



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-044
Appellant:	Adam Phillips
Assessment Manager:	Brett McCullagh
Referral Agency:	Sunshine Coast Regional Council
Site Address:	26 Malibu Avenue, Coolum Beach, described as Lot 141 on RP 87103 – the subject site

Appeal

Appeal under the *Planning Act 2016 (PA)* Section 229(1)(a)(i), Schedule 1 Section 1(1) Table 1 Item (1)(a) and Schedule 1 section 1(2)(g) against the refusal by the Assessment Manager at the direction of the Referral Agency, the Sunshine Coast Regional Council (SCRC), for the erection of a Class 10a building, a carport.

Date and time of hearing:	1 December 2022 9.30 am
Place of hearing:	The subject site
Tribunal:	Dr Christopher Robertson – Chair Ms Suzanne Bosanquet – Member
Present:	Mr Adam Philips – Appellant Mr Brett McCullagh – Northshore Building Approvals Qld Pty Ltd Mr Cameron Wilson – Sunshine Coast Regional Council Mr Stefan Martin – Sunshine Coast Regional Council

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the PA, replaces the decision of the Assessment Manager, made under direction from the Referral Agency, the SCRC, with the decision to allow the construction of the carport (class 10a building) as proposed by the Appellant, as per Architect Drawings and Renderings supplied to the Tribunal, namely: CNST.00.3; CNST.02; CNST.03; CNST.050; CNST.052, CNST.100; and CNST.Z.02 (Dated: 11/08/2022).

Background

1. The subject site is 607m² and is designated low density residential. The site has a Westerly facing street frontage verge of 8m between the property boundary and street. The opposite side of the street has a 4m Easterly verge between the property boundary and street. The primary use of the street is residential and comprises of mixed dwelling styles of different periods, consisting

of both single and double story. Property frontages adjacent the verges vary, from no fencing to high fencing and minimal or selective or dense use of vegetation.

2. The Assessment Manager made an application to the Referral Agency, SCRC, for a proposed carport that is sited within the permissible setback of 6m. The proposed carport provides for a site cover of 25.5 m², with a site cover ratio of 14.5%.
3. The proposed design for the carport is very modest and simple. It consists of a minimal pitch flat roof, with articulated edges and minimal post supports, maximising transparency whilst providing an elegant resolution of breaking down the bulk and scale of the existing circa 1980s style 2 storey dwelling and adding a positive improvement to the visual aesthetic of the streetscape and the dwelling itself. The proposed siting along the street frontage maintains the usage of the existing crossover and driveway, abuts the neighbouring enclosed garage and maintains an open recreational area to the northern edge of the property to facilitate planting and maintaining amenity for adjacent properties and for the site itself.
4. On 25 August 2022, the Referral Agency (SCRC) advised that the application for the 'proposed development does not comply with, nor can it be conditioned to comply with, the requirements of the applicable assessment benchmarks'. The reasoning for the refusal by the Referral Agency was provided as:

1.05 metre setback from the outermost projection of the carport to the road/property boundary (Malibu Avenue frontage) in lieu of 6m.

The proposal does not meet the Performance Outcome PO2 (d) of the Dwelling House Code within the Sunshine Coast Planning Scheme 2014:

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

The proposed carport would not maintain the visual continuity and pattern of buildings within the street. Malibu Avenue is characterised by open landscaped front yards. The visual continuity and pattern of 'the street' (Malibu Avenue) predominantly comprises of other garages, carports and sheds setback approximately 6 metres from the road frontage, with the continuity of the built form being maintained. Whilst there are two examples of structures within the front setback (a garage located 3 metres to the site frontage at 7 Malibu Avenue approved under a different planning scheme and the shade structure at 21 Banksia Avenue), this would represent two encroachments within a street of 30 properties, which is not considered to constitute a pattern of buildings located with a 1.05m setback in the street. Site and street photos taken from a physical visit to the street also show the majority of structures setback a minimum of 6m from the front boundary and often located behind landscaping, thus representing the visual continuity in the street. Consequently, the proposed carport would not comply with PO2 (d).

5. On 29 August 2022, the owner of the property appealed to the Development Tribunal on the refusal of the application.

Material considered

6. The material considered in arriving at this decision comprises:
 - a. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 29 August 2022
 - b. Sunshine Coast Planning Scheme 2014
 - c. Sunshine Coast Council, 'Council Assessment Report: Development Services. Application for Referral Agency Response.' Application No: CAR22/0629. Dated: 23 August 2022
 - d. '9.3.6 Dwelling House Code' Sunshine Coast Planning Scheme 2014

- e. '7.2.8 Coolum Local Plan Code,' Sunshine Coast Planning Scheme 2014
- f. Queensland Development Code. March 2010
- g. MP 1.2 – Design and Siting Standard for Single Detached Housing – Lots 450m² and Over. Queensland Development Code. March 2010.
- h. Correspondence from Sunshine Coast Council, to Northshore Building Approvals Qld. Dated 25 August 2022.
- i. Dennis Hill Architect. Drawings and renderings for 'Philips Residence – 26 Malibu Avenue, Coolum Beach. Construction Issue C'. Dated 11 August 2022.

