



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>96 - 2010</b>
<b>Applicant:</b>	RJ & KA McCarthy
<b>Assessment Manager:</b>	GMA Certification Group
<b>Concurrence Agency:</b> (if applicable)	Gold Coast City Council
<b>Site Address:</b>	11 Queen Anne Court Paradise Point described as Lot 236 SP 146790 – the subject site.

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of a building approval. A building height restriction was conditioned, based on advice from Council following a referral for a siting variation. The relaxation was required for an attached carport to be constructed within the road boundary setback.

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<b>Date of hearing:</b>	4 March 2011
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Debbie Johnson - Chair Steve Adams – General Referee
<b>Present:</b>	Rob McCarthy – Applicant J Wirth - Property Owner Andrew Bently – GMA Certification Group Ben Smith– GMA Certification Group Gold Coast City Council elected not to be represented at the hearing

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### **Decision:**

The Committee, in accordance with section 564 of the SPA, **sets aside** Conditions 2 and 7 of the decision appealed against to allow the carport to be built to a maximum height of 3.3M with the carport supports to measure 500mm square as proposed. The height is to be taken as being measured from the top of the fascia to natural ground.

## Background

The existing waterfront residence on the subject site is approximately 7 years old and typical of other homes built in the street and immediate locality. The architecturally designed two storey home is built on a concrete slab, and incorporates a double garage.

The owners of the site engaged the applicant as a builder to construct an attached carport to the front of their double garage. The proposed carport was within the road boundary setback area. Architectural plans were prepared and the application was lodged with the certifier. As part of the approval process, the certifier referred the application material to council for consideration of the siting variation. The council subsequently provided written advice to the certifier approving the carport structure with conditions. Similarly, the prepared architectural plans were endorsed by council, and amended to condition a maximum carport building height of 3.0M. The building height was to be taken as being measured from the top of the fascia to the natural ground. The certifier subsequently approved the carport structure which was amended to reflect the 3M height condition required by the council.

The applicant had intended to align the carport fascia with that of the existing single storey garage. The garage building platform is approximately 750mm higher than the road therefore the driveway falls to meet the footpath level. As the carport is proposed over the driveway, the front of the structure will measure higher than the rear, due to the fall of the natural ground level. If the carport height at the rear is taken to match the existing fascia on the garage it will be less than 3M. However, the front would measure 3.26M, that is, higher than allowed for in the current approval.

The applicant believed that the aesthetics of the home would be adversely affected if the carport roof was not aligned with that of the garage. Similarly, he felt there would be stormwater problems due to the guttering of the garage and the carport being offset.

The applicant subsequently lodged an appeal with the Building and Development Dispute Resolution Committees against the 3M height condition imposed by council.

## Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Application for appeal/declaration lodged with the Building and Development Dispute Resolution Committees on 23 December 2010.
2. Concurrence agency's written advice dated 11 November 2010.
3. The assessment manager's decision notice dated 16 December 2010.
4. Property details, including mapping as available through council's website.
5. The application and appeal material including drawings of the proposed carport.
6. Verbal submissions made by the applicant at the hearing.
7. Verbal submissions made by the owner at the hearing.
8. Verbal submissions made by the certifier at the hearing.
9. Verbal submissions made by Council (via telephone initiated by the Committee) at the hearing
10. Gold Coast City Council's Advisory Notes, titled 'Design and siting of buildings and structures'
11. The Gold Coast City Council's Planning Scheme 2003.
12. The *Sustainable Planning Act* (SPA) 2009.
13. The *Building Act 1975* (BA).
14. The Building Regulation 2006 (BR).

15. The Queensland Development Code (QDC).

16. The Building Code of Australia (BCA).

## **Findings of Fact**

The subject site is 711sq/m, boasts a water frontage and is situated in a private cul de sac. The land is slightly splayed in shape, widening as it opens to the waterfront along the rear boundary line. The established home is large and occupies fractionally less than 50% of the site. Although the land is predominately level, it does fall away gently to both the road at the front and the water at the rear. The surrounding homes in this area are relatively exclusive and exhibit a broad range of contemporary architectural styles. Several buildings within view of the site, incorporate carport and entry structures within the road boundary setback area that appear to exceed the dimensions of the proposed carport.

The Gold Coast City Planning Scheme's Detached Dwelling Domain Place Code together with the Detached Dwelling Code determine the siting provisions applicable to this site.

In this instance the application for a carport structure is self assessable against both these Codes. As the front boundary setback for the carport is non compliant with the acceptable measures being less than 6 metres, the application is referred to council as a concurrence agency for their advice.

Neither of these Codes contain acceptable measures relating to the height of carports or dimensions of the support columns.

As the carport setback does not comply with the acceptable measures, Council must assess the application against the relevant performance criteria of the Detached Dwelling Domain Place Code together with the Detached Dwelling Code.

The relevant Performance Criteria for the Detached Dwelling Domain Place Code is:

### *PC2*

*All buildings and covered car parking spaces must provide for setbacks from the street frontage and the side and rear boundaries, which are appropriate to the efficient use of the site and the streetscape character of this domain.*

Council have accepted the proposed carport setback complies with this performance criteria, however there is nothing in the wording of the criteria that allows for the consideration of carport heights or aesthetics to support the 3 metre height or column dimension restrictions. Consequently this criteria is not relevant to the determination of the appeal

The relevant Performance Criteria for the Detached Dwelling Code is:

### *PC3*

*The covered car parking space/carport must be located and designed to:*

- a) aesthetically complement the main dwelling;*
- b) not dominate the street frontage;*
- c) have minimal adverse effect on the amenity, likely amenity and character of the neighbourhood.*

Council have also accepted the proposed carport setback complies with this performance criteria, however unlike the previous criteria this one contains aesthetics criteria which justify the consideration of the impacts of the carport height and support columns by the Committee.

Council has prepared Advisory notes to address the design and siting of buildings and structures. These notes indicate the maximum building height of a carport and maximum size for support columns that will be accepted by Council. This appears to be the source of the specific 3 metre height and 350 millimetre column restrictions. The Advisory notes are not an adopted part of the Gold Coast Planning Scheme or a Planning Scheme Policy, therefore they have no statutory weight and as such can't be considered by the Committee in making a determination.

The Queensland Development Code sets out standard siting requirements for buildings and structures, except where the Planning Scheme identifies an alternative siting provision.

### **Reasons for the Decision**

The performance criteria stated in the covered car parking space/carport provisions for both the Detached Dwelling and Detached Dwelling Domain Place Codes are clear. In this instance council has elected to approve the siting of the carport as proposed. However, council restricted the height of the carport and the dimensions of the front supports associated with the structure in accordance with the provisions contained in its Advisory notes.

Taking into account Performance Criteria PC3 of the Detached Dwelling Code, the Committee determined that:

- a) The proposed alignment of the fascia and guttering will offer a preferable architectural and aesthetic outcome that complements the dwelling than would otherwise be achieved by reducing the height to the nominal dimension stipulated in council's advisory notes for the design and siting of buildings and structures.
- b) The 500mm square dimension for the supporting columns was in keeping with both the existing dwelling and carport's proportions.
- c) The additional 30mm of height and 150mm width to the support columns did not result in a carport design that dominated the street frontage.
- d) the carport design as originally proposed will have minimal impact on the existing or future amenity and character of the neighbourhood given the position of the carport in relation to the adjoining dwellings; the broad range of contemporary architectural styles in the street; and the existence of other carport and entry structures in the vicinity that are within the road boundary setback and appear to exceed the dimensions of the proposed carport

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**Building and Development Committee Chair**

**Date: 03 May 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  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**