



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

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| Appeal Number: | 40 - 16 |
| Applicant: | Darryl MacPherson |
| Assessment Manager: | Alliance Building Approvals Pty Ltd |
| Concurrence Agency: (if applicable) | Sunshine Coast Council (Council) |
| Site Address: | 26 Pembroke Avenue, Pelican Waters, Qld 4551, Lot 413 SP168153 – the subject site |

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse two Class 10a Carports. Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the buildings as they did not meet and could not be conditioned to meet the performance criteria of the Queensland Development Code MP 1.2, Element 1 Design and Siting of Buildings and Structures, Performance Criteria 2 Buildings and Structures, P2 (b) and (c).

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| Date and time of hearing: | 25 November 2016 10:30 am |
| Place of hearing: | The subject site |
| Committee: | Mr. Richard Prout – Chair Mr. John Panaretos – Member |
| Present: | Mr. Darryl MacPherson – Property owner and Applicant Mr. Ian Simpson – Assessment Manager Mr. Peter Chamberlain – Council representative |

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **sets aside** the decision of the Assessment Manager to refuse the two Class 10a carports at the direction of Council, and approves them with the following conditions:

- The proposed carports must be sited and built in accordance with the following drawings on pages 9,10 and 11 of this decision :
Drawing Number 2016-40 sheet 1 of 3, dated 15/12/2016, Site Plan;
Drawing Number 2016-40 sheet 2 of 3, dated 15/12/2016 Plan View, Elevation View; and
Drawing Number 2016-40 sheet 3 of 3, dated 15/12/2016, Location of First Truss.
- The maximum length of each carport must not exceed 6 m, total combined length must not exceed 12 m;

- The Applicant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for Building Work;
- Prior to the issuing of a Development Approval for Building Work the Applicant shall carry out one of the following:
 - Apply for and gain an Operational Works Approval for a second driveway/crossover; alternatively
 - Confirm with Council that an approval for the second driveway/crossover was previously approved by Council under a Local Law; alternatively
 - Remove the existing driveway/crossover.

Background

The subject site is a 680 m² allotment located at 26 Pembroke Avenue, Pelican Waters and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is rectangular in shape with a street frontage of 20 m.

The existing dwelling on the site was built in 2005 and includes a double garage facing Pembroke Avenue. The existing dwelling is compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2 (QDC MP1.2).

In May 2016 the property owners engaged Apollo Patios Roofing Australia PTY Ltd, (Builder) a company specialising in prefabricated carports, patios, enclosures etc. to design and construct; two new carports to be located on the eastern side of their dwelling, built to the boundary for a combined length of 13.2m; and a separate roofed veranda on the southern side of the dwelling.

As part of their service the builder lodged a Development Application for Building Work with Alliance Building Approvals Pty Ltd (Assessment Manager).

The proposed carports did not comply with Acceptable Solution A2(d)(ii) Buildings and Structures of the Queensland Development MP1.2 (QDC MP1.2) Element 1, Design and Siting of Buildings and Structures which states the following:

*A2(d) - Subject to A2(c), **class 10a** buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where –*

(ii) the total length of all buildings or parts, of any class, within the boundary clearance is not more than 9m along any one boundary;

As such, the Assessment Manager lodged a request for referral agency response for building work with Council on 13 June 2016. The Council issued a Concurrence Agency Response on 10 August 2016 instructing the Assessment Manager to refuse the Application as it did not meet and could not be conditioned to meet the requirements of the QDC MP1.2 Performance Criteria P2 Buildings and Structures elements (b) and (c).

An Application for appeal (Form 10) was lodged on 13 October 2016 by the Applicant with the Committees Registrar.

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 13 October 2016;
2. Assessment Manager Decision Notice, Permit No: 2016-0474, dated 11 October 2016, refusing the carports and patio as directed by Council;

