



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	21-066
Appellant:	Christopher Charles Bates and Janese Marie Bates
Respondent (Assessment Manager):	Veen Lyall-Wilson of Pronto Building Approvals
Co-respondent (Concurrence Agency):	Sunshine Coast Regional Council
Site Address:	6 Summer Drive Maroochydore and described as Lot 51 on SP181389 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the Planning Act 2016 (PA) against the refusal of a Development Application for Building Works for additions to a dwelling house being an existing carport. The decision followed a concurrence agency response by the Sunshine Coast Regional Council (Council), directing refusal of the application. Council stated in part, that the proposal did not meet Performance Outcomes PO2 (d) of the Dwelling House Code under the Sunshine Coast Planning Scheme 2014.

Date and time of hearing:	21 March 2020 1-30 p.m.
Place of hearing:	The subject site
Tribunal:	Anthony Roberts – Chair Elisa Knowlman - Member
Present:	Mr CC Bates & Mrs JM Bates – Appellants Mr M Schwieso & Mr J Dodd - Council representatives Mr V Lyall-Wilson Pronto Building Approvals – Assessment Manager

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the Planning Act (2016), has decided this appeal by replacing the decision of the Assessment Manager to refuse the application, with a decision to approve the development as constructed.

Background

The subject site is a residential property situated in a residential estate locally known as Maroochy Waters. The 695 sq/m allotment is flat (as is the surrounding area) and has frontage of 20 metres to Summer Drive which curves substantially along its extent. The land is zoned Low Density Residential.

The existing dwelling is single storey brick on a concrete slab constructed in the 1980s in a style typical of that time – with arched brick garages. It is parallel to the street with a setback of approximately 6 metres.

The Appellants' stated reason for requiring a double carport to be constructed on the existing double width driveway was to have weather-proof accommodation for their large passenger vehicle and caravan which cannot be accommodated in the existing double garage.

A chronology of events was provided by the Appellants as follows:

- October 2020 - Coastal Patios were engaged to construct the double carport and Pronto Building Approvals were in turn engaged by Coastal Patios as Assessment Manager to provide the necessary approvals. An approval was issued by the Assessment Manager on 23/10/2020.
- December 2020 - Carport erected at a setback of 2.5 metres from the front boundary.
- January 2021 – Final Inspection Certificate issued.
- February 2021 – Appellants received 'Breach Identified' letter from Council stating that Council had received a complaint concerning the carport structure that had been constructed without a Concurrence Agency Response (CAR) from the Council and that an inspection had confirmed the breach. The letter stated that to remedy the situation the Appellants had two options which were to remove the carport or obtain a CAR to keep the carport. The Appellants responded advising Council that the Assessment Manager would action a CAR.
- July 2021 - CAR submitted by the Assessment Manager seeking approval for a 2.5 metre setback.
- October 2021 – Appellants receive a Show Cause Notice (as to why an Enforcement Notice should not be issued) from Council which attached the CAR refusal dated 21/7/2021 that they were previously unaware of.
- October 2021 – Assessment Manager issued an amended Decision Notice - Refusal (dated 28/10/2021) which refused the application as directed by Council.
- November 2021 - Appellants wrote to Council advising that an appeal to the Development Tribunal would be lodged and asking that enforcement proceeding be held in abeyance pending the outcome of the appeal. The appeal was subsequently lodged with the Registrar using Form 10 – Notice of Appeal on 16/11/2021.

The hearing for the appeal was held at the subject site on 21 March 2022 at 1-30 p.m. The Tribunal had the opportunity to view the existing carport structure from both the subject property, neighbouring properties, and the streetscape more generally.

The site when viewed from the street immediately in front features an open lawn area with limited landscaping and with no front fence. However, along the length of the 1.6 metre side setback adjoining the carport on the [eastern] property boundary there is a row of dense vegetation exceeding the height of the carport.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence (together with attachments) accompanying the appeal lodged with the Tribunals Registrar on 16/11/2021.
2. The submission (and attachments) to the Tribunals Registrar by the Appellants – dated November 2021.
3. Sunshine Coast Regional Council - Concurrence Agency Response dated 21/7/2021.
4. Amended Decision Notice refusing application 201026 - dated 28/10/2021.
5. Sunshine Coast Regional Council - Council Assessment Report – dated 20/07/2021.

