



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	18 - 13
<b>Applicant:</b>	Robert Bauer
<b>Assessment Manager:</b>	Sunshine Coast Inspection Services
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council (Council)
<b>Site Address:</b>	2 Macleay Crescent, Pacific Paradise described as Lot 70 on SP 171084 referred to as the subject site

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### Appeal

Under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Assessment Manager to refuse a Development Application (Application) for a Building Approval relating to the construction of an attached carport. The decision followed a Concurrence Agency response for the siting of the carport structure.

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<b>Date and time of hearing:</b>	10:00am, 25 June 2013
<b>Place of hearing:</b>	2 Macleay Crescent, Pacific Paradise (the subject site).
<b>Committee:</b>	Debbie Johnson - Chair Shane Adamson - Member
<b>Present:</b>	Robert Bauer – Applicant Neil Lockett – Assessment Manager Paul Riley – 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 by the Assessment Manager to refuse the Application.

### Background

- The subject site is located on the corner of Macleay Crescent and Whitsunday Drive and currently contains a single storey dwelling that incorporates a double garage and has a site area of 450m<sup>2</sup>.
- Vehicular access to the property is from Macleay Crescent. There are only three allotments fronting this section of Macleay Crescent. As this is a small length of street, any new building works within the street setback area, will be significant in terms of its impact on the streetscape.

- The proposed structure is predominately unenclosed, having a 2 degree pitch, sloping towards the front property boundary. The proposed siting for the new garage is alongside the western boundary, over the existing driveway, between the dwelling and within 160mm of the front property alignment.
- The proposed carport is 6m in width and has a depth of 5.5m measured along the western boundary of the site.
- On 1 May 2013, the Assessment Manager was engaged by the Applicant to assess the Application for building works for the carport. Before this Application could be determined, it was referred to the Concurrence Agency to determine a siting variation as the structure was to be built 160mm from the front boundary.
- On 7 May 2013, the Council directed the Assessment Manager to refuse the Application in accordance with section 287(2)(b) of the SPA, because the proposed development did not comply with performance criteria P2, Element 1, Code 4.1 of the Maroochy Plan 2000, which states:

*Buildings and structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:*

- a) *Views and vistas;*
- b) *Building character and appearance;*
- c) *Casual surveillance; and*
- d) *An adequate area suitable for landscaping being provided for at the front of a lot.*

Specifically, the Concurrence Agency reason stated that the proposed development did not comply with (b) above.

- On 8 May 2013, the Assessment Manager refused the Application as directed by the Council.
- On 16 May 2013, an appeal was lodged with the Building and Development Dispute Resolution Committee Registry.
- On 17 May 2013, the Committee Registry advised the relevant parties that an appeal had been lodged.
- On 28 May 2013, an amended Decision Notice was issued correcting some errors in the original Decision Notice.
- On 4 June 2013, an appeal was lodged about the amended Decision Notice to refuse the application.
- On 5 June 2013, the Committee Registry notified the parties of the appeal lodged.

## **Material Considered**

The material considered in arriving at this decision comprises:

- 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 4 June 2013.
- Verbal submissions by the Applicant, the Assessment Manager and the Council representatives at the hearing;
- The Committees' on site inspection of the subject site;
- Property details as available through Council's website;
- The Queensland Development Code (QDC) Part MP1.2;
- *The Sustainable Planning Act 2009 (SPA);*

- *The Building Act 1975* (BA);
- The Building Regulation 2006 (BR)
- The National Construction Code 2012
- Historic aerial photographs of the subject site as viewed through Google Maps;
- The Maroochy Plan 2000, in particular Part 4.1 Code for Residential Development and Use; and
- The additional information provided by the Applicant's builder including photographs of a carport having a similar design to that proposed to be constructed.