3. The following drawings and photos:
 - Site Plan, by Apollo Patios, Drawing Number SC 10186, sheet 1 of 2;
 - Section View and Plan Views, by Apollo Patios, Drawing Number SC 10186, sheet 2 of 2;
and
 - Photographs of the proposed site and adjoining allotment.
4. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
5. Undated letter from Applicant advising Committee that the Assessment Manager would be representing him at the Appeal Hearing;
6. Sunshine Coast Council Application Form – 2015/16 Planning and Environment Request for Referral Agency Response for Building Work, dated 13 June 2016, lodged by Alliance Building Approvals (Assessment Manager);
7. Letter/report dated 12 June 2016 from the Assessment Manager to Council addressing Performance Criteria P2 Buildings and Structures of the QDC MP 1.2;
8. Information Request from Council to Assessment Manager dated 28 June 2016;
9. Email dated 8 July 2016 from Assessment Manager to Council responding to Council Information Request;
10. Email dated 18 July 2016 from Council to Assessment Manager responding to Assessment Manager email of 8 July 2016;
11. Email dated 20 July 2016 from Assessment Manager to Council with a standard form from Freedom Patios, headed Neighbours Consent signed by the owner of 22 Pembroke Avenue, Pelican Waters with tick box stating they had no particular concerns with the proposal;
12. Email and attached letter dated 22 July 2016 from the owner of 22 Pembroke Avenue, Pelican Waters to Council withdrawing their support for the carports and stating they believed the carports would have an adverse impact on their property;
13. Email dated 8 August 2016 from Assessment Manager to Council addressing the Performance Outcomes P2(b) and P2(c);
14. Concurrence Agency Response from Council dated 10 August 2016 instructing Assessment Manager to refuse Development Application for Building Work;
15. Email from the Assessment Manager to the Committee dated 9 December 2016 and following amended drawings:
 - Section View and Plan Views, by Apollo Patios, Drawing Number SC 10186, sheet 2 of 2, undated;
 - Air photography Site Plan, untitled, and undated; and
 - Photographs of the proposed site detailing the location of the carport posts.
16. Email response from Council to the proposed new design dated 13 December 2016;
17. Verbal submissions at the hearing from all parties to the appeal;

18. Sunshine Coast Council Development Information Site Report for the subject site;
19. The Sunshine Coast Planning Scheme 2014;
20. The Queensland Development Code MP 1.2 (QDC MP 1.2);
21. The *Sustainable Planning Act 2009* (SPA);
22. The *Building Act 1975* (BA).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 680 m² allotment located at 26 Pembroke Avenue, Pelican Waters and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014;
2. The allotment is rectangular in shape with a street frontage of 20 m;
3. The existing dwelling on the site was built in 2005 and includes a large double garage facing Pembroke Avenue, the existing dwelling is compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the QDC MP1.2;
4. The allotment was created on 20 December 2004;
5. The following buildings were noted onsite at the hearing:
 - A dwelling with a double lockup garage approved in 2005;
 - An in ground swimming pool located on the southern side of the dwelling approved in 2011;
 - A roofed veranda on the eastern side of the dwelling approved in 2008;
 - Two self-assessable Class10a sheds located along the rear southern boundary;
 - A standalone roofed veranda located within the pool enclosure close to the southern rear boundary. No building approvals were provided by Council for this building.
6. The allotment has a second driveway crossover providing access to the location of the two proposed carports, however Council has no record of an approval having been obtained for the second driveway crossover;
7. There is a Unitywater sewer main which runs parallel with the front road boundary offset within the boundary by approximately 1 m. The allotment is not affected by any easements and as such the allotment is not constrained;
8. The streetscape in Pembroke Avenue and the surrounding area consists of residential dwellings with a mixture of open fronted allotments or up to 1.8 m high front and side boundary fences/walls with soft landscaping and with buildings setback 6 m from the road boundaries;
9. The property has complying off street parking in accordance with Acceptable Outcome A08(a) (Access and Car Parking) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:
 - (a) *for a lot exceeding 300m² – at least 2 (two) car parking spaces with at least one space capable of being covered.*

Application Process

1. In May 2016 the property owners engaged Apollo Patios Roofing Australia PTY Ltd, (Builder) a company specialising prefabricated carports, patios, enclosures etc. to design and construct;

two new carports to be located on the eastern side of their dwelling, built to boundary for a combined length of 13.2m; and a separate roofed veranda on the southern side of the dwelling;

2. The Builder lodged a Development Application for Building Work with a Private Building Certifier, Alliance Building Approvals Pty Ltd (Assessment Manager);
3. However the proposed carports did not comply with Acceptable Solution A2(d)(ii) Buildings and Structures of the Queensland Development MP1.2 (QDC MP1.2) Element 1, Design and Siting of Buildings and Structures which states the following:

*A2(d) - Subject to A2(c), **class 10a** buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where –*

(ii) the total length of all buildings or parts, of any class, within the boundary clearance is not more than 9m along any one boundary;

4. The Assessment Manager lodged a request for referral agency response for building work with the Council on 13 June 2016 along with plans detailing the location and design of the proposed carports and a letter/report addressing Performance Criteria P2 Buildings and Structures of the QDC MP 1.2;

5. The Council issued an Information Request on 28 June 2016 to the Assessment Manager stating:

This application has been assessed and Council considers that the proposal does not comply with the QDC MP1.2 P2(b) and (c).

