



## Building and Development Dispute Resolution Committees—Decision

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Sustainable Planning Act 2009

<b>Appeal number:</b>	31 - 10
<b>Applicant:</b>	Graeme & Marie Sue See
<b>Assessment manager:</b>	Coastal Building Certification
<b>Concurrence agency: (if applicable)</b>	Sunshine Coast Regional Council (Council)
<b>Site Address:</b>	17 Ballinger Road, Buderim and described as Lot 22 on RP 77533 – the subject site

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### Appeal

Appeal under section 527 of the Sustainable Planning Act 2009 (SPA) against the decision dated 13 May 2010 by the assessment manager to direct refusal of an application for building works for the siting of a carport. The refusal was based on a concurrence agency response from Council.

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Date of hearing:	10:00am - Thursday 15 July 2010
Place of hearing:	The subject site
Committee:	Mr Peter Folker – Chairperson
Present:	Graeme Sue See – Applicant Marie Sue See – Applicant Michael Bowcock – Coastal Building Certifications Steve Essex – SX Constructions Simone Essex – SX Constructions

Note: Council did not organise for a representative to attend the hearing.

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### Decision

The Committee, in accordance with section 564 of the SPA, **sets aside** the decision of the assessment manager to direct refusal of the building works development application for a carport within the front boundary setback and replaces it with the following decision:-

The assessment manager is directed to approve application, as if the concurrence agency had approved the application, subject to the following conditions:-

1. The carport shall be sited and located in accordance with the site plan (prepared by Magica Building Design, drawing no.09024a [issue a]) dated 21 September 2009;
2. The carport roof has colours to match the house;

3. The applicant is to construct and maintain the proposed front and side boundary wall in good condition including the rendered and painted exterior of the wall;
4. The carport is to remain open-fronted at all times – no roll-a-door or similar door/gate is to be installed;
5. The applicant is to provide landscaping to the area adjacent to the new turnaround on the property;
6. The applicant must comply with all other relevant building assessment provisions applicable to the building development application.

## **Background**

The site is located on the eastern side of Ballinger Road, in the suburb of Buderim. Ballinger Road is a well used link road from Burnett Street in the centre of Buderim to Stringybark and Dixon Roads (amongst others) to the south east which are the main inter-neighbourhood roads in this part of Buderim. The site is close to the Burnett Street end of Ballinger Road and is close to “Buderim Village”, the main centre for Buderim. It has an area of approximately 809m<sup>2</sup> and is of a regular, rectangular shape.

The site generally slopes down from the road towards the rear of the site and the land falls away fairly sharply. The appellants advised that this general locality has slope stability problems and that this is one of the reasons most of the dwellings in this locality are built as close to the road boundary as possible (Council’s Landslip Hazard Mapping shows this area as being in a “Very High” and “High” landslip hazard category).

Due to the slope of the land, the footpath/verge area is generally level with the road but the driveway for this property falls quickly into the site (in the order of approximately a metre).

The subject site is occupied by a two storey residential dwelling which presents as a single storey when viewed from the street, with the second level tucked in under the top level as the land falls away. There is a pool behind the lower level. The dwelling is set back 6 metres from the road frontage. Other than a single car carport in the general location now proposed, it is evident that the original dwelling was designed and build without typical “garage style” car accommodation within the curtilage of the dwelling.

The appellants advised that the existing dwelling was built in 1980 and there was, until recently, an existing pergola (carport) structure located in the area where the new carport is now proposed. The previous carport was covered and provided car shelter (a review of Google Maps aerial photography shows evidence of this structure). A plan submitted by the appellants, which shows the previous pergola structure, indicates that it was built to within approximately 1.5 m of the front boundary. The pergola structure has only recently been removed due to deterioration.

The subject site is located in an established residential area occupied by a range of detached residential dwellings, comprising both single and double storey buildings. The site is bounded by detached houses on the northern and southern side boundaries. The land to the east (rear) appears to be a Council reserve.

