



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	19-012
<b>Appellant:</b>	Mr Wayne Beechey
<b>Respondent (Assessment Manager):</b>	Fastrack Building Certification
<b>Co-Respondent (Concurrence agency):</b>	Moreton Bay Regional Council
<b>Site Address:</b>	122 Jensen Road, Caboolture QLD 4510 (Lot 18 SP180501)

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### **Appeal**

Appeal made under section 229 and schedule 1, section 1, table 1, Item 1(a) of the *Planning Act 2016* against the refusal of a development application for a Development Permit for Carrying out building work for construction of a carport due to asserted conflicts with the Moreton Bay Regional Planning Scheme.

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<b>Date and time of hearing:</b>	16 July 2019 at 10.00am
<b>Place of hearing:</b>	122 Jensen Road, Caboolture QLD 4510 (Lot 18 SP180501) (the subject site)
<b>Tribunal:</b>	Debbie Johnson – Chair Murray Lane and Belinda Scott - Members
<b>Present:</b>	Matthew Beechey – brother of appellant and resident Kellie Beechey – sister-in-law of the appellant and resident Melanie Marsellos and Sam Lang – Representing Moreton Bay Regional Council the Concurrence Agency

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) confirms the assessment manager's decision, as directed by the concurrence agency, to refuse the development application for a Development Permit for Carrying out building work for construction of a carport.

## **Background:**

### Subject Site

1. The subject site is 600.00 square metres in area, has regular dimensions and appears to have been subject to earthworks to create a levelled building area.
2. The subject site is improved by a single storey dwelling house, including an attached double garage.
3. The lot is subject to 3 per cent slope falling from the existing enclosed garage to Jensen Road.
4. The subject site benefits from a wide road verge area between 7.75 metres to 9.0 metres in the vicinity of the driveway, inclusive of two established street trees.

### Development Application

5. The development application seeks a development permit for carrying out building work for a new carport.
6. The carport is proposed to be located in front of the existing attached double garage, which is setback 6.48 metres from the front property boundary.
7. The carport is proposed to be setback 500mm from the front property boundary and 1.9m from the eastern side property boundary
8. The carport is proposed to be 5.0m in length, 6.48 metres in width and a maximum of 2.5 metres in height.
9. The carport is proposed to be constructed with a 'Coolspan' proprietary roof type with a 1 per cent slope towards Jensen Road and supported by vertical aluminium posts and horizontal steel beams. The visible building materials are proposed to be primrose in colour to match the finished colour scheme of the exiting dwelling house.

### Assessment of the Development Application

10. The subject site is designated within the General Residential Zone – Suburban Neighbourhood Precinct of the Moreton Bay Regional Planning Scheme, version 3, which commenced on 3 July 2017 (the planning scheme).
11. The Concurrence Agency Response given by the council 17 January 2019 directed the assessment manager to refuse the development application. The reasons for refusal are summarised as follows:
  - a. Conflict with RAD3 of the Dwelling House Code due to the proposed carport not being setback at least 5.4 metres from the front property boundary,
  - b. Conflict with RAD24 of the Dwelling House Code due to the domestic outbuilding (carport) not being located behind the main building line
  - c. Conflict with PO Performance Outcome 3 of the Dwelling House Code
  - d. Conflict with the Overall Outcomes of the General Residential Zone – Suburban Neighbourhood Precinct
  - e. Inconsistency with Planning Scheme Policy – Residential Design.

Council officers summarised the conflicts with the performance criteria as unacceptable negative impacts on existing and planned residential character, the carport not being subordinate to the dwelling house and dominance of the street frontage.

12. The assessment manager issued a Decision Notice refusing the development application on 13 February 2019.
13. The Appellant, dissatisfied with the refusal, lodged an appeal with the Development Tribunal Registry on 12 March 2019 against the Decision of the Assessment Manager