You are invited to discuss the Performance Criteria to ascertain if further information can be submitted which may help in achieving a compliant re-design.

6. The Assessment Manager responded to the Council Information Request on 8 July 2016 detailing; the setback from the boundary to the habitable rooms on the adjoining allotment; confirming the carports were for the storage of a vehicle/boat and as such will not cause a nuisance or impact on the amenity or privacy of the adjoining residents;

7. Council emailed the Assessment Manager on the 18 July 2016 again stating that the proposal does not comply with QDCMP1.2 P2(b) and P2(c) inviting them to discuss the matter and submit a compliant redesign;

8. The Assessment Manager emailed the Council on the 20 July 2016 responding to Council email of 18 July 2016 with a Freedom Patios standard form headed Neighbours Consent with a tick box: *Have no particular concerns with the proposal*, signed by the owner of 24 Pembroke Avenue, Pelican Waters. It should be noted that the form had the incorrect address referenced as 22 Pembroke Avenue, Pelican Waters;

9. Council received an email and letter from the owner of 24 Pembroke Avenue, Pelican Waters on the 22 July 2016 revoking their earlier support and stating they believed the carports would have an adverse impact on their property;

10. The Assessment Manager emailed Council on the 8 August 2016 addressing the Performance Criteria of the QDC MP1.2, P2(b) and P2(c);

11. The Council issued a Concurrence Agency Response on the 10 August 2016 instructing the Assessment Manager to refuse the Application as it did not meet the performance criteria of the Queensland Development Code MP 1.2, Element 1 Design and Siting of Buildings and Structures, Performance Criteria 2 Buildings and Structures, P2 (b) and (c). Namely:

In accordance with section 289(1) the reasons for refusal are as follows:

The application is refused as the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:

QDC MP1.2 Performance Criteria -

P2 Building and Structures -

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.

(c) do not adversely impact on the amenity and privacy of residents on adjoining lots.

12. The Assessment Manager issued a Decision Notice on the 11 October 2016, refusing the Class 10a Carports as directed by Council;

13. The Applicant lodged a Notice of Appeal (Form 10) with the Committees Registrar on the 13 October 2016.

Reasons for the Decision

The Committee conditionally sets aside the decision of the Assessment Manager to refuse the two Class 10a carports at the direction of Council for the following reasons:

- At the Hearing the parties to the Appeal discussed the option of changing the design as follows:
 - Moving both carports forward so they commenced at the 6m front road boundary setback;
 - Reducing the gap between the carports to a minimum 500mm;
 - Reducing the length of the carports; and
 - Ensuring the carports finished clear of the opening to the existing veranda area.
- The Hearing was suspended to allow the Applicant the opportunity to provide an amended design based on the above discussions for the Committee and Council to consider.
- The Applicant provided the amended drawings on 9 December 2016 and Council responded to the proposal on the 13 December 2016 advising the following:

Should the BDDRC decide to amend Council's refusal, it is preferred that the length and height of carport/s be kept to an absolute minimum and should commence from the 6.0 m road boundary setback to limit any adverse effect to the adjoining neighbour as described in QDC MP 1.2 – P2(b)&(c).
- The Committee is of the opinion that the amended design provided by the Applicant is compliant with the Performance Criteria of the Queensland Development Code MP1.2, Element 1 Design and Siting of Buildings and Structures, Performance Criteria 2 Buildings and Structures, P2 (a),(b) and (c) as:

P2 Buildings and structures –
(a) provide adequate daylight and ventilation to habitable rooms; and
(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots;
(c) do not adversely impact on the amenity and privacy of residents on adjoining lots.
- The carports are open buildings located on the south/western side of the adjoining allotment, and therefore will cause negligible over shadowing to the adjoining dwellings habitable rooms and will have no impact on the ventilation to its habitable rooms.
- The proposed design no longer directly connects the entertainment area to the carports, thus reducing the possibility that they will be used for entertainment functions, and impact on the amenity or privacy of the adjoining allotment.

- The majority of the combined length of the carports is either forward of the line of the adjoining allotment garage or in line with the adjoining allotments garage, again reducing any impact on the adjoining allotment and dwelling.

Richard Prout
Building and Development Committee Chair
Date: 15 December 2016

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.

