



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	52-11
Applicant:	Robyn Greene and Jason Greene
Assessment Manager:	Neil Barralet
Concurrence Agency:	Sunshine Coast Regional Council (Council)
Site Address:	37 Regatta Boulevard, Wurtulla and described as Lot 309 on GC6286 (the subject site)

Appeal

Appeal under Section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of Neil Barralet as the Assessment Manager to refuse a Development Application (DA) for construction of a carport to a dwelling within the road boundary setback. This decision was based on Concurrence Agency advice from Council.

Date of hearing:	Friday 12 August 2011 at 3.00 pm
Place of hearing:	The subject site
Committee:	Dennis Leadbetter - Chairperson Simon Forsyth - General referee
Present:	Robyn Greene - Owner Jason Greene - Owner Neil Barralet - Assessment Manager Alan Thompson - Council Steve Rosenius - Council

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 dated 8 June 2011, based on a Concurrence Agency refusal and replaces it with the following decision:-

The Assessment Manager, in accordance with Section 564(1) of the SPA, is **directed** to decide the DA for building works as if there were no Concurrence Agency requirements.

The carport may be constructed to within 2765 mm from the road alignment and 900 mm to the eastern alignment, measured to the outer most projection.

Background

The applicant lodged a DA with the Assessment Manager for approval of a Development Permit for building works consisting of the construction of additions to an existing dwelling, comprising a bedroom, study, laundry and a carport, on the subject site.

The Assessment Manager lodged a Concurrence Agency application with Council as these works encroached within the road boundary setback.

Council refused the application on the grounds that:-

1. The proposed development does not comply with and cannot be conditioned to comply with Specific Outcome 07 (Garages and Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 as:
 - The proposed carport will have a dominating appearance when viewed from the street given that the building is located within the prescribed setback and located forward of the line of the dwelling; and
 - The carport will be inconsistent with the existing and proposed streetscape character; and
 - The carport will detract the outlook from surrounding properties due to the building massing and scale.
2. The Development does not comply with Specific Outcome 08 (parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004. As the existing complying off-street car parking is proposed to be converted to habitable rooms.
3. The allotment is not constrained and has complying off-street parking in accordance with the code. In addition the location of the existing buildings onsite are such that an alternative design is available to both comply with the planning scheme provisions and to have covered car parking spaces which do not unduly impact upon the streetscape.

Council representatives at the hearing indicated that Caloundra City Council had a policy to require all carports to be set back 6 metres from a road boundary, but since amalgamation of local authorities, they were now following the guidelines of Maroochy Shire Council which had allowed a 4.5 metre road boundary setback for carports.

Council representatives also indicated that alternative solutions were available, these necessitated removal of a portion of the existing slab. That was brought about because being an open carport and connected to the dwelling the floor slab has to be lower than that of the habitable areas.

Material Considered

1. *Form 10 – Notice of Appeal* and grounds of appeal contained therein received by the Registrar on 27 June 2011.
2. Drawings and written submissions submitted with the appeal.
3. Verbal submissions from those attending the appeal hearing.
4. *The Sustainable Planning Act 2009 (SPA)*.
5. *The Sustainable Planning Regulation 2009 (SPR)*
6. *The Building Act 1975 (BA)*.
7. The Caloundra City Plan 2004 Part 8, specifically *Specific Outcomes 07 and 08*.

Findings of Fact

The Committee made the following findings of fact:

1. The dwelling is a single story structure approximately 30 years old.
2. The current owners are in the process of refurbishing the dwelling and increasing the functionality and usability of their home.
3. The site has an area of 600 m² and is of a rectangular shape.
4. The site is not a corner site.
5. The site is basically flat.
6. Homes in the surrounding area are predominantly single story.
7. The neighbouring area currently being developed is of smaller lots with considerably reduced road boundary setbacks and zero side alignment set backs.

Reason for the Decision

Council's refusal was based on three factors:-

1. Non compliance to specific outcome 07 of Part 8 of the Caloundra City Plan 2004,
2. Non compliance to specific outcome 08 of Part 8 of the Caloundra City Plan 2004, and
3. That the allotment was not constrained and had compliant off street parking, and there was an alternative design available.

The Committee has considered all three of these points raised by Council, and would respond as follows:-

The Committee finds Council's statement that the site was not constrained difficult to accept in that if this were correct, then there would not be an appeal.

The site has an existing house, swimming pool, and no area capable of installing car accommodation for two vehicles without demolition of part of the existing dwelling, even with Council's agreed 4.5 metre road boundary set back.

The solution to build to within 4.5 metres of the road alignment requires the carport to extend to the eastern side alignment, a development option the Committee believes is less than desirable in terms of impact on the adjoining owner, and also maintenance access.

Also, the current covered parking available on site is for one vehicle, and current standards, and most Local Governments recognise the fact households have more than one vehicle, together with other items – trailers, boats, caravans etc - that need to be suitably housed.

The Committee believes it not unreasonable, considering the investment in these items often represents the second largest investment following the actual home, to provide adequate and suitable protective housing for them on site.

In considering *Specific Outcome 07*, the planning scheme states:

- 07 *Garages and carports do not dominate the streetscape and preserve the amenity of the adjacent land and dwellings having regard to:*

- (a) *building character and appearance*
- (b) *views and vistas*
- (c) *building massing and scale as seen from neighbouring premises*

The Committee is of the opinion that:-

1. The building's character and appearance, when renovated to match the western portion of the dwelling, will substantially enhance the street appeal of this specific dwelling, and considerably improve the overall streetscape.
2. The neighbouring dwelling to the east, which would be most impacted by the structure will suffer less impact having the carport set off the common side alignment and projecting further towards the front road boundary than being built up to the side alignment.
3. The views and vistas from adjoining properties are limited due to the topography, the existence of high fences, and the fact the surrounding area is a fully developed residential area.
4. The building's scale when completed will be in sympathy with the local, predominantly single story, structures to the area. The design also provides some interesting massing to the development thus introducing greater interest to the streetscape.

In considering *Specific Outcome 08*, the planning scheme states:

08 Parking and access safely and efficiently meet the needs created by the detached house.

The Committee is of the opinion that the proposal meets, and in fact exceeds, the *Acceptable Solution* given in Council's planning scheme. With the structure set back from the eastern alignment and the existence of a high fence around the property to the east, visibility of the footpath and carriageway is enhanced when exiting the property with the driveway being spaced away from the side alignment, thus improving public safety. The house is located on a divided section of road, and vehicle traffic is from the west. Visibility in that direction is not impacted.

The Committee has considered the alternative design proposal put forward at the hearing by Council representatives. While in simple planning terms it may provide an alternative floor planning solution, there were structural and other issues that were not addressed, and some of these would have significant cost implications and others fail to meet sustainability design considerations.

The Committee is of the opinion that our role is not to explore alternative detail designs, but to assess the submission as presented to the Committee. Certainly if there were alternative siting positions available on site, which provided reasonable access and met the criteria, the Committee is obliged to consider those, but in this instance such an alternative is not available due to the constraints of the site without extensive demolition.

Dennis Leadbetter
Building and Development Tribunal Chair
Date 28 September, 2011

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:

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