6. Sunshine Coast Regional Council - Submission to Development Tribunal – undated.
7. The Planning Act 2016 (PA).
8. The Planning Regulation 2017 (PR).
9. The Building Act 1975 (BA).
10. The Building Regulation 2006 (BR).
11. The Queensland Development Code (QDC).
12. The Sunshine Coast Planning Scheme 2014.
13. The Sunshine Coast Dwelling House Code (Dwelling House Code).
14. Verbal submissions made by the parties at the hearing and during the site inspection.
15. Petition signed by seven neighbouring property owners providing support for the development.
16. Tribunal Decision 21-034 of 17 December 2021 in respect of 24 Summer Drive Maroochydore.

Findings of Fact

The Tribunal makes the following findings of fact:

Jurisdiction:

The Tribunal has jurisdiction to hear the appeal under the PA section 229(1)(a)(i) and Schedule 1, sections 1(1)(b), 1(2)(g) and Table 1, item 1(a) being an appeal by the Appellants against the refusal of the development application by the Assessment Manager on the direction of the Referral Agency.

Decision Framework

Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:

- (2) Generally, the appellant must establish the appeal should be upheld.
- (4) The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.
- (5) However, the tribunal may, but need not, consider— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.

Section 254 of the PA deals with how an appeal such as this may be decided. The first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal and not relevant here) are as follows:

- (1) This section applies to an appeal to a tribunal against a decision.
- (2) The tribunal must decide the appeal by-
 - (a) confirming the decision; or
 - (b) changing the decision; or
 - (c) replacing the decision with another decision; or
 - (d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or
 - (e) [not relevant].

- (3) However, the tribunal must not make a change, other than a minor change, to a development application.

It was not in dispute that:

- the carport is assessable building work (BA s 20)
- the level of assessment is code assessment (Planning Regulation Schedule 9, Table 1)
- the relevant assessment benchmarks are the Building Assessment Provisions (Planning Regulation Schedule 9, Table 1) as set out in BA s 30, which include the Building Code of Australia (BCA) and the Queensland Development Code (QDC), subject to BA s 33.

As this is a code assessable application, the decision must be made according to s 60(2) of the Planning Act, which provides in part:

To the extent the application involves development that requires code assessment, and subject to section 62, the assessment manager, after carrying out the assessment—

- (a) **must** decide to approve the application to the extent the development complies with all of the assessment benchmarks for the development; and
- (b) **may** decide to approve the application even if the development does not comply with some of the assessment benchmarks...

This is consistent with s 34A (2) BA:

*(2) If the assessment manager for a building development application is satisfied the application complies with the building assessment provisions, the assessment manager **must** approve the application.* (bold highlighting added to both citations).

Section 33 of the BA (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover, provided those alternative provisions are either a qualitative statement or quantifiable standard. The Tribunal considers that both Acceptable Outcome AO2.1 (as a quantitative standard) and Performance Outcome PO2.1 (as a qualitative statement) are alternative provisions as defined in the BA, and that they therefore supersede the equivalent boundary clearance requirements in the QDC MP1.2. To comply with the boundary requirements called up (indirectly) by the BA, building work must satisfy either AO2.1, or PO2.1 of Council's Dwelling House Code.

It was common ground between the parties that AO2.1 of the Council's Dwelling House Code (which sets out a requirement for a 6 metre front setback for carports, garages and sheds) is not complied with and therefore the development must be assessed and determined to be compliant against all four parts of the performance criteria stated in PO2.1 and re-stated below:

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.

As no other issues in dispute were raised, it follows that if the carport does comply with PO2.1, the development complies with all assessment benchmarks, and the appeal must be allowed per s 60(2) PA and s 34A(2) BA.

At the hearing, the Assessment Manager made a submission to the effect the carport structure, being best defined under QDC MP1.2 as an 'Open Carport' is not subject to the requirements of the planning scheme, as the alternative provisions set out in the Dwelling House Code do not specifically reference open carports as defined in the QDC. Further, the Assessment Manager in

the assessment of the proposal determined the open carport structure, located over the existing driveway crossover, satisfied the provisions of QDC MP1.2, A1(c) and therefore did not require a concurrence agency referral.