## Findings of Fact

The Committee makes the following findings of fact:

- The existing dwelling has a minimum setback of about 5m from the Whitsunday Drive and about a 4m setback to Macleay Crescent.
- The setback area to both street frontages is well landscaped with mature planting.
- The adjoining dwelling is set well back from the street along the western side of the subject site.
- There is an 1800mm high timber paling fence between these two properties. The fence is screened by a large hedge on the subject site, alongside the existing driveway.
- At the time of the site inspection, it was evident that there are no other carports in the immediate locality, however there are some carports in the general area.
- The Queensland Development Code Part MP1.2 (QDC MP 1.2) determines the design and siting standard for single detached housing on lots 450sq/m and over.

QDC P1 states:

The location of a building or structure facilitates an acceptable streetscape, appropriate for-

- (a) the bulk of the building or structure; and
- (b) the road boundary setbacks of neighbouring buildings or structures; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

In addition to the QDC, local planning schemes may impose additional or alternative requirements.

- The Maroochy Plan 2000 provides alternative siting requirements to those found in the QDC. Therefore, neither the Acceptable Solutions or the Performance Criteria of the QDC apply to this development.

The Maroochy Plan defines a carport as follows:

**Carport** refers to a class10 building providing covered vehicular parking with:

- (a) two sides or more open; and
- (b) not less than one third of its perimeter open.

A side is taken to be open where the roof covering adjacent to that side is not less than 500mm from another building or a side or rear lot boundary

- With reference to the Maroochy Plan's definition for Carport, the proposed structure cannot include the western side (that is positioned within 500mm of the side boundary) or northern side (which abuts the existing residence) of the structure as being open. Similarly, a portion of the

third side is enclosed by a return in the building line of the existing residence. Therefore under the Maroochy Plan the proposed structure cannot be defined as a carport, it is more appropriately referred to as a garage. This is the case even though one third of the perimeter of structure can be defined as open, given the overall dimensions for the structure that have been provided, 6.0m x 5.5m.

- The relevant acceptable measure of the Maroochy Plan 2000, Part 4.1 Code for Residential Development and Use (A2.3) states that the minimum setback for garages (including corner lots) is 6.0m.

**A2.3** *In Residential (other than Sustainable Rural Residential), Centre, Industrial, Special Purpose and Master Planned Community Precincts:*

*(a) the minimum street setback for garages (including corner lots) is 6 metres; and*

*(b) garages doors facing the street (ie:- within 0 to 45 degrees of parallel to the street) have a maximum aggregate width of:*

*6m, or 50% of the allotment frontage width, (which ever is the lesser).*

- The existing dwelling has a minimum setback of about 5m from the Whitsunday Drive and about a 4m setback to Macleay Crescent.
- The setback area to both street frontages is well landscaped with mature planting.
- The adjoining dwelling is set well back from the street along the western side of the subject site.
- There is an 1800mm high timber paling fence between these two properties. The fence is screened by a large hedge on the subject site, alongside the existing driveway.

## **Reasons for the Decision**

Having regard to the above, the Committee makes the following decision:

- a. The proposed development will not adversely impact upon views and vistas as the neighbouring outlook is directly across Macleay Crescent, north east to the subject site.
- b. While the design of the proposed structure is acceptable in terms of the built form, it is not in keeping with the character of the immediate area. There are no garages built within the 6m setback nor carports within the immediate locality.
- c. The siting of the proposed garage is unlikely to effect the casual surveillance from either the subject site or the adjoining property as their outlook is not in the direction of the structure.
- d. The site is well established with mature landscaping. The siting for the proposed carport is over an existing concrete driveway, therefore all the existing landscape would be undisturbed.

The Committee upholds the decision of the Assessment Manager, solely on the grounds that the proposed structure is completely out of character with the surrounding development in this locality. The proposed development must comply with all aspects of the performance criteria P2, Element 1, Code 4.1 of the Maroochy Plan 2000 and is therefore refused.

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**Debbie Johnson**  
**Building and Development Committee Chair**  
**Date: 19 August 2013**

## **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) 3237 0403 Facsimile (07) 3237 1248**