



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	34 - 11
Applicant:	David Freudenberg
Assessment Manager:	Caloundra Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	40 Mandara Drive, Wurtulla Qld 4575 and described as Lot 50 on W93211 – the subject site

Appeal

Appeal under section 564 of the *Sustainable Planning Act 2009* (SPA) against the decision of the assessment manager to refuse a siting variation for the proposed carport at the subject site. The decision was based on a concurrence agency response from Council.

Date of hearing:	7 July 2011
Place of hearing:	The subject site
Committee:	Robin King-Cullen – Chair
Present:	David and Lacey Freudenberg – Applicant Chris Jones – in support of Applicants Alan Thompson – Sunshine Coast Regional Council

Decision:

The Committee, in accordance with section 564 of the SPA **sets aside the decision** appealed against and makes the following decision replacing it:

The amended application is **approved** subject to the following conditions:

- (a) Carport is to be generally in accordance with drawings 34-11A, 34-11B and 34-11C attached to this decision, and no closer to the front boundary than 4500mm;
- (b) Carport is to remain open and without doors; and
- (c) Visible external surfaces of the carport are to be finished in colours, hues and textures that are non-reflective and compatible with the existing dwelling and surrounding streetscape.

Background

The Proposal

The matter concerns the decision of Council as concurrence agency to refuse an application for siting variation to enable a double carport to be constructed within 700mm of the front road boundary and 500mm from the northern side boundary.

The subject site, having an area of 555 square metres, is located in Mandara Drive, Wurtulla.

The subject site is relatively flat and contains a single storey dwelling constructed prior to 1985 with a 6700mm setback from Mandara Drive.

In support of their application, the appellants state that:

- (a) the existing dwelling has a single garage which is not adequate to provide undercover accommodation for the appellants' 2 vehicles and trailer;
- (b) although there is sufficient space for a complying carport on the southern side of the existing house, verbal advice from Council indicates that a driveway at this location would not be permitted;
- (c) many other properties in Mandara Drive and the local area have carports within the 6m frontage;
- (d) the neighbours have provided letters agreeing to the proposal;
- (e) the proposal will not affect outlooks and views of neighbouring properties nor affect light and ventilation to the adjoining dwellings;
- (f) the bulk of the proposed structure is acceptable in the streetscape and will not be of a nuisance or danger to the public; and
- (g) the proposed siting meets the performance criteria of the Caloundra Plan 2004 and Queensland Development Code in a way that will provide an acceptable streetscape and be consistent with the general area which has many similar carport sitings and will have no impact on adjoining properties.

In relation to (d) above, a neighbour living directly opposite the subject site at 21 Tareel Street was present on site prior to the hearing and confirmed her support for the carport. The neighbour did not attend the hearing.

In relation to (c) above, the Committee Chairperson sought further information from Council regarding existing carports in Mandara Drive erected within the 6m front boundary setback. The appellants provided photographs and addresses of 15 existing carports erected within the 6m setback in Mandara Drive and Council officers' investigation provided the following information in relation to these structures:

- In 3 instances there was record of approval prior to 2004, but due to the age of the permit Council no longer has the file and cannot confirm whether or not a carport formed part of the works;
- In 5 instances the carport structures were approved before the Caloundra City Plan 2004;
- In 6 instances there was no record of approval for the carport structure and it is therefore assumed the carports were erected without the necessary approvals; and
- In 1 instance a carport was legally approved less than 6m to the frontage after introduction of the Caloundra City Plan 2004 and Council officers advise that a "review of the file revealed that the certifier overlooked the planning scheme requirements without first obtaining a siting variation".

During the hearing a number of alternative locations for the proposed carport were discussed by the appellant, Mr Freudenberg and the council representative, Mr Thompson. The only possible alternative location for a carport on site without structural changes to the existing dwelling, is adjacent to the southern boundary. This location was examined at the hearing and while a complying carport at this location appeared possible in terms of setbacks and dimensions, advice from Council officers indicated that a driveway and crossover to service the carport at this location would not be supported due to physical constraints.