The Tribunal has considered this submission and noted that while the Sunshine Coast Planning Scheme does not provide a definition for carports, the QDC defines and consequently differentiates between a carport and an open carport as follows:

- Carport means a class 10a building, other than a garage, providing covered vehicular parking.
- Open Carport means a carport with – (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another building or a side or rear allotment boundary; and (b) not less than one-third of its perimeter open.

The Tribunal found that using the abovementioned definitions, the proposed structure is best described as an open carport. However, it is noted that the QDC definition of Open Carport includes within it the phrase “means a carport”. This framing within the definition encompasses and enables the broader definition of a carport. The Tribunal considers that the definition of an open carport cannot be used without the broader definition of carport also being applied.

Further, the dictionary definition for a carport is a shelter for a car consisting of a roof supported on posts, built beside a house. As such a carport by its nature is an open building and the fact that the Sunshine Coast Planning Scheme 2014, Dwelling House Code P02 uses the term Garages, Carports and Sheds and does not use the term “open” means the general meaning of the term carport would apply and the planning scheme requirement would apply to all carports – “open” or otherwise. The Dwelling House Code clearly states that Acceptable Outcomes A02.1(a) is an alternative provision to the QDC.

For the above reasons, the Tribunal is of the view that the Sunshine Coast Planning Scheme 2014 - Dwelling House Code does provide the applicable assessment standard for the proposed development contemplated by the BA.

Matters in Dispute:

Council’s assessment of the development confirmed that the development complied with elements (a) to (c) of PO 2.1(d). In this particular case, Council has relied on PO2.1(d) as the basis for its decision.

In Council’s CAR refusal of the reasons for refusal were stated as follows:

“The proposed 2.5 metre setback of the carport does not meet:

PO2(d) – maintain the visual continuity and pattern of buildings and landscape elements within the street.

1. The visual continuity and overall pattern of Summer Drive predominately comprises of dwellings approximately 4.5m – 6.0 m from the road frontage with carports, garages and sheds consistently setback 6.0m as required by the Planning Scheme. Council considers the carport proposed 2.5m front boundary to be inconsistent with the setback pattern of the street as a whole. Council therefore considers that the proposed carport does not maintain the visual continuity and pattern of buildings within the street. As such, the proposal does not comply with Sunshine Coast Planning Scheme 2014 – Dwelling House Code, Performance Outcome PO2 (d).

2. Furthermore, as the existing car parking provided on the site (double garage) satisfies the requirements of the Dwelling House Code, Council sees no reason to depart from the planning scheme. “

At the hearing, confirmation was provided by Council representatives that the only focus of the appeal was the siting of the carport relative to the frontage of the subject site, and the achievement or otherwise of PO2.1(d) of the Dwelling House Code, and that there were no other aspects of the proposed carport design or siting that were in dispute. The Tribunal therefore finds that the only matter in dispute in this appeal is the front setback of the proposed carport and its achievement or otherwise of PO2.1(d) of the Dwelling House Code.

Visual Continuity and Pattern of Buildings and Landscape Elements within the Street

Council's position, as set out Council's referral agency response and confirmed by Council's representatives at the Appeal is that the visual continuity and pattern of buildings in the street and the associated landscape elements comprises predominantly of dwellings setback approximately 4.5m – 6.0 m from the road frontage with carports, garages and sheds consistently setback 6.0m as required by the Planning Scheme. Council considers the carport setback 2.5m from the front boundary of the subject site to be inconsistent with the setback pattern of the street as a whole and consequently does not maintain the visual continuity and pattern of buildings within the street - therefore failing to comply with Dwelling House Code, Performance Outcome PO2 (d).

Based upon the site inspection conducted on 21 March 2022, the Tribunal finds that substantial windiness or curvature of Summer Drive presents varied 'streetscapes' comprising varied building pattern and landscape elements along the extent of the street. As a whole, Summer Drive exhibits a 'mixed' style of building or landscape elements and is characterised by a variety of building forms, scales and styles, as well a wide variety of landscape elements, such as fencing and soft landscaping treatments, in terms of their heights, types, materials and locations.

