



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	<b>85 - 2010</b>
<b>Applicant:</b>	Garry and Rosemarie Boshammer
<b>Assessment Manager:</b>	Caloundra Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Sunshine Coast Regional Council
<b>Site Address:</b>	125 Cooroora Street Battery Hill described as Lot 626 RP 202416 – the subject site.

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### **Appeal**

Appeal under section 527 of the *Sustainable Planning Act 2009* against the refusal in part of a building approval. The part refusal was based on concurrence agency advice from Council relating to a request for a siting variation. The zero boundary relaxation was required for a proposed carport within the road boundary setback.

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<b>Date of hearing:</b>	15 December 2010
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Debbie Johnson - Chair
<b>Present:</b>	Garry Boshammer - Applicant Richard Prout - Council

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### **Decision:**

The Committee, in accordance with section 564 of the SPA, **sets aside** the decision appealed against and **replaces** it with the following decision:

- The road boundary clearance to Cooroora Street is varied to 1.5m for the carport. The reduced setback is to be taken as being measured from the boundary alignment to the outermost projection, as defined in the Queensland Development Code (QDC) MP1.2.
- The design of the proposed carport structure will therefore have to be amended and reassessed for building compliance by the assessment manager.

## **Background**

The existing residence on the subject site is approximately 25 years old and typical of other homes built in the street and immediate locality. The brick and tile, single storey home is rectangular, built on a concrete slab, and incorporates a single garage. Currently the residents own three vehicles. The applicants purchased this property in recent times with the view to renovate and extend it to suit their own family needs.

A development application was subsequently lodged with the assessment manager. Two new structures, a covered entry porch and a carport were proposed as part of the works. The location of both new structures were proposed within the road boundary setback area.

The assessment manager referred the application to council as a concurrence agency for consideration of the reduced setbacks. Council issued a concurrence agency response to the assessment manager on 19 November 2010. Council approved the siting variation for the covered entry patio and refused the zero boundary setback as proposed for the carport.

The assessment manager subsequently issued a decision on 23 November 2010, approving works as proposed with the exception of the carport structure.

The applicant lodged an appeal with the Building and Development Dispute Resolution Committees against the refusal in part as it pertained to the carport structure.

## **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 30 November 2010.
2. Concurrence agency's written advice dated 19 November 2010.
3. The assessment manager's decision notice dated 23 November 2010.
4. Property details, including mapping as available through council's website.
5. The application and appeal material including photographs and drawings detailed by the applicant, and letters of support for the carport by the adjoining property owners.
6. The applicant's written submission appealing against the conditions contained in the decision notice.
7. The council's written submission supporting their refusal of the siting for the carport.
8. Verbal submissions made by the applicant at the hearing.
9. Verbal submissions made by the council's representatives at the hearing.
10. The Caloundra City Council's Planning Scheme 2004.
11. The *Sustainable Planning Act 2009* (SPA).
12. The *Building Act 1975* (BA).
13. The Building Regulation 2006 (BR).
14. The Queensland Development Code (QDC).
15. The Building Code of Australia (BCA).

## Findings of Fact

The subject site and the other properties in the street are directly opposite a golf course in an attractive, well established, residential area. Many of the original homes in this vicinity have undergone significant renovations or improvements, due to the age of the homes and the increased land values in the locality.

The site is rectangular in shape with a slope of approximately 5% falling diagonally to the corner of the lot, along the street boundary where the carport is to be sited. The site has been cut, filled and retained in part along the side boundaries to provide the building platform for the existing residence. The dwelling faces south and adjoins a residential lot which is approximately 1M higher along the west boundary and another which is 1M lower along the eastern boundary. The current owners of these adjoining properties have provided letters of support for the carport as proposed. To the rear, the northern boundary of the site is shared with a third site which is unaffected by the works proposed, this is due to its location and orientation.

The allotment width is 18.5M and the proposed carport width is 6.35M. The applicant proposes to fence along the front property boundary of the site to a height of 1.8M. Fencing up to 2M high is self assessable. The minimum ceiling height of the proposed carport is dimensioned as being 2.4M high. The lowest point of the carport structure is that part which is nearest to the front boundary fence line. The carport roofline is a 'fly over' skillion, falling from over the gutter line of the existing dwelling down at 5 degrees towards the fence line.

The Caloundra City Planning Scheme's Detached House Code determines the siting provisions applicable to this site. The following text sets out the overall outcomes stipulated in the Detached House Code Provisions.

### *8.5 Detached House Code*

#### *8.5.1 Overall Outcomes*

*(1) The Overall Outcomes are the purpose of the Detached House Code.*

*(2) The Overall Outcomes sought for the Detached House Code are as follows:*

- (a) detached houses and residents are not subject to unacceptable risks from natural hazards;*
- (b) detached houses and associated buildings are compatible with surrounding development;*
- (c) detached houses and associated buildings are sited and designed to protect residential amenity and maintain streetscape character;*
- (d) an acceptable level of services and utilities is provided to detached houses;*
- (e) detached houses are climatically responsive, energy efficient and incorporate water conservation measures; and*
- (f) uses associated with detached houses, including annexed units and home offices, are of a nature compatible with residential uses and occur at an acceptable scale and intensity.*

Of these (b) and (c) are most relevant to the circumstances of this decision. However, specifically, the relevant acceptable solution, S7.2 states, for self assessable development:

*The minimum road boundary setback for carports is 6 metres.*

Where alternative setbacks are sought, assessment is made against the relevant specific outcome statement. In this instance:

Outcome 7 states:

*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.*
- (Building Regulation 2006 alternative provision)*

## **Reasons for the Decision**

The existing dwelling has a single garage. As the residents own three vehicles there are often two cars in the street, parked along the kerb, adjacent to the property. The applicant proposes to fence along the street frontage to a height of 1.8M. Similarly, they propose a wider driveway to allow two vehicles to park between the existing dwelling and the new fence line. They believe that this will improve the security of their vehicles. Parking the vehicles within the property behind the fence line, will undoubtedly improve the streetscape from the perspective of neighbouring residents and passersby. This work is self assessable.

The carport's proposed skillion roof line is of a light weight material and will match the skillion roofline approved for over the entry patio. The nominated height of the carport roof is in keeping with single storey construction. The dwelling as a whole is to remain single storey and is therefore aesthetically compatible with the adjoining dwellings and many others in the immediate locality.

The site looks directly across to the local golf course green which is largely concealed behind a screen of native trees and shrubs along the road verge. The golf course runs the entire length of the street on the opposite side of the road. The outlook to this vegetated area along the green is equally available to all residents along the road. The siting of the proposed carport will not affect the outlook from other properties.

The available area between the front wall of the existing residence and the property boundary as taken from the dimensions on the drawings is 6.92M. The road boundary is to be fenced to a height of 1.8M. The roof line of the carport will be setback a further 1.5M and have an approximate overall height of 2.7M to ensure a 2.4M clearance. The roof line of the front entry is setback a further 3M and is higher again. The staggered location of these three structures and the proportional stepping in the height of their built form will present an attractive and acceptable streetscape.

In closing it is notable that those property owners most likely affected by the siting of the carport have submitted written endorsements for the approval of the structure.

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**Debbie Johnson**  
**Building and Development Committee Chair**  
**Date: 16 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**