#### Hearing

14. On 16 July 2016, the matter was heard on site, inclusive of a site inspection.
15. The hearing was attended by Moreton Bay Regional Council representatives as well as Matthew Beechey (resident and brother of the appellant) and Kellie Beechey (resident and sister-in-law of the appellant) as representatives of the appellant. Of note, the assessment manager and the appellant were not in attendance.
16. The appellant's representatives stated the proposed carport is necessary to protect their assets and vehicles. In their view, the proposed carport does not negatively impact on the residential character of the area because the proposed carport is designed and to be constructed by a local and reputable carport supplier, and there are existing carports in the local area, including two carports in Jensen Road.
17. The attending council officers stated the proposed carport does not meet the relevant assessment criteria in the planning scheme, noting the subject site is located within a local area which is not dominated by carports located in the front setback areas of general residential lots. The council officers stated other carports in the wider area may have been approved under a prior planning scheme, noting the current and applicable planning scheme commenced in February 2016.
18. The council officers stated no information request was made and the applicant did not address the relevant assessment criteria in the planning scheme.
19. The appellant's representatives stated that they (or more accurately, the appellant) relied on the carport supplier to prepare the development application, who in turn engaged a building certifier, expecting the process to be straight-forward as they were using reputable professionals.
20. The council officers indicated that the subject site was within a typical residential subdivision and was not subject to additional planning requirements or guidelines, such as those often found in a master planned community.
21. The appellant's representatives indicated they are aware of other carports in the local area, with the proposed carport being consistent with the local character. These carports were stated to be at 21 and 34 Jensen Road, Caboolture, 34, 40, 39, 45 Elof Road, Caboolture and 22, 86, and 99 Kent Street, Caboolture.
22. The council officers stated during the hearing that these carports were possibly approved under previous planning schemes and/or were constructed without approval.
23. A site inspection was undertaken as part of the hearing, which included consideration of the location of the proposed carport, the existing slope in that area, the relevant setbacks, the proposed height of the structure, context in terms of vegetation and road verge widths.
24. More broadly, the site inspection considered the subject site in context of the existing local character. It was noted that no carports forward of the building line were visible in that part of Jensen Road, with garages typically setback sufficiently to allow a car to

park within the front property boundary. It was also noted that many of the dwellings in the local area had at least one car parked in the front driveway area external to the garage, possibly indicating demand for car parking spaces and high use of private motor vehicles.

#### **Jurisdiction:**

1. This appeal to the tribunal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal. In Schedule 1 of PA, section 1(2) states Table 1 may apply to a tribunal but only if the matter involves the circumstances set out in paragraphs (a) to (l). Paragraph (g) of section 1(2) states: "a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission".
2. The tribunal is satisfied that the development application made to Council satisfies that requirement being, a development application for a Development Permit for carrying out building work under the section 33 of the *Building Act 1975* regarding alternative provisions to Queensland Development Code (QDC) boundary clearance provisions for particular buildings.
3. That application was subsequently refused by the Assessment Manager, as directed by the council as a Concurrence Agency.
4. Table 1 item 1(a) in Schedule 1 of the PA states that for a development application, an appeal may be made to a tribunal against the refusal of all or part of the development application.

#### **Decision Framework:**

1. Section 246 of the PA provides as follows (omitting the examples contained in the section):
  - *The registrar may, at any time, ask a person to give the registrar any information that the Registrar reasonably requires for the proceedings.*
  - *The person must give the information to the registrar within 10 business days after the registrar asks for the information.*
2. Section 251 of the PA set out the matters the tribunal can consider and what laws should be applied in considering a matter. Subsections (2) and (3) state:
  - *(2) The tribunal must decide the proceedings based on the laws in effect when—  
(a) the application or request was properly made; or  
(b) if the application or request was not required to be properly made—the application or request was made.*
  - *(3) However, the tribunal may give the weight that the tribunal considers appropriate, in the circumstances, to any new laws.*

3. 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—*
    - (a) *other evidence presented by a party to the appeal with leave of the tribunal; or*
    - (b) *any information provided under section 246.*
  
4. Section 254 of the PA deals with how this appeal may be decided and the first three subsections of that subsection are as follows:
  - *This section applies to an appeal to a tribunal against a decision.*
  - *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) (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*

**Material Considered:**

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice, grounds for appeal lodged with the Tribunals Registrar on 12 March 2019.
2. Proposal Plans, entitled ‘Site Plan – Proposed Carport – Kellie and Matthew Beechey – 122 Jensen Rd Caboolture 4520, Job 112336 R, Drawing No. A, dated 8 December 2018.
3. Decision Notice – Refusal – 20181810, given by the assessment manager, dated 13 March 2019.
4. Concurrence Agency Response, 122 Jensen Road, Caboolture QLD 4510, Lot 18 SP 180501, given by Moreton Bay Regional Council and dated 17 January 2019.
5. Development Tribunal Notes - 122 Jensen Road, Caboolture’, being an emailed response provided by Moreton Bay Regional Council to the tribunal following the hearing on 17 July 2019, in response to the appellant’s assertion that ten carports have been approved by the council in the local area.
6. Planning and Development Online information for the subject site
7. The *Planning Act 2016* (PA)
8. The *Planning Regulation 2017* (PR)
9. The *Development Application Rules*
10. The *Building Act 1975* (BA)