The proposed carport is intended to be located within 190mm of the northern (side) boundary and the same distance from the front (road) boundary. The appellants propose to construct a concrete block wall along the front and side boundaries to at least 1.8 metres high above the adjoining ground level outside the wall (i.e. the footpath). The proposed carport is an open structure although due to the slope of the land the proposed carport roof will be predominantly below the level of the proposed front boundary wall and part of the side boundary wall.

The appellants plan to reconstruct the driveway to widen it to match the width of the proposed carport and to provide a turn-around area to allow vehicles to enter and leave in a forward direction. Limited landscaping opportunities exist on the site in front of the dwelling under the appellant’s proposal. The

current access and driveway arrangement does not provide high levels of visibility when leaving the property.

## **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 on 17 May 2010.
2. A site inspection of the site and the locality, undertaken by the chairperson.
3. The assessment manager's decision notice dated 13 May 2010.
4. Council's referral agency response dated 27 April 2010;
5. Verbal and written submissions from the parties at and post the hearing.
6. The 2000 Planning Scheme for the former Maroochy Shire Council (the Maroochy Plan 2000) – in particular, Code 4.1 Code for Development of Detached Houses and Display Homes, Element 1, P2.
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 applicants, through their building certifier, applied for a variation to the siting requirement to allow the proposed carport. Council was a concurrence agency for the variation and directed the certifier to refuse the application by concurrence agency response dated 27 April 2010.
- Council's direction to refuse the application is based on alleged non-compliance with provisions of the planning scheme for the former Maroochy Shire Council, in particular Code 4.1 Code for the Development of Detached Houses and Display Homes, in particular Element 1, Performance Criterion P2, which states:

P2 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.
- At the hearing, the appellant made a number of points to support the carport in its proposed location, including:
  1. the carport will replace a previous structure that was only recently removed due to deterioration and which was already well within council's preferred setback alignment;
  2. the carport will have no impact on existing views and vistas because it is proposed to be located in front of the existing dwelling and that the existing dwelling already impedes any views and

- vistas that the proposed carport would otherwise affect;
3. the appellants believe that it is reasonable to expect to be able to provide cover for their vehicles and to be able to replace the previous structure (which had provided cover for one vehicle);
  4. the appellants believe that the proposed development will allow forward access to and egress from the property thus improving driver visibility to identify motorists and pedestrians which will greatly improve safety when entering and exiting the property (safer ingress and egress was expressed as an important reason for the proposed development by the appellants);
  5. the appellants believe that the proposed development will allow multiple cars to be parked behind the boundary (i.e. on the site), thus removing obstacles (i.e. kerb side parking) to driver visibility when leaving the property;
  6. that one of the proposed elevations shows that, with the proposed block wall in place along the front and side boundaries, the majority of the carport area and structure is not visible from the street;
  7. (via the appellants' private certifier) that no approval would be required for the proposed block wall along the front and side boundaries.
- Council, as the concurrence agency, were invited to but did not attend the hearing (due to unforeseen circumstances) and subsequently were given a copy of the committee chair's notes taken from the hearing and provided the opportunity to make detailed written submissions addressing their position with respect to this matter. Council provided written a submission dated 5 August 2010. Whilst the submission did not address the above performance criteria directly (four other non-related criteria were discussed and one related item which mentions elements of the performance criteria), the key points Council made are summarised as follows:
    1. the planning scheme does not require that any covered car accommodation be provided in conjunction with a detached dwelling;
    2. Council acknowledges that a carport designed to accommodate a single vehicle and setback further from the front and side property boundaries would achieve better compliance with the relevant performance criteria;
    3. that despite evidence that there is one other car accommodation constructed up to the front boundary on Ballinger Road, a precedent has not been set as streetscape in this area is characterised by natural landforms and vegetation rather than buildings and structures;
    4. Council does not consider that this proposal will comply with all of the above mentioned performance criteria as it has not been demonstrated that it will "contribute positively to the streetscape", nor "maintain the amenity of adjacent land and dwellings": specifically in terms of P2(b) building character and appearance; and P2(d) an adequate area suitable for landscaping being provided for at the front of a lot.
    5. Council does not believe that there is the possibility of a better outcome for the carport in the current location.
  - Council again noted at the end of its submission that its decision is based primarily on criteria (b) building character and appearance, and (d) an adequate area suitable for landscaping being provided for at the front of a lot. Council's submission does not offer any further discussion of these criteria.
  - A timber paling fence approximately 1.8 metres in height exists along the front and northern side boundaries which would, if the proposed carport was constructed, substantially limit the visibility of the carport when approaching the subject site from either direction along Ballinger Road.
  - There are at least two other examples nearby of car accommodation being located up to the front property boundary, one being a fully enclosed single garage at 18 Ballinger Road and the other a flat roofed single car carport at 27 Ballinger Road.

