



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	21-023
Appellant:	Adam Amson, That Patio Guy
Respondent (Assessment Manager):	Richard Jones, Fluid Building Approvals
Co-Respondent (Concurrence Agency) :	Sunshine Coast Regional Council
Site Address:	19 Colsak Close, Palmwoods Qld 4555 described as Lot 8 on RP814215 – the subject site

Appeal

Appeal under Section 229(1)(a)(i) and Schedule 1, section 1, table 1 item 1(a) of the *Planning Act 2016*, (the **Act**), against the decision of the Assessment Manager, as directed by the Concurrence Agency, for refusal of a Development Permit for Building Works (Dwelling House (class 10a carport)) on the basis that the proposal does not comply with the Performance Outcome PO2 of the Dwelling house code of the Sunshine Coast Planning Scheme 2014 (**Planning Scheme**).

Date and time of hearing:	26 August 2021 at 10:00am
Place of hearing:	The subject site (19 Colsak Close, Palmwoods)
Tribunal:	John Panaretos – Chair Nicole Prentice – Referee
Present:	Adam Amson, Suncoast Home Improvements Pty Ltd (T/A That Patio Guy) – Appellant Tracey Douglas Sunshine Coast Regional Council – Council representative Mitchell Schwieso, Sunshine Coast Regional Council – Council representative

Decision:

1. The Development Tribunal (**Tribunal**), in accordance with section 254(2)(a) of the *Planning Act 2016* confirms the decision of the assessment manager, as directed by the concurrence agency to refuse the application.

Background

2. The subject site, located at 19 Colsak Close, Palmwoods, and described as Lot 8 on RP814215, has a site area of 1,071m².
3. An Application (the Subject Application) was lodged by the Appellant on behalf of the owner-resident on 22 February 2021, seeking a Development Permit for Building Works (Dwelling

house). The proposal is for the construction of a double carport, dimensions 6.0 metres x 5.4 metres, in front of the existing garages with a setback of 800mm from the front alignment.

4. The proposed carport is designed to provide a wider covered space to allow Ms Baker, the owner-resident, to enter and exit her vehicle as she suffers from a degenerative disease. The existing garages fail to meet her increasing needs as each garage is constrained in width by support column(s).
5. The proposed carport is subject to assessment against the front setback prescribed by Performance Outcome PO2 and Acceptable Outcome AO2.1 of the Dwelling house code of the Planning Scheme. AO2.1 requires a 6.0 metre setback, which the application sought to relax to 800mm.
6. On 20 April 2021, Sunshine Coast Regional Council (**Council**) directed the refusal of the application on the basis the proposal does not comply with Performance Outcome PO2 part (d) of the Dwelling house code. Performance Outcome PO2 states:

Garages, carports and sheds:-

- (a) *preserve the amenity of adjacent land and dwelling houses;*
- (b) *do not dominate the streetscape;*
- (c) *maintain an adequate area suitable for landscapes adjacent to the road frontage; and*
- (d) *maintain the visual continuity and pattern of buildings and landscape elements within the street.*

7. The Assessment Manager issued the Decision Notice of Refusal on 20 April 2021.
8. An Application for Appeal/Declaration – Form 10 was lodge with the Development Tribunal on 5 May 2021.
9. A Tribunal Hearing (**hearing**) was held on site on 26 August 2021 at 10:00am.
10. At the hearing the Appellant confirmed that the reason for the proposed carport was to provide alternative covered car accommodation as the existing garage did not meet the needs of the owner, following the owner's diagnosis with a degenerative disease which affects her mobility. The existing garage has a central pillar which obstructs the owner's access into and out of the vehicle.
11. The Council representatives detailed their rationale for the decision to refuse, including avoiding a precedent of consenting to development that is inconsistent with the existing streetscape when there is existing vehicle accommodation on the site.
12. Council additionally advised that its assessment of the application was confined by the *Planning Regulation 2017* (the **Regulation**), to *Performance Outcome PO2* of the Planning Scheme, thus excluding both the Purpose of the *Dwelling house code* and the owner's personal circumstances.
13. The Tribunal accepts Council's understanding of the limitations placed on the assessment criteria applying to this application by the *Planning Act 2016* and the Regulation, specifically Schedule 9 Part 3 Division 2 Table 3 item 1(b) and item 4.
14. Alternative positions for car accommodation to meet the owner's needs were considered at the hearing but discounted due to other constraints.

Material Considered

The material considered in arriving at this decision comprises:

15. 'Form 10 – Appeal Notice', grounds for appeal and accompanying documents lodged with the Tribunals Registrar 5 May 2021.
16. Sunshine Coast Regional Council's Concurrence Agency Response dated 20 April 2021.
17. *Planning Act 2016*.
18. *Planning Regulation 2017*.
19. Sunshine Coast Planning Scheme.
20. Presentations made at the hearing.

Findings of Fact

21. The Tribunal makes the following findings of fact:
 - Although Lot 8 is characterised by steeply sloping and benched land, the site of the proposed carport is flat, level with the road and visually terminates the cul-de-sac. Lot 8 contains a dwelling incorporating a double garage, with a front setback from Colsak Close of approximately 6 metres.
 - Colsak Close is characterised by a steep crossfall, from south to north, with dwellings located lower than the road on the northern side of the street, and a generally consistent 4.5 metres to 6.0 metres landscaped setback to the road.
 - The proposed carport is to be setback 800mm from the road frontage (Colsak Close).
 - The carport position is located at the end of a cul-de-sac, level with the road and therefore clearly visible in the streetscape with no space for landscaping in front to screen the view.
 - The proposal is not consistent with *Performance Outcome PO2* of the *Dwelling house code* since the front boundary setback is not consistent with the prevailing pattern of buildings and setbacks in the streetscape. Thus, it does not maintain the visual continuity and pattern of the buildings within the street.
 - The proposed 800mm setback conflicts with Sunshine Coast Planning Scheme 2014 – *Dwelling house code, Performance Outcome PO2 (d)*.

Reasons for the Decision

22. The location of the proposed carport 800mm from the front alignment, level with and at the termination of the cul-de-sac, would not maintain the pattern of buildings and landscape elements in the street.
23. The proposal does not satisfy the *Dwelling house code, Performance Outcome PO2* of the Planning Scheme in that it would intrude into the streetscape and fail to maintain the visual continuity of the buildings within the street, and it cannot be conditioned to overcome these conflicts.
24. There is an existing garage on the subject site which satisfies the requirement under the *Dwelling house code* for car accommodation to be provided.

25. Assessment criteria for the application exclude personal circumstances and Planning Scheme provisions beyond *Performance Outcome PO2*.

John Panaretos

Development Tribunal Chair

Date: 9 September 2021

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 -

- (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.

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
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