



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	28-18
Appellant:	Project BA
Respondent (Assessment Manager)	Luke Neller
Co-respondent (Concurrence agency)	Sunshine Coast Regional Council
Site Address:	3 Samantha Drive, Bli Bli Queensland 4560, described as Lot 1 on RP 896155 – the subject site

Appeal

Appeal under section 229 and item 1 of table 1 of section 1 of schedule 1 of the *Planning Act 2016* (PA) against the refusal of a development application for building work for construction of a carport located near the frontage of the subject land. The Concurrence Agency directed the Assessment Manager to refuse the application because it does not comply with performance criteria PO2(b), (c) & (d) of the Dwelling House Code under the Sunshine Coast Planning Scheme 2014 (planning scheme).

Date and time of hearing:	8 October 2018, 10:30am
Place of hearing:	The subject land
Tribunal:	Shane Adamson – Chair Jenny Owen – Member
Present:	Luke Neller (Project BA Building Certifiers) – Appellant Daniel Eichhorn (Project BA Building Certifiers) – Appellant Norman Parker – Property owner Stephanie Raven – Council representative Peter Chamberlain – Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the PA confirms the decision of the Assessment Manager to refuse the development application for building work for a proposed carport near the front boundary of the subject land.

Background

The property owner engaged Southern Cross Sheds (Applicant) to design and construct a new carport to be located near the front boundary on the subject land. The Applicant lodged a Development Application for Preliminary Approval for Building Work with the Assessment Manager (Luke Neller of Project BA - Building Certifiers).

On 23 April 2018, a copy of the application was referred to the Concurrence Agency (Sunshine Coast Regional Council) because the proposed carport did not comply with the Acceptable Outcomes under the Dwelling House Code, specifically Acceptable Outcome A02.1(a).

On 17 May 2018, the Concurrence Agency made an Information Request, advising the Assessment Manager that it had determined that the proposed carport did not reasonably comply with performance outcome P02, and requested further information.

On 19 June 2018, the Assessment Manager responded to the Information Request providing further justification, including photographs to support the proposal.

On 27 June 2018, a Referral Agency Response was provided directing the Assessment Manager to refuse the application. The Concurrence Agency provided the following reasons:

A dwelling house is required to incorporate a high standard of design and make a positive contribution to the streetscape character of the area in which it is located.

- 1. The proposed development will dominate the streetscape, will not maintain the visual continuity and pattern of buildings in the street and will not maintain the visual continuity landscape elements in the street and therefore does not achieve the Performance outcome P02(b), (c) or (d).*
- 2. The streetscape in the vicinity of the subject lot generally consists of residential dwellings with open fronted yards with soft landscaping elements. Buildings are generally setback 6m from the road boundaries, with no carports located in front of dwellings. The carport will be an inconsistent built form within the front setback and will not make a positive contribution to the streetscape character, which is generally set aside for landscaping elements. As such the proposal does not achieve the outcomes of the Dwelling House Code.*

On 3 July 2018, the Assessment Manager refused the development application for building work in accordance with the Concurrence Agencies Response provided above.

On 4 July 2018, the Assessment Manager lodged an appeal with the Tribunal about the decision.

Jurisdiction

The Tribunal has jurisdiction to hear an appeal lodged about the refusal of the a development application for building work under the PA, Schedule 1, section 1 - Appeal rights and parties to appeals, Table 1, item 1 development applications. This being for a development application other than an excluded application, for an appeal made against the refusal of all or part of the development application (paragraph (a) of item 1).

In considering the appeal, the Tribunal was concerned about the status of the appeal, given the appeal was lodged by the Assessment Manager and not the Applicant. On 12 April 2019, the Tribunal was advised by the Registrar with respect to the noncompliance with Form 10 under the PA (in that the 'Appellant' was named as 'Project BA' instead of the Applicant 'Southern Cross Sheds' for the development application, and the form being signed by the Assessment Manager (Project BA), instead of the Applicant (Southern Cross Sheds)), was duly excused pursuant to section 243 of the PA by an authorised delegate of the Chief Executive.

Decision framework

It is noted that:

- the onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA),
- the tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (s. 253(4) of the PA),
- the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings), and
- the tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

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 4 July 2018;
2. The Concurrence Agency Referral lodged by the Assessment Manager with the Concurrence Agency dated 23 April 2018;
3. The Information Request made by the Concurrence Agency dated 17 May 2018;
4. The response made to the Information Request by the Assessment Manager dated 19 June 2018;
5. Concurrence Agency Response dated 27 June 2018;
6. The Decision Notice refusing the application reference number 20181231 dated 3 July 2018; and
7. Part 9.3.6 Dwelling House Code, under the planning scheme.

Findings of Fact

The Committee makes the following findings of fact:

1. the subject site has an area of about 600m², is rectangular in shape and is located on the eastern side of Samantha Drive;
2. the subject land is improved by a dwelling located about 6m from the front boundary and has an existing concrete standing area where the carport is to be constructed with a small retaining wall generally on the front boundary;
3. the proposed carport is 6.8m wide x 6.0m long and 3.0m high;
4. when viewed from the street the carport has a length of 6m;
5. access to the carport is to be from a new driveway with entry from north eastern end;
6. the proposed carport has a 0m front setback and 1m side setback to the south west;
7. within this part of the Samantha Drive the streetscape is consistent in terms of the built form being comprised primarily of residential dwellings having a 6m setback to the road reserve;
8. within the locality there is an existing shade-sail structure located within the 6m setback area fronting the dwelling at 17 Samantha Drive located to the south, but is removed from the subject land;
9. another carport is located within the 6m setback area fronting the dwelling at 45 Samantha Drive located near Thomas Road but is well removed from the subject land;
10. the character of the area is comprised generally of single detached dwellings having a 6m building setback to Samantha Road; and
11. there are few carports or other structures located within the 6m setback area fronting dwellings in Samantha Drive with the existing built form being comprised of dwellings located 6m from the front boundary.

Reasons for the Decision

The Tribunal is not satisfied the proposed carport meets parts (a), (b), (c) & (d) of Performance Outcome PO2 of the Dwelling House Code under the planning scheme, for the following reasons:

- the proposed carport does not preserve the amenity of other dwelling houses within the street with limited or no ability to screen the structure from the street;
- the proposed carport will dominate the street in this location;
- the proposed carport will not maintain adequate area suitable for landscaping adjacent to the road frontage; and
- the proposed carport will not maintain the visual continuity and pattern of buildings and landscape elements within the street.

Shane Adamson
Development Tribunal Chair
Date: 29 April 2019

Appeal Rights

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of

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- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833 Facsimile (07) 3237 1248

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