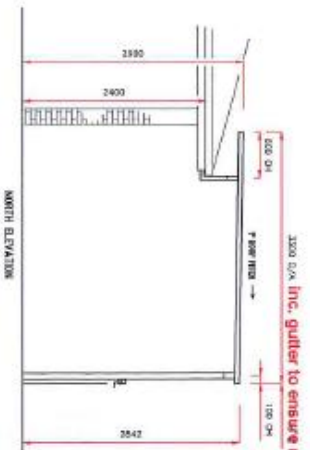
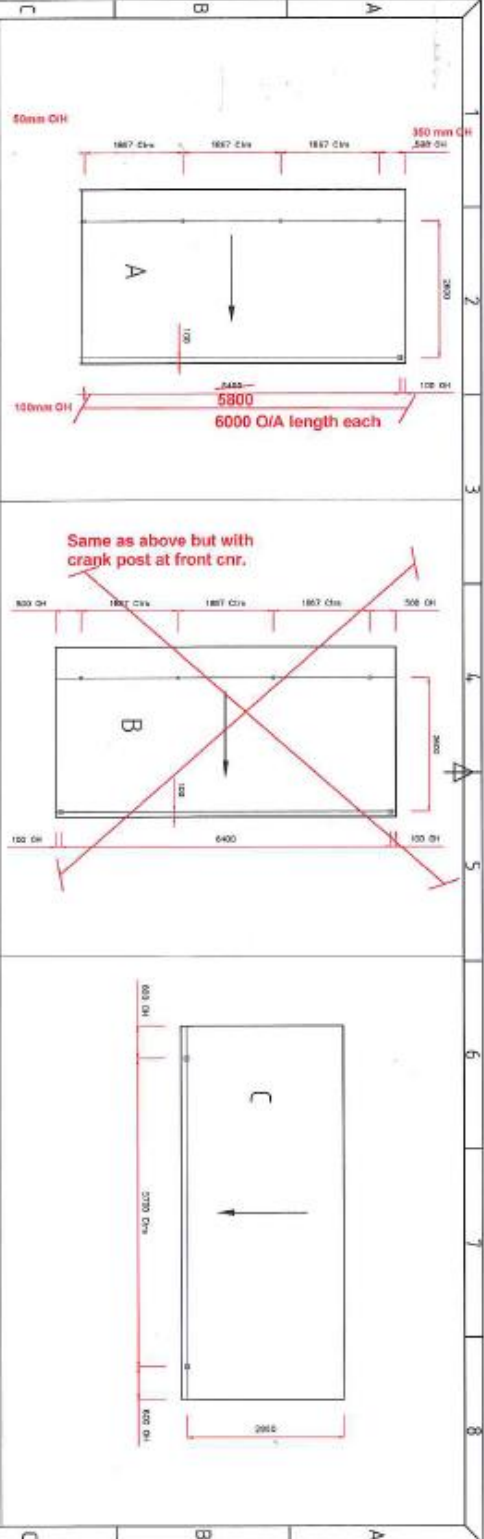
Enquiries

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) 1800 804 833 Facsimile (07) 3237 1248



DRAWING NUMBER 2016-40 SHEET 1 OF 3 SITE PLAN
DATED 16-12-2016



DRAWING NUMBER 2016-440 SHEET 2 OF 3
PLAN VIEW, ELEVATION, VIEW, DATED 16-12-2016

Apollo Patios
 Apollo Patio Roofing Australia Pty Ltd
 Head Office: 29 Corymbia Place Parkinson, QLD
 Phone: (07) 3271-1666
 Fax: (07) 3800-9230
 Web-Site: www.apollopatios.com.au

APPROVED FOR MANUFACTURE

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| DATE | APPROVED FOR MANUFACTURE |
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APPROVED FOR MANUFACTURE: Apollo Patio Roofing Australia Pty Ltd
 H. SC. 0185

TITLE: D/MANIPULATION
 28 PENDERIE AVENUE FELICIAN MATRIS 4591

DATE: 16-12-2016
 TIME: 11:00
 DRAWN BY: A

NOTE: DIMENSIONS SHOWN ARE APPROXIMATE. ALL DIMENSIONS TO FACE UNLESS SPECIFIED OTHERWISE. ALL DIMENSIONS TO FACE UNLESS SPECIFIED OTHERWISE. ALL DIMENSIONS TO FACE UNLESS SPECIFIED OTHERWISE. ALL DIMENSIONS TO FACE UNLESS SPECIFIED OTHERWISE.

