



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	94-10
Applicant:	Mr Trent Aisbett
Assessment manager:	Neil Barralet
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	6 Pannaroo Street, Buddina and described as Lot 259 on RP1 14172 — the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the decision of the assessment manager, dated 17 December 2010, to refuse a development application for building works for the siting of a carport.

Date of hearing:	10am on Thursday 10 February 2011
Place of hearing:	The subject site
Committee:	Ms Kari Stephens – Chairperson
Present:	Mr Neil Barralet – Assessment manager Mr Richard Prout – Council representative Mr Trent Aisbett – Applicant/owner Mr Scott Woodall – Builder

Decision

The Committee, in accordance with section 564 of the SPA **confirms** the decision appealed against and dismisses the appeal.

Background

The subject site is located in the beachside suburb of Buddina in an area characterised by older style (1970's to 1980's) detached residential dwellings, primarily single-storey. Some recent redevelopment and refurbishment of a selection of houses in the locality is evident.

The site is located on the western side of the street, approximately midway along the length of the street. The land is flat and has an area of approximately 587m² and a frontage to the road of 15.8m. This allotment size is fairly typical for the area. The site is bounded by detached houses on each of the side and rear boundaries.

The site is currently occupied by a single-storey dwelling which is currently undergoing renovations. The dwelling has an existing block wall built along the front boundary, and an existing pool located in the north-eastern (front) corner of the site. An existing double garage (with a complying setback) also makes up part of dwelling. The ongoing renovations to the property include a two-storey extension, in an area behind the existing garage.

During a site inspection, it was found that there are three houses on Pannaroo Street with garages/carports built within the front setback area. Council advised that these structures are lawful, and were approved in approximately 2001 (before the current setback provisions applied). A fourth dwelling on the corner of Pannaroo Street also includes a garage/carport within the setback, although there is no evidence of any approval for this structure, and it is most likely unlawful. In the surrounding area, a large number of carports and garages are built on the boundary (in some areas, as many as one third of the houses have a structure built on the front boundary).

The proposed carport is intended to be constructed in front of the existing garage, over the existing driveway/hard stand area. The proposed carport would have a zero setback to the street. The applicant states the additional covered car parking area is required to accommodate his and his wife's vehicles, because the existing garage accommodates his work vehicle, tools and a jet ski. It is relevant to note that vehicles currently park in the location of the proposed carport, being the existing driveway.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar.
2. A site inspection of the site and the locality, undertaken by the Chairperson.
3. The assessment manager's decision notice dated 17 December 2010.
4. Verbal and written submissions from the parties at the hearing.
5. A written submission from the Assessment Manager after the hearing.
6. The Planning Scheme for the former Caloundra City Council – in particular, Code 8.5 Detached House Code.
7. The Queensland Development Code (QDC) – Part MP1.2.
8. The SPA
9. The Sustainable Planning Regulation 2009

Findings of Fact

The Committee makes the following findings of fact:

The assessment manager's decision to refuse the application for building work (relaxation of siting provisions for a carport) was based upon the Council's concurrence agency advice, dated 19 November 2010. The refusal is based on alleged non-compliance with provisions of code 8.5 "Detached House Code" of the Caloundra City Plan. The reasons for refusal are as follows:

The application is REFUSED as:

1. *The development does not comply with and cannot be conditioned to comply with the specific outcome 07 (garages and carports) Code 8.5 Detached Housing Code of the Caloundra City Plan*

2004 as:

- The proposed car park 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 a 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's massing and scale.
2. The allotment is not constrained and has complying off-street parking in accordance with specific outcome 08 (parking and access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004.

The siting provisions referred to above are contained in the Detached Housing Code, as alternative siting provisions to those contained in the QDC.

The requirement that carports/garages do not dominate the streetscape was introduced in 2004 with the commencement of the Caloundra City Plan which incorporates the Detached House Code. The original specific outcome (then 08) and acceptable solution stated:

Specific Outcomes		Acceptable solutions for self-assessable development* and probable solutions for assessable development	
Streetscape			
08	Garages and carports do not dominate the streetscape.	58.1*	For a lot up to 12 metres in width, garages and carports do not comprise more than 50% of the width of the lot.

