



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	15-12
<b>Applicant:</b>	Lloyd Sloman and Lisa Davies
<b>Assessment Manager:</b>	Pacific BCQ
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council
<b>Site Address:</b>	6 Pavonia Street Peregrin Beach and described as Lot 555 on MCH 5425 — 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 siting variation for a proposed carport at the subject site. The decision was based on a Concurrence Agency response from Council.

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<b>Date of hearing:</b>	2 July 2012
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Robin King-Cullen, Chair Lisa Davies, Applicant
<b>Present:</b>	Don Grehan, Pacific BCQ representative Paul Riley, Sunshine Coast Regional Council, (Council)

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### **Decision:**

The Building Development and Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms the decision** of the Assessment Manager to refuse a siting variation for a proposed carport..

### **Background**

#### ***The Proposal***

The appeal concerns the decision of Council as Concurrence Agency to refuse an application for siting variation to enable a double garage to be constructed within 2702mm of the front road boundary and an open carport to be constructed within 3714mm from the front road boundary and within 1618mm from the southern side boundary.

The subject site, having an area of 875 square metres, is located in Pavonia Street Peregian.

The subject site slopes down from the road frontage and contains a two storey dwelling with an existing double garage under and constructed with a 6000mm setback from Pavonia Street.

The rear of the site contains a swimming pool and mature landscaping. The area between the southern side boundary and the existing dwelling is paved and landscaped.

In support of their application, the Applicants state that:

- the proposed structures are no more visually dominant than other structures within the vicinity;
- they are happy to provide a 1800 high block fence to screen the proposed structure; and
- there is no predominant pattern to the setback of buildings or landscaping within the street.

The Applicant, Ms Lisa Davies added the following points at the hearing:

- a shortage of living space creates the need to convert the existing garage into a family room;
- owners of other houses in the vicinity have done similar things (photographs provided at the hearing);
- the family has a total of four cars with children of driving age living at home; and
- an enclosed garage is necessary to protect vehicles from weather and salt spray.

During the hearing a number of alternative solutions were discussed between the parties which included:

- (a) an open carport (rather than enclosed garage) in the same location as the proposed garage and with a reduced roof pitch (no more than 5 degree pitch was suggested by Council; and
- (b) relocation of the single carport on the southern side of the existing dwelling further to the rear of the block so that it does not encroach within the 6m front setback.

The Applicants were requested to advise in writing whether or not they were prepared to consider this Alternative Solution. The Applicants response was forwarded under cover of email dated 17 July 2012 from the Assessment Manager.

In relation to item (a) above, the Applicants were prepared to change the profile of the new garage roof to a Dutch gable, to erect a solid 1.8metre high boundary wall at the front of the property and to install an electronic gate. They argued that these measures, together with planting of trees along the inside of the new wall and along the southern boundary, would hide the majority if not all of the extension from either end of the street. Amended plans and illustrations were supplied to reflect these changes. Further photographs and descriptions of other properties in nearby streets having garages within the 6m front setback were supplied.

In relation to item (b) above, the Applicants stated they would be prepared to forgo the single carport altogether in order to alleviate the Council's concerns regarding the width of the extension.

Council's comment on the amended plans and illustrations (contained within Council's email dated 2 August 2012) was that the amended proposal cannot be supported on the following grounds:

*"1. The proposal does not comply with Noosa Plan, 14.54 Siting & Effects of Development Setbacks*

*O1 Buildings and other structures are appropriately designed and sited to—*

*d) maintain the visual continuity and pattern of buildings and landscape elements*

- within the street;*
- e) for class 10a structures, do not visually dominate the street;*
2. *The garage becomes the dominant structure at the front of the dwelling*
  3. *Generally, all buildings in the street are set back 6m."*

The Committee considers that the amended proposal contained within the Assessment Managers email dated 17 July 2012 goes some way to addressing clause (e) of Specific Outcome 01 of Division 11 - Building Works Code of The Noosa Plan ("*do not visually dominate the street*"). However, the fact remains that there are no other garage or carport structures built within the 6m setback in Pavonia Street and therefore clause (d) of Specific Outcome 01, Division 11- Building Works Code of The Noosa Plan ("*maintain the visual continuity and pattern of buildings and landscape elements within the street*") is not complied within the Committee's opinion. .

### **Concurrence Agency Decision**

The Council response dated 20 March 2012 to the Development Application for building works lodged by the Assessment Manager refused the application on the grounds that:

*"The proposed development does not comply with and cannot be conditioned to comply with the following Planning Scheme performance criteria:*

*...The proposal does not maintain the visual continuity and pattern of buildings and landscape elements within the street and visually dominates the street."*

### **Material Considered**

The material considered in arriving at this decision comprises:

- (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 4 April 2012.
- (b) Copy of the referral agency response dated 20 March from Council to the Assessment Manager directing refusal of the application.
- (c) Copy of Development Application Decision Notice dated 28 March 2012 from the Assessment Manager stating that the application has been refused.
- (d) Verbal and written submissions made by the Applicant, Ms Lisa Davies and Assessment Manager at the hearing.
- (e) Verbal and written submissions made by Council at the hearing.
- (f) Email correspondence from Assessment Manager (forwarding response from Applicants to queries raised at the hearing) to the Registrar dated 17 July 2012,
- (g) Email correspondence from Council contained in email to the Registrar dated 2 August 2012 (responding to the Applicants amended proposal referred to in item (f) above.
- (h) The Noosa Plan Division 11 – Building Works Code.
- (i) The Noosa Plan – Schedule 1 – Minimum Boundary Setbacks for Buildings and Other Structures.

### **Findings of Fact**

The Committee makes the following findings of fact:

- The premises currently has a double garage which the Applicants state is needed for additional living space.
- The existing double garage is insufficient to house the family's four vehicles.
- The Applicants are prepared to change the profile of the new garage roof to a Dutch gable, to erect a solid 1.8metre high boundary wall at the front of the property and to install an electronic gate and landscaping to reduce the impact of the proposed garage from the street.
- There are no existing garages or carports constructed within the 6metre front boundary setback in Pavonia Street, although there are examples in surrounding streets which may or may not have been lawfully erected.

### **Reasons for the Decision**

The Committee considers that the proposal does not satisfy Specific Outcome 01 (d) of Division 11 - Building Works Code of The Noosa Plan in that it would not "*maintain the visual continuity and pattern of buildings and landscape elements within the street*".

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**Robin King Cullen**  
**Building and Development Committee Chair**  
**Date: 8 August 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  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**