Findings of fact

The Tribunal makes the following findings of fact:

7. Malibu Avenue comprises of property frontages to the street verges varying in style and presentation. This variance is enhanced by the difference in verges of 8m and 4m (Easterly and Westerly facing properties respectively between property boundary and the street) and the different styles and ages of housing (both single and double story) in the street, which have evolved and will continue to evolve, responding to urban growth pressures. As a consequence of this variation the visual streetscape is far from homogeneous and is instead variable with some properties having dense vegetation, high fencing, or minimal landscaping and fencing. The verge of 8m on the Easterly side of the street provides the most dominant, consistent and continuous visual element to the streetscape.
8. The design of the carport is well considered, minimal in its visual impact and has been articulated to provide basic shelter and amenity for car accommodation onsite. The design is simple, open, modest and minimal compared to other existing examples within the streetscape. The siting of the carport is well considered in relation to amenity of adjoining neighbours and existing infrastructure. Alternative siting of the carport would negatively affect amenity and increase bulk and scale to the streetscape, negatively impacting the visual character of the existing streetscape. Its siting provides efficient use of the lot, maximising the onsite recreational areas, and visual and physical connectivity with optimal environmental consideration. The carport has been detailed to prevent the future addition of garage door, thus maintaining its openness. It is the opinion of the Tribunal that the proposed design and siting presents an exemplar for a well-considered carport that positively adds to the visual aesthetic of the street and provides acceptable amenity thus complying with the purpose of Queensland Development Code (QDC) MP1.2 - *'To provide good residential design that promotes the efficient use of a lot, an acceptable amenity to residents, and to facilitate off street parking.'*
9. As noted under the *Sunshine Coast Planning Scheme 2014 (SCPS)*, '9.3.6 Dwelling House Code,' 'Performance Outcomes,' 'Garages, Carport and Sheds,' 'Acceptable Outcomes,' 'Note-A02.1(a) an alternative provision to the QDC.' This wording intends that A02.1(a) does not replace the QDC entirely, but is offered as an alternative. Under the QDC, 'MP 1.2- Design and Siting Standard for Single Detached Housing – on Lots 450m² and over,' 'Element 1 - Design and Siting of Buildings and Structures,' Acceptable Solutions A1(c) for a minimum road setback may be less than required for an open carport provided it satisfies the stipulated criteria. In this instance, the proposed carport satisfies the criteria in that:
 - A1(c)(i) the aggregate perimeter dimension of walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the line of supports) of that part of the carport within the same setback. In this case:
 - Total Perimeter = 6.1+ 6.16 + 6.1= 18.36m.
 - Perimeter of supports =0.5m
 - Ratio = 0.5m/18.36m = 2.7%.
 - Accordingly, the proposal complies.
 - A1(c)(ii) there is no practical alternate location for the carport that will not interfere with the adjacent properties' use and enjoyment, in conjunction with compromising the

property and dwelling in relation to the streetscape.

—The proposal complies.

- A1(c)—The proposal complies.
- A(i)(a)—The proposal complies with all aspects, with a maximum height of 2.93m, a width of 6.16m and a gradient under 1 in 5.

Reasons for the decision

10. As well as providing additional vehicle accommodation, the proposed carport is designed to enhance the appearance of the primary dwelling on site. In conjunction with the proposed landscaping, its relationship to the streetscape and surrounding environs, with its setback of 1050mm from the large 8m verge and minimalist elements of its construction, the Tribunal considers the proposed carport complies with the qualitative objectives of '9.3.6 Dwelling House Code, PO2,' in that the proposal preserves and maintains the visual continuity of the street and adds to the diverse neighbourhood forms and landscaping, rather than detracts from the streetscape.
11. The carport as proposed satisfies the Acceptable Solutions of the QDC, namely 'MP 1.2', 'Element 1 - Design and Sitting of *Buildings and Structures*', 'Acceptable Solutions, A1(c).'

Dr. Christopher Robertson

Development Tribunal Chair

Date: 21 December 2022

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. 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 Energy and Public Works
GPO Box 2457
Brisbane QLD 4001

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