



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	09/2011
Applicant:	Just Patios
Assessment Manager:	Fastrack Building Certification
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (Council)
Site Address:	16 Beattie Street, Golden Beach and described as Lot 680 on RP 79900 – the subject site

Appeal

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

Date of hearing:	10am on Thursday 5 April 2011
Place of hearing:	The subject site
Committee:	Ms Kari Stephens – Chairperson
Present:	Mr Richard Prout – Council representative Mr Glenn Argent – Owner Mrs Barbara Argent – Owner Mr Clint Bowman – Applicant

Decision

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

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. An inspection of the site and the locality, undertaken by the Chairperson.
3. The assessment manager's decision notice dated 19 January 2011.
4. Verbal and written submissions from the parties at the hearing.

5. A written submission from the Assessment Manager at the hearing.
6. A written submission from the Owner provided after the hearing.
7. The Planning Scheme for the former Caloundra City Council – in particular, Code 8.5 Detached House Code.
8. The Queensland Development Code (QDC) – Part MP1.2.
9. The *Sustainable Planning Act 2009* and its regulations.

Background

The subject site is located in the suburb of Golden Beach in an area characterised by older style (1960s to 1970s) detached residential dwellings, primarily single-storey. The subject site is located within a "low density residential" precinct in the Caloundra City Plan 2004.

The site is located on the southern side of Beattie Street, on the corner of Coronation Avenue. The land is relatively flat and has an area of approximately 602m² and a frontage to the road of 19.2m. 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 two-storey brick dwelling. A driveway from Beattie Street provides access to an existing garage located on the ground floor of the house. Although used in part for storage purposes, this ground floor area has the capacity to accommodate three vehicles (two in tandem).

The dwelling has a front setback (from Beattie Street) of approximately 6m. The secondary frontage (to Coronation Avenue) is approximately 2m as measured during the hearing. An existing pool is located along the western side of the house.

In the immediate area, a site inspection revealed that there are a limited number of houses with garages or carports built within the front setback area. The applicant, in the appeal documentation, cites these properties as examples of precedent. It is not known whether these structures are lawful.

The proposed double 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, a boat, and vehicles belonging to his adult children, who also live at the premises. The carport would provide protection for the vehicles against adverse weather conditions. The existing garage is being partially used for vehicle storage, as well as other miscellaneous storage. The owner stated that the existing garage would remain in its current state, and it was not intended to be redeveloped as habitable areas.

The Council representative noted that the existing dwelling, with a setback of 2m to Coronation Avenue, already had substantial relaxations in terms of setbacks.

The applicant stated that the carport would be a flat roof construction with low profile beams and posts, and built to match the colour and the style of the existing house. The applicant stated that the carport would not be visually obtrusive. In addition to the above, the owner provided a number of pro forma letters from various neighbours indicating that they do not object to a relaxation of the boundary to accommodate the carport.

Findings of Fact

The Committee makes the following findings of fact:

The assessment manager's decision to refuse the application for building work, was based upon the Council's Concurrence Agency advice, dated 11 January 2011. The refusal is based on an alleged non-compliance with the provisions of code 8.5 "Detached House Code" of the Caloundra City Plan 2004. The reasons for refusal are as follows:

The application is REFUSED as:

1. *The development does not 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 is 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 mass 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/storage.*
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 have covered car parking spaces which do not unduly impact upon the streetscape.*

The siting provisions referred to above are contained in the Detached Housing Code, as alternative siting provisions to those contained in the QDC. The relevant provisions, comprising the "specific outcome" in the left-hand column, and "probable solutions" in the right-hand column, are replicated below.

Garages and Carports	
<p>07 Garages and carports do not dominate the streetscape and preserve the amenity of adjacent land and dwellings having regard to:</p> <p>(a) building character and appearance; (b) views and vistas; and (c) building massing and scale as seen from neighbouring premises.</p> <p><i>(Building Regulation 2006 alternative provision)</i></p>	<p>S7.1* For a lot up to 12 metres in width, garages and carports do not comprise more than 50% of the width of the lot.</p> <p>S7.2* The minimum road boundary setback for carports (other than in the Rural Precinct) is 6 metres. cap that</p> <p>S7.3* The minimum road boundary setback for garages (other than in the Rural Precinct) is 6 metres.</p> <p><i>(Building Regulation 2006 alternative provision)</i></p>

It is uncontested that the proposal must demonstrate compliance with the Specific Outcome in the left-hand column. The Specific Outcomes provide an opportunity for a variety of responses which is consistent with the 'performance based' approach encouraged by the SPA. The Specific Outcomes are best described as 'qualitative', rather than 'quantitative', and are not capable of measurement or calculation. They are usually outcome driven.

The Probable Solutions in the right-hand column relate to each Specific Outcome. This column is usually 'quantitative' in nature, and is capable of measurement or calculation. The probable solutions are one way (albeit Council's preferred way) of meeting the Specific Outcome. Alternate solutions are also acceptable, as long as the applicant can satisfactorily meet the Specific Outcome.

It is clear from the wording of Specific Outcome 07, that it is planning scheme's intent for detached residential areas to create a character where garages and carports "do not dominate the streetscape". The immediate area has a streetscape character which predominantly provides a 6m setback to the street frontage.

The Committee accepts the applicant's argument that elsewhere in the suburb, there are examples of structures built within the front boundary setback. However these structures were most likely built prior to 2004, and are sufficiently distant from the site, that they do not contribute to the character of the streetscape. Furthermore, the provisions that applied then, no longer apply.

It is also likely that as the suburb undergoes gentrification and redevelopment, that new and more substantial dwellings will be constructed, each of which will be expected to comply with the planning scheme provisions as they relate to setbacks.

In terms of assessment of this appeal, the only relevant provision is the Detached House Code, which forms part of the City Plan 2004. The proposal must therefore demonstrate that it is able to comply with Specific Outcome 07. In the Committee's opinion, the proposed double carport, with a zero setback to Beattie Street, will have a dominating impact on the streetscape. Furthermore, the proposed carport, combined with the 2m (reduced) setback of the existing house to Coronation Avenue, will combine to create an undesirable building mass and scale as seen from neighbouring premises and the street.

The Committee considers the proposed carport to be in conflict with Specific Outcome 07 of the Detached House Code. The Committee does not consider the fact that a large number of cars are parked at the premises, or that the carport design will be matched to the house, or that there are letters of no objection, to be sufficient grounds to justify the approval of the proposal.

The Sustainable Planning Act states that a decision must not conflict with the relevant (planning) instrument unless "there are sufficient grounds to justify the decision, 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 proposal is therefore considered to be in conflict with Specific Outcome 07 of the Detached House Code.

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

There are no grounds which warrant favourable consideration of the proposal, despite the conflict.

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