



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	56 - 10
Applicant:	Peter Taylor for and on behalf of Taylor'd Distinction
Assessment Manager:	Sunshine Coast Regional Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	20 Rowell Street, Battery Hill and described as Lot 72 on RP 155543 – the subject site

Appeal

Appeal under section 564 of the *Sustainable Planning Act 2009* (SPA) against the following conditions of Preliminary Approval for Building Works – Dwelling Additions:

4. “(1) *The siting variation application approved applies only to the carport, porch and open deck with the front building setback of 4.5m from Rowell Street road frontage.*
 - (2) *The proposed deck structure located within the 6 metre front road boundary setback shall remain unroofed.*”
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Date of hearing:	11:30am on Thursday 26 August 2010
Place of hearing:	The subject site
Committee:	Robin King Cullen – Chair
Present:	Jacqueline Heinz – Owner Peter Taylor – Applicant Richard Prout – Council representative

Decision:

The Committee, in accordance with section 564 (2) (a) of the *Sustainable Planning Act 2009* (SPA), **confirms** the decision appealed against and **dismisses** the appeal.

Background

Proposal

In June 2010 the applicant applied to Council for a siting relaxation to erect a carport and roofed balcony within 4 metres of the front boundary, and a porch within 4.6 metres of the front boundary in lieu of the acceptable solution under Caloundra City Plan 2004 of 6 metres. The proposed porch within 4.6 metres of the front boundary is not in dispute.

The matter concerns the Council's decision to condition approval of the relaxation application subject to conditions including:

4. *"(1) The siting variation application approved applies only to the carport, porch and open deck with the front building setback of 4.5m from Rowell Street road frontage.*

(2) The proposed deck structure located within the 6 metre front road boundary setback shall remain unroofed."

The subject site, having an area of 555 square metres, is located in Rowell Street, Battery Hill and is within a Low Density Residential Precinct under the Caloundra City Plan 2004.

The subject site slopes gently up from Rowell Street and contains a two storey dwelling constructed prior to 1985 with a 6 metre setback from Rowell Street. The neighbourhood is described by the applicant's architectural consultant as "predominantly typical of mid 1970s to early 1980s style architecture".

The applicant submits the following in support of the application to erect a carport and roofed balcony within 4 metres of the Rowell Street road frontage:

- the existing dwelling is to be renovated using modern and functional design principles, such as covered outdoor living areas, passive solar and natural ventilation;
- the existing first floor balcony is inadequate for providing suitable outdoor living and weather protection, hence the need for the balcony extension;
- the extended balcony roof is proposed to provide mandatory shading from the sun;
- design of the balcony extension has taken privacy of adjoining properties into consideration and will in no way produce any detrimental effects on pedestrian or vehicular traffic, existing lines of sight will remain unaffected; and
- neighbours have indicated they have no objection to the proposed extension.

During the hearing the applicant stressed the need for the extended balcony to be roofed to provide weather protection and in particular sun protection due to the dangers of skin cancer.

Assessment manager's decision

In its written submission to the Committee, Council gave reasons for conditioning the approval to require that the carport (and balcony above) be no closer than 4.5 metres to the Rowell Street road frontage and that part of the balcony within the 6 metre setback to remain unroofed as:

- the allotment is not constrained and as such there is an obligation on the applicant to design in accordance with the applicable codes;
- the applicant has not demonstrated that the development facilitates an appropriate streetscape as required under Acceptable Solution A1(a) (Buildings and Structures) of MP1.2;
- the applicant has not demonstrated that the development complies with Specific Outcome 07 (Garages and Carports) Code 8.5 Detached Housing Code of the Caloundra City Plan in that:
 - the proposed carport will have a dominating appearance when viewed from the street;
 - the proposed carport will be inconsistent with the existing and proposed streetscape character;

the proposed carport will detract from the outlook of surrounding properties;

- the allotments within the area of the subject site generally comply with the setback requirements of the Caloundra City Plan. As such the proposed building would be inconsistent, as any reduction of the setback would cause a perceived overdevelopment of the street frontage; and the allotment is not constrained and the location of the existing building and structures on site are such that an alternative design is available to both comply with the above codes and to provide additional habitable space which does not unduly impact on the streetscape.

A further reason stated in the written submission related to the Council officer's belief that the existing complying off-street car parking is proposed to be converted to habitable rooms. This reason was withdrawn at the Committee hearing.

The Committee considered that Council's decision to approve the application subject to conditions (rather than refuse the application) creates uncertainty in relation to Council's intention for the final design and construction of the approved building works. The Committee requested amended plans to comply with the front building setback of 4.5 metres from Rowell Street and the deck structure remaining unroofed as required under conditions 4(1) and 4(2) of the approval in order to overcome this lack of certainty. The applicant was not prepared to provide further plans.

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 Registrar on 22 July 2010
2. Copy of application drawings
3. Copy of decision notice dated 15 July 2010 issued by Council to the applicant
4. Verbal submissions made by the owner at the hearing
5. Verbal submissions made by the applicant at the hearing
6. Verbal and written submissions made by Council's representative at the hearing
7. Code 8.5 of the Caloundra City Plan 2004
8. Section MP 1.2 of Queensland Development Code
9. The *Building Act 1975*
10. The SPA
11. The Building Code of Australia

Findings of Fact

The Committee makes the following findings of fact:

1. The subject dwelling, together with the majority of other dwellings in Rowell Street, currently has a 6 metre setback from the road frontage.
2. The existing roofed first floor deck has an effective width of 1.7 metres from the inside of the railing to the living room doors which does not provide a particularly effective outdoor dining/living space.
3. The proposal to erect a carport and roofed balcony within 4 metres of the front boundary does not comply with either the Acceptable Solution of the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing) or the Acceptable Solution 07 (Garage and Carports) of Code 8.5 Detached Housing Code of Caloundra City Plan 2004.

4. The existing dwelling currently has an enclosed double garage which will be retained, with the garage doors proposed to be relocated in a southerly direction to facilitate addition of a carport which will provide covered car parking spaces in addition to those provided in the existing double garage.

Reasons for the Decision

The Committee considers that:

1. the development does not demonstrate compliance with Performance Criteria P1 of the Queensland Development Code MP1.2 (Design and Siting Standard for Single Detached Housing) in respect of the bulk of the building or structure and the road boundary setbacks of neighbouring buildings or structures;
2. the development does not demonstrate compliance with Specific Outcome 07 of Code 8.5 Detached Housing Code of Caloundra City Plan 2004 in relation to the carport and balcony above not dominating the streetscape and preserving the amenity of adjacent land and dwellings;
3. compliance with the assessment manager's condition that the carport and deck be no closer than 4.5 metres from the road frontage would allow for the deck to be extended to an overall width in excess of 3 metres which is considered sufficient to provide an effective outdoor living/dining space;
4. weather protection (including sun protection) to the extended balcony could reasonably be provided by means other than a constructed roof;
5. the premises have complying covered car accommodation which will be retained; and
6. there is no overriding argument to justify a greater road frontage relaxation than the relaxation approved in the assessment manager's decision of 15 July 2010.

Robin King Cullen
Building and Development Committee Chair
Date: 23 September 2010

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