is insufficient to house his vehicles and work trailers.
- 13 Carports, shade sail structures &/or garages are located within the prescribed road boundary setback requirements along Oceanic Drive. None of the structures identified had received approval by Council under the Caloundra Plan 2004.
- The proposed carport is to be setback 0.60m from the Oceanic Drive frontage and has a gable end with a ridge height of approximately 4.20m.
- A UW sewer runs across the front of the property.

- The Queensland Development Code Part MP1.2 (QDC MP 1.2) determines the design and siting standard for single detached housing on lots 450sq/m and over.

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 Caloundra City Plan 2004 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 site plan indicates there is sufficient space on the property for a complying double width & extended length carport or garage on the south side of the dwelling without the need for a siting variation.
- While the design of the proposed structure is acceptable in terms of the built form in other parts of the Council area, it is not in keeping with the character of the Oceanic Drive area.

### **Reasons for the Decision**

Having regard to the above, the Committee considers that the proposal does not satisfy Specific Outcome O7, (Garages and Carports) of Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 in that it would dominate the streetscape and fail to preserve the amenity of the Oceanic Drive precinct having regard to building character and appearance.

Furthermore, a complying double width & extended length carport or garage can be erected on the south side of the dwelling without the need for a siting variation.

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**John Dunn**  
**Building and Development Committee Chair**  
**Date: 19 February 2014**

## **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**