It is the case – with the exception of the carport approved within the 6 metre setback at number 24 Summer Drive by the Development Tribunal under appeal - that carports in the street are generally set back beyond 6 metres from the front boundary. However, it is also the case that there is considerable 'visual clutter' in the streetscape generally attributed to the presence of assorted structures such as substantial solid fences (Colourbond and brick block) and shade sail structures. The street contains a mix of architectural styles including some very modern structures and high-mass fencing to boundary and smaller structures on frontages such as pool pump houses. A definable 'continuity and pattern' of streetscape is therefore difficult to determine.

In the context of the subject site, there are at least six examples of shade structures providing cover to cars within the 6m street setback area. These structures may or may not have been erected lawfully. These structures do seem to detract from the Council's design intention of having visual continuity and consistent pattern of buildings and landscape elements.

In relation to the subject site itself the Tribunal noted, during the site inspection, that the carport is flanked by a substantial existing landscape buffer along the western side of the carport which virtually obscures the structure from that aspect. The actual design of the structure with a high flat roof sloping to the house blends in well with the roofline of the house and is relatively unobtrusive.

The Tribunal therefore finds that the carport itself, as constructed, does not have a detrimental impact on the visual values of the streetscape and that it effectively maintains the existing visual continuity and pattern of buildings and landscape elements already evident in the street.

Neighbour Support

The tribunal notes that seven nearby neighbours have signed a petition in support of the carport. This at the least indicates that the parties most directly affected by the appearance and location of the carport are accepting of its presence in the streetscape.

The Council has made the Appellants aware that a complaint was made about the carport which gave rise to a compliance inspection. The Council has failed to disclose the nature of such complaint to the Appellant.

As indicated above, the Tribunal considers that those parties most directly affected by the development have no concerns so assigns little weight to the initial complaint the nature of which remains undisclosed.

Existing Car Accommodation on Site

In respect to second component of Council's reasons for refusal - *Furthermore, as the existing car parking provided on the site (double garage) satisfies the requirements of the Dwelling House Code, Council sees no reason to depart from the planning scheme* – the Tribunal makes the observation that the size and design of the existing double garage (double-arched entrance) renders it impractical for the accommodation of the Appellants' large vehicle let alone the caravan. The Tribunal reiterates its finding that the carport does not in fact depart from the Planning Scheme, as it complies with PO2.1 as required.

Further, there are insufficient setbacks on either side of the dwelling to locate carport(s) behind a 6 metre street front setback.

Reasons for the Decision

In this appeal the Tribunal considers the Appellants have satisfied the onus to demonstrate the appeal should be upheld. Therefore, the Tribunal has determined to replace the decision of the Assessment Manager for the reasons identified below.

The Tribunal found that Council's Planning Scheme intent that garages and carports do not dominate the streetscape is clear. However, when considering the prevailing visual continuity of Summer Drive as a whole, the streetscape varies considerably due to the Street's substantially curvilinear alignment and variability in setbacks, fencing, built form and street tree arrangement. It is also the case that there is considerable existing 'visual clutter' in the streetscape generally attributed to the presence of assorted structures such as substantial solid fences and shade sail structures.

To the extent that the streetscape has 'visual continuity and pattern of building and landscape elements' the Tribunal finds that the carport as constructed maintains that visual continuity and pattern.

The Tribunal therefore considers Performance Outcome PO2.1(d) has been satisfied in that the carport which has a design that integrates the structure with the existing house and is partially obscured by a landscape buffer is not inconsistent with the prevailing streetscape exhibited along the length of Summer Drive and in closer proximity to the subject property.

Further immediate neighbours, seven in total, have been willing to provide written endorsements to support the approval of the existing carport. This at the least indicates that

the parties most directly affected by the appearance and location of the carport are accepting of its presence in the streetscape.

A handwritten signature in black ink, appearing to be 'A Roberts', enclosed in a light green rectangular box.

Anthony Roberts

Development Tribunal Chair

Date: 12 May 2022

Appeal Rights

Schedule 1, Table 2, item 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.

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:

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