- The immediate area is an older part of Buderim and can be characterised by a predominance of detached dwellings of varying degrees of age, size and appearance set amongst a generally well-vegetated landscape within lots and road reserves. The general area is not homogenous in terms of building setbacks, building styles, structures or fences (as perhaps a new estate would appear).
- There is not sufficient area between the existing house and the front property boundary to provide double car accommodation so that it would comply with a front setback of 4.5m. The committee notes that a single car accommodation would not meet a 4.5m setback in this instance either.
- The rearrangement of the driveway and inclusion of a turnaround facility on site would improve access and egress to and from this property.

Based on an assessment of these facts, it is the Committee's decision that the decision notice being appealed against be **set aside** and that the building works application for siting of a dwelling house be approved, subject to compliance with the following conditions:

1. The carport shall be sited and located in accordance with the site plan (prepared by Magica Building Design, drawing no.09024a [issue a]) dated 21 September 2009;
2. The carport roof has colours to match the house;
3. The applicant is to construct and maintain the proposed front and side boundary wall in good condition including the rendered and painted exterior of the wall;
4. The carport is to remain open-fronted at all times – no roll-a-door or similar door/gate is to be installed;
5. The applicant is to provide landscaping to the area adjacent to the new turnaround on the property;
6. All other relevant building assessment provisions applicable to the building development application.

### **Reasons for the Decision**

- The proposed carport will be located behind a proposed 1.8 metre high block wall, such that only part of the roof of the carport will be visible to passers-by.
- The proposal will have minimal if any visual or amenity impacts on neighbours.
- The subject site is within a locality that is of a mixed built form, from which the subject proposal will not detract.
- Alternative options for this site do not appear to be readily available and are unlikely to offer the same level of safety with respect to vehicles being able to enter and exit the site in a forward direction.
- The concurrence agency's submission stated that its response was based primarily on clauses (b) and (d) of the performance criteria. Clause (b) relates to building character and appearance, and clause (d) relates to adequate landscaping at the front of a lot.
  - In terms of building character and appearance, the Committee was not convinced that these were problematic. The proposed carport will have very little visual impact on the streetscape as the majority of the carport structure will be hidden by a proposed masonry fence. The same can be said for the immediate neighbour to the north (most potentially affected by the carport).

- In relation to clause (d) – adequate landscaping at the front of a lot, the committee finds that whilst only a limited area is available at the front of the lot for landscaping, the effects that additional landscaping would have on the streetscape (if a greater area was available), only to be hidden from view behind the proposed block wall, would not contribute greatly to the outcome and hence is not considered sufficient grounds for refusal. Alternatively, the proposed turnaround area makes a significant contribution to a safer access arrangement for this property and outweighs the landscaping issue in the committee’s opinion.
- The proposal satisfies the Performance Criteria of the relevant Planning Scheme Code.

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**Peter Folker**  
**Building and Development Committee Chair**  
**Date: 23 August 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