However, some three years later, the provisions for garage setbacks in the Detached House Code were modified to strengthen and clarify the required streetscape outcomes. The Specific Outcome (now 07) and acceptable solutions state:

Garages and Carports			
07	Garages and carports do not dominate the streetscape and preserve the amenity of adjacent land and dwellings having regard to: (a) building character and appearance; (b) views and vistas; and (c) building massing and scale as seen from neighbouring premises. <i>(Building Regulation 2006 alternative provision)</i>	57.1*	For a lot up to 12 metres in width, garages and carports do not comprise more than 50% of the width of the lot.
		57.2*	The minimum road boundary setback for carports (other than in the Rural Precinct) is 6 metres.
		57.3*	The minimum road boundary setback for garages (other than in the Rural Precinct) is 6 metres.

As can be seen from the above amendment (which remains current), the Council made a deliberate change to the specific outcome and acceptable measures of the Detached House Code, to strengthen its position on streetscape and amenity outcomes in regard to garages and carports in residential areas.

Before 2004, a number of carports were lawfully established within 6m of the road frontage, and many of these carports remain evident today in the surrounding area. It is acknowledged that there are a significant number of structures built to the boundary within the Buddina area. It is also acknowledged that these structures were approved prior to the current planning scheme and the provisions that applied then, no longer apply.

It is clear from both the original wording of Specific Outcome 07, and more particularly the amended (current) wording, that it is the planning scheme's intent for detached residential areas to create a character where garages and carports "do not dominate the streetscape". Whilst it can be argued that the existing carport structures contribute to the character of the area, it is also important to note that it is not the planning scheme's intention that this particular built form continue into the future.

It is highly likely that areas around the subject site will transform in coming years with gentrification of the neighbourhood which will include modernisation and renovations to the existing built form. As part of this process, and in accordance with the provisions of the planning scheme, the number of instances where carports and garages are located on the front boundary will decrease with time.

During the hearing, the assessment manager stated that Council were out of touch with the community in not allowing zero-lot lined carports. He stated that this was an older area, and a small allotment, and that the general provisions of the Code shouldn't apply. Rather, the garage/carport setback provisions should only apply to new housing areas.

The Council representative refuted that Council were out of touch with the community. He stated that feedback from the community was that carports/garages detracted from the streetscape. Furthermore, when Council officers proposed to change the street setback to 4.5m, the Council decided to increase the setback to the current 6m provision.

Following the on-site hearing, the assessment manager made a further representation to the Committee stating that hundreds of other carports were built to the road boundary in this area, and they should be considered as a precedent for approval of this proposal.

The fact that other carports and garages are constructed within the setback elsewhere in the suburb has little relevance to this proposal, because those structures are either unlawful, or were approved under different planning provisions (i.e. prior to the City Plan 2004). The only relevant provision for assessment of this proposal, is the Detached House Code, which forms part of the City Plan 2004.

Specific outcome 07 of the Detached House Code is the relevant provision for the assessment of this proposal, and rightly or wrongly, it makes no differentiation between established residential areas, and new residential areas. Specific outcome 07 seeks to ensure that garages and carports do not dominate the streetscape, and in the Committee's opinion, the proposal cannot meet the specific outcome.

As pointed out by the building certifier, the subject site is relatively small (at 587m²). However this in itself does not justify a reduction in setback to zero. In fact, the combined impact of small allotment sizes, narrow frontages, solid block fences and structures built on the front boundary, can constitute a visual overdevelopment of the street frontage in terms of bulk and scale.

Where a proposal conflicts with a specific outcome of a planning scheme code, the assessment manager must refuse the application, unless there are over-riding grounds which support the proposal, despite the conflict. In this case, no such grounds exist.

Reasons for the Decision

The Detached House Code, in particular specific outcome 07 (garages and carports) expressly requires that garages and carports do not dominate the streetscape. It is the Committee's opinion that the proposal will dominate the streetscape in terms of building bulk and scale.

The fact that other carports and garages are constructed within the setback elsewhere in the suburb has little relevance to this proposal, because those structures are either unlawful, or were approved under different planning provisions (i.e. prior to the City Plan 2004).

An existing unlawful double garage already exists on the site, with a compliant setback.

There are no over-riding grounds which warrant favourable consideration of the proposal.

Kari Stephens
Chairperson
Building and Development Committee Chair
Date: 18 February 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