



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	38 - 16
Applicant:	Tim Schoch
Assessment Manager:	Fastrack Building Certification (Mr Alister Marr)
Concurrence Agency: (if applicable)	Sunshine Coast Council (Council)
Site Address:	44 Tulip Lane, Buderim Qld 4556, Lot3 RP 805792 – the subject site

Appeal

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice of the Assessment Manager to refuse a Class 10a Carport. Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building as it did not meet and could not be conditioned to meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome P02 (b) and (d).

Date and time of hearing:	14 November 2016 10:30 am
Place of hearing:	The subject site
Committee:	Mr. Richard Prout – Chair Mr. Andrew Parker – Member
Present:	Mrs. Andrea Schoch – Property owner Mr. Tim Schoch – Property owner and Applicant Mr. Peter Chamberlain – Council representative

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Assessment Manager to refuse the Class 10a Carport.

Background

The subject site is a 840 m² allotment located at 44 Tulip Lane, Buderim and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is rectangular in shape with a street frontage of 21 m.

The existing dwelling on the site was built in 1990 and includes a double garage facing Tulip Lane. The existing dwelling is compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2.

In August 2016 the property owners engaged Just Patios Qld Pty Ltd (Builder) a company specialising prefabricated carports, patios, enclosures etc. to design and construct a new carport

to be located in front of their existing garage with a front road boundary setback of 600mm from Tulip Road.

As part of their service the builder lodged a Development Application for Building Work with Fastrack Building Certification (Assessment Manager).

However the proposed carport did not comply with Acceptable Outcome A02.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

Where located on a lot in a residential zone, a garage, carport or shed:

(a) is setback at least 6 metres from any road frontage;

As such the Assessment Manager lodged a request for referral agency response for building work with Council on 15 September 2016. The Council issued a Concurrence Agency Response on 4 October 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 Sunshine Coast Planning Scheme Performance Outcome PO2 for Garages, Carports and Sheds.

An application for appeal Form 10 was lodged with the Building and Development Dispute Resolution Committees Registrar by the Applicant on 12 October 2016.

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 12 October 2016;
2. Assessment Manager Decision Notice, Permit No: 20161537, dated 12 October 2016, refusing the carport as directed by Council;
3. The following drawings and photos:
 - Site Plan, Section View and Elevation View, dated September 2016, Project 201609 A01;
 - Satellite view of subject site and surrounding properties, dated September 2016, Project 201609 A01;and
 - Photographs of the streetscape and surrounding area.
4. IDAS Form 1 - Application Details, IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*;
5. Letter from property owners dated 13 September 2016, to Council in support of their application detailing reasons why they believe the carport should be approved;
6. Undated letter from the owner of 1/49 Tulip Lane confirming that they have no objection to the proposed carport;
7. Undated letter from the owners of 42 Tulip Lane confirming that they have no objection to the proposed carport;
8. Undated letter from the owner of 46 Tulip Lane confirming that they have no objection to the proposed carport

9. Sunshine Coast Council Application Form – 2015/16 Planning and Environment Request for Referral Agency Response for Building Work, dated 15 September 2016, lodged by Fastrack Building Certification (Assessment Manager);
10. Information Request from Council to Assessment Manager dated 22 September 2016;
11. Letter from Assessment Manager dated 28 September 2016 to Council responding to Council Information Request;
12. Concurrence Agency Response from Council dated 4 October 2016 instructing Assessment Manager to refuse Development Application for Building Work;
13. Verbal submissions at the hearing from all parties to the appeal;
14. Sunshine Coast Council Development Information Site Report for the subject site;
15. The Sunshine Coast Planning Scheme 2014;
16. The Queensland Development Code MP 1.2 (QDC MP 1.2);
17. The *Sustainable Planning Act 2009* (SPA);
18. The *Building Act 1975* (BA).

Findings of Fact

The Committee makes the following findings of fact:

Subject Site

1. The subject site is a 840 m² allotment located at 44 Tulip Lane, Buderim 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 approximately 22 m;
3. The existing dwelling on the site was built in 1990 and includes a double garage facing Tulip Lane. 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 7 January 1991;
5. The following buildings were noted onsite at the hearing:
 - A dwelling with a double lockup garage approved by Council in 1990 approved by Council; and
 - A dwelling addition at the rear of the property (eastern side of allotment) approved by a Private Building Certifier in 2014.
6. The site has a drainage easement which runs parallel with the rear eastern boundary and a Unitywater sewer main which also runs parallel with the rear eastern boundary. The offset from the rear boundary for both is 3m. With the exception of the easement and sewer main, the allotment is not constrained;
7. The streetscape in Tulip Lane 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;
8. 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 August 2016 the property owners engaged Just Patios (Builder) a company specialising in prefabricated carports, patios, enclosures etc. to design and construct a new carport to be located in front of their existing garage with a front road boundary setback of 600 mm from Tulip Lane;
2. The Builder lodged a Development Application for Building Work with a Private Building Certifier, Fastrack Building Certification (Assessment Manager);
3. However the proposed carport did not comply with Acceptable Outcome A02.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 which states the following:

Where located on a lot in a residential zone, a garage, carport or shed:

(a) is setback at least 6 metres from any road frontage;

4. The Assessment Manager lodged a request for referral agency response for building work with the Council on 15 September 2016 along with plans detailing the location and design of the proposed carport;
5. Section 33 of the BA (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover. Table 9.3.6.3.1 of the Dwelling House Code clearly states that Acceptable Outcomes A02.1(a) is an alternative provision to the QDC;
6. The Council issued an Information Request on 22 September 2016 to the Assessment Manager stating:

Council considers that the carport does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes P02 (b) and (d).

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

7. The Assessment Manager responded to the Council Information Request on 28 September 2016 setting out how the proposal complied with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes P02 (b) and (d);
8. The Council issued a Concurrence Agency Response on the 4 October 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 Sunshine Coast Planning Scheme Performance Outcome PO2 (b) and (d) for Garages, Carports and Sheds, 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:

Garages, Carports and Sheds:

(b) do not dominate the streetscape;

(d) Maintain the visual continuity and pattern of buildings and landscape elements within the street

Council considers that the carport does not comply with the Sunshine Coast Planning Scheme 2014, Dwelling House Code Performance Outcome P02 (b) and (d).

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

10. The Applicant lodged a Notice of Appeal (Form 10) on the 12 October 2016.

Reasons for the Decision

The Committee confirms the decision of the Assessment Manager to refuse the Class 10a Carport for the following reasons:

The Committee is of the view that the development is not compliant with the Performance Outcome P02 (b) and (d) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 as:

P02 (b) do not dominate the streetscape.

The streetscape in Tulip Lane 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 generally setback 6 m from the road boundaries.

The proposed carport is 6 m wide and set forward of the line of the dwelling with only a 600 mm front road boundary setback, as such the carport will have a dominating appearance when viewed from the street.

P02 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.

As previously stated, the streetscape in Tulip Lane 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 generally setback 6 m from the road boundaries.

As the proposed carport is set forward of the line of the dwelling with a minimum 600 mm front road boundary setback, it will not maintain the visual continuity and patterns of the buildings within the streetscape.

Richard Prout
Building and Development Committee Chair
Date: 16 November 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