Concurrence Agency Decision

The concurrence agency (Council) response to the application dated 6 April 2011 refused the application on the grounds that:

1. *The development does not comply with Specific Outcome 07 (Garages & 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;*
 - *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's messing 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; and*
 - *The location of the existing buildings on site 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.*

The amended proposal

Following the hearing, alternative locations for the proposed carport were further discussed by the appellant Mr Freudenberg and the council representative, Mr Thompson.

By emails dated 13 July 2011 and 22 July 2011 addressed to the A/Registrar, the appellant submitted revised plans (drawings 34-11A, 34-11B and 34-11C attached) requesting that these revised plans be considered in lieu of the plans submitted with the original application. The revised plans indicate removal of the existing garage and replacement with a new carport located no closer than 4500 mm from the front boundary and with a setback from the northern boundary varying from 0 mm to 1500 mm.

The revised plans were forwarded for formal comment to the council representative, Mr Thompson. By emails dated 22 July 2011, Mr Thompson advised that the amended carport arrangement shown on drawings 34-11A, 34-11B and 34-11C was recommended for approval with the following conditions:

1. A condition requiring the carport to remain open and without doors.
2. A condition requiring the visible external surfaces of the carport are to be finished in colours, hues and textures that are non-reflective and compatible with the existing dwelling and surrounding streetscape.

The amended proposal is acceptable to both the appellant and the Council representative and is therefore approved with the conditions recommended by the Council representative.

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 Registrar on 17 April 2011.
2. Copy of the referral agency response dated 6 April 2011 from Council to Caloundra Building Approvals directing refusal of the application.
3. Copy of development application decision notice dated 20 April 2011 from Caloundra Building Approvals to David Freudenberg stating that the application had been refused.
4. Verbal submission made by neighbour situated at 21 Tareel Street prior to the hearing.
5. Verbal submissions made by David and Lacey Freudenberg and Chris Jones at the hearing.
6. A petition containing signatures from 10 neighbours stating that "I have viewed a copy of the plans for the proposed carport on David and Lacey's property and I do not believe that this carport would detract from the outlook of my home".
7. Verbal submissions made by Alan Thompson at the hearing.
8. Map and copy of documents submitted with the concurrence agency advice application provided by Alan Thompson at the hearing.
9. Copy of amended drawings 34-11A, 34--11B and 34-11C submitted under cover of email dated 13 July 2011 from the appellant to the A/Registrar.
10. Email dated 22 July 2011 from the appellant to the A/Registrar requesting amended drawings 34-11A, 34-11B and 34-11C be considered in lieu of the plans submitted with the application.
11. Email correspondence from Alan Thompson to the Committee Chairperson dated 8 July 2011 providing approval history regarding the 15 existing carports in Mandara Drive.
12. Email correspondence from Alan Thompson to the Committee Chairperson dated 19 July 2011 and 22 July 2011 in relation to the amended proposal shown on drawings 34-11A, 34-11B and 34-11C.
13. Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.
14. The QDC.
15. The *Building Act 1975*.
16. The SPA.
17. The Building Code of Australia.

Findings of Fact

The Committee makes the following findings of fact:

1. The premises currently has a garage for one vehicle which the appellants state is insufficient to house their vehicle and trailer.
2. There are a number of existing carports in Mandara Drive with setbacks less than 6 m that appear to have been approved prior to the introduction of the Caloundra City Plan 2004.
3. Only one existing carport in Mandara Drive was lawfully erected after 2004 and Council officers advise that “a review of the file revealed that the certifier overlooked the planning scheme requirements without first obtaining a siting variation”.
4. Amended proposal shown on drawings 34-11A, 34-11B and 34-11C with a setback of 4500 mm from the front boundary and 0 mm from the northern side boundary is supported by the Council representative subject to conditions included in the decision.

Reasons for the Decision

The Committee considers that the amended proposal shown on drawings 34-11A, 34-11B and 34-11C satisfies Specific Outcome 07 (Garages & Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004 and should be approved.

Robin King-Cullen
Building and Development Committee Chair
Date: 30 August 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:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Infrastructure and Planning
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CITY EAST QLD 4002
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