



## Building and Development Dispute Resolution Committees—Decision

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### **Sustainable Planning Act 2009**

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| <b>Appeal Number:</b>                         | 27 – 17  |
| <b>Applicant:</b>                             | Jason and Erin Mackenzie   |
| <b>Assessment Manager:</b>                    | Caloundra Building Approvals Pty Ltd (Bruce Milgate)               |
| <b>Concurrence Agency:</b><br>(if applicable) | Sunshine Coast Council (Council)                                   |
| <b>Site Address:</b>                          | 6 Yew Court, Buderim Qld 4556, Lot 31 RP 881972 – the subject site |

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### **Appeal:**

Appeal under section 527 of *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by the Assessment Manager (Caloundra Building Approvals Pty Ltd) to refuse the approval for a Class 10a Carport.

The Assessment Manager was directed by the Sunshine Coast Council (Council) as the Concurrence Agency, to refuse the application for building development approval.

The Council's response was that the proposed development 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, and Performance Outcome P02.

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| <b>Date and time of hearing:</b> | 21 July 2017, 2.00pm  |
| <b>Place of hearing:</b>         | The subject site  |
| <b>Committee:</b>                | Mr Gregory Schonfelder – Chair<br>Mr. Richard Prout – Member  |
| <b>Present:</b>                  | Mr. Jason Mackenzie – Property owner<br>Mr. Bruce Milgate – Assessment Manager<br>Mr. Steve Rosenius – Council representative |

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Assessment Manager (Caloundra Building Approvals Pty Ltd) to refuse the building development application for the construction of a Class 10a Carport.

### **Background:**

The subject site is a 743 m<sup>2</sup> allotment located at 6 Yew Court Buderim and is near rectangular in shape with a street frontage of 20.65m.

The existing Class 1a dwelling on the site includes a Class 10a double garage facing Yew Court.

The existing buildings on site are compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2.

The property owners engaged DW Drafting Solutions to design a new Class 10a carport to be located in front of the existing Class 10a garage on the site with a front road boundary setback of 167mm from Yew Court.

The design also included a second storey addition to the existing Class 1a dwelling. (Note: This part of the proposal (addition to the dwelling) is not the subject of this appeal)

The builder (Osiris Group (Qld) Pty Ltd lodged a Development Application for Building Work with Caloundra Building Approvals Pty Ltd (Assessment Manager).

However the proposed siting of the carport did not comply with Acceptable Outcome A02.1 (a) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, 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 a referral agency response for building work with Council along with plans detailing the location and design of the proposed Class 10a carport and the proposed additions to the existing Class 1a dwelling;

The Council issued a concurrence agency response on 6 June 2017 instructing the Assessment Manager to refuse the application for building development approval, as proposal for the Class 10a carport 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.

The Building and Development Dispute Resolution Committees (the Committee) received application for appeal Form 10, from the Applicant on 21 June 2017.

#### **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 21 June 2017;
2. Assessment Managers' Decision Notice, Reference No: 7655, dated 9 June 2017, refusing the Class 10a carport as directed by Council;
3. The following drawings, site plan, floor plans, and elevations, dated 10 April 2017 - project number 17/K13;
4. Letter from property owners dated 21 June 2017, to the Registrar in support of their application detailing reasons why they believe the carport should be approved including:
  - 8 photos showing Class 10a carports within the 6.0m setback in the surrounding area;
  - and
  - site plan and 12 photos of the surrounding streetscape

6. Concurrence Agency Response from Council dated 6 June 2017 instructing the Assessment Manager to refuse Development Application for Building Work;
7. Verbal submissions at the hearing from all parties to the appeal;
8. The Sunshine Coast Planning Scheme 2014;
9. The Queensland Development Code MP 1.2 (QDC MP 1.2);
10. The *Sustainable Planning Act 2009* (SPA);
11. The *Building Act 1975* (BA).

## **Findings of Fact**

The Committee makes the following findings of fact:

### **Subject Site**

1. The subject site is a 763 m<sup>2</sup> allotment located at 6 Yew Court, Buderim.
2. The allotment is near rectangular in shape with a street frontage of approximately 20.65 m;
3. The existing dwelling on the site includes a double garage facing Yew Court. The existing dwelling is compliant with the setback provisions of the Sunshine Coast Planning Scheme 2014 and the QDC MP1.2;
4. The following buildings were noted onsite at the hearing a Class 1a dwelling with a double Class 10a garage.
5. The offset of the Class 1a dwelling from the rear boundary for both is more than 10m. The streetscape in Yew Court and the surrounding area consists of residential dwellings with a majority of open fronted allotments and side boundary fences/walls with soft landscaping and with buildings setback 6 m from the road boundaries;
6. 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:
  - for a lot exceeding 300m<sup>2</sup> – at least 2 (two) car parking spaces with at least one space capable of being covered.

### **Verbal Submissions at hearing**

#### Applicant

- Purchased property in 2001
- Explained proposal wanting to accommodate extended family
- Additional car parking required which could be in front of existing garage even if carport was not allowed.
- Weather protection for vehicles is required
- 2 carports sited with 6.0m of road frontage are located on the other side of the road opposite subject site in Yew Court
- Carport to be shielded by vegetation especially large tree on nature strip
- Carport to be adjacent boundary fence which would also hide the carport
- No objection to proposal from adjoining property owners
- Willing to make some concessions to design
- Low height (skillion) and light weight design for carport minimises impact on street scape

- Could install 2.0m high fence across the frontage without Council approval
- Large road verge 5.8m which would reduce impact of carport on streetscape
- Frontage to be extensively landscaped

#### Council

- Streetscape impacted
- Pattern of building in street consistent with age of subdivision
- Alleged illegal carport in street to be investigated
- Other opportunities available considering subject site is large lot
- Concern that approval would set precedent
- Need to maintain visual continuity and pattern of buildings and landscape elements
- Planning Scheme specifically requires setback provisions to be maintained as other areas have been severely impacted by previous changes

#### **Reasons for the Decision**

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

1. The Committee is of the view that the development is not compliant with the Performance Outcome P02 (d) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6

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

2. The streetscape in Yew Court and the surrounding area consists of residential dwellings with a majority of open fronted allotments with side boundary fences/walls with soft landscaping and with buildings generally setback 6.m from the road boundaries.
3. The proposed carport is 7.0 m wide and set forward of the line of the dwelling with only a 167mm from the front road boundary setback, as such the carport will have a dominating appearance when viewed from the street.
4. As previously stated the streetscape in Yew Court and the surrounding area consists of residential dwellings with a majority of open fronted allotments.
5. As the proposed Class 10a carport is set forward of the line of the dwelling with a minimum 167 mm front road boundary setback, it will not maintain the visual continuity and patterns of the buildings within the streetscape.

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**Gregory Schonfelder**  
**Building and Development Committee Chair**  
**Date: 18 September 2017**

### **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**