11. The *Building Regulation 2006* (BR)
12. The *Queensland Development Code* (QDC) Part MP 1.2
13. The Moreton Bay Regional Planning Scheme
14. The *National Construction Code 2016* (NCC)

**Findings of Fact:**

1. The applicable version of the relevant local categorising instrument is the Moreton Bay Regional Planning Scheme, version 3, which commenced on 3 July 2017, being the effective local categorising instrument on the day the development application was made.
2. The subject site is within the General residential zone - Suburban neighbourhood precinct under the planning scheme.
3. Relevant to the subject building development application, the council's jurisdiction is limited to its Referral Agency functions under Section 33 of the *Building Act 1975* in relation to assessing whether the proposed building or structure complies with the quantifiable standards under the planning scheme in respect of boundary clearances.
4. The *Building Regulation 2006* in Part 3, nominates the Queensland Development Code, as setting out the standard siting requirements for buildings and structures, except where the planning identifies an alternative siting provision.
5. Part 1.6 of the planning scheme states it may "specify alternative planning scheme provisions under section 33 of the *Building Act 1975*. This relates to alternative design solutions for boundary clearance and site cover provisions MP 1.1, 1.2 and 1.3 of the QDC."
6. In particular, 'Table 1.6.1 Building assessment provisions in the planning scheme' details the relevant codes for proposed alternatives to the Queensland Development Code's boundary clearance provisions, stating: Alternative provisions to QDC boundary clearance and site cover provisions for a dwelling house, including a class 10 building or structure. (*Building Act 1975* section 33). For the development application, the applicable codes in the planning scheme are limited to: Section 9.3.1 Dwelling house code.
7. The applicable parts of the Dwelling house code are RAD3 and RAD24. According to Section 9.3.1.3 Requirements for assessment, the corresponding performance outcome (PO) for RAD3 is PO3 and for RAD24 is PO22
8. RAD3 states:
  - *Setbacks (excluding built to boundary walls) comply with:*
    - ...(b) *General residential zone:*
      - i. *Suburban neighbourhood precinct - Table 9.3.1.4 'Setbacks'*

And includes the following note:

*Note - The above setbacks apply only to Class 1a and Class 10a buildings/structures.*

9. 'Table 9.3.1.4 Setbacks - General residential zone - Suburban neighbourhood precinct and Township zone - Residential precinct' includes the following minimum setbacks:

- *To covered car parking space: Min 5.4 (metres)*
- *Side Non-built to boundary wall To OMP and wall: as per QDC*
- *Note - These requirements apply to all Class 10a buildings and structures as defined by the Building Code of Australian (sic).*

10. RAD24 states:

- *Domestic outbuildings:  
...(c) are located behind the main building line and not within primary or secondary frontage setbacks.*

11. The proposed building work does not meet RAD3 or RAD24. Assessment against the PO3 and PO22 of the Dwelling house code is required.

12. The applicable parts of PO3 state: Dwelling houses and structures are setback to:

*(a) be consistent with the intended character of the streetscape, precinct and zone;*

*Note - Refer to the overall outcomes for the relevant zone, precinct or sub-precinct to determine the relevant precinct character.*

The following notes are provided to assist in the assessment of PO3:

*Note - This is a qualitative statement that is an alternative provision to the QDC, part MP1.1, P1 and P2 and MP1.2, P1 and P2.*

*Note - Refer to Planning scheme policy - Residential design for details and examples.*

13. PO22 states:

- *Domestic outbuildings and carports are:  
(a) of a height that does not negatively impact the visual amenity of adjoining properties;  
(b) located on-site to not dominate the streetscape.*

14. The overall outcomes of the General Residential Zone – Suburban neighbourhood precinct are included in the purpose of the code, which states:

- *(1)The purpose of the code will be achieved through the following overall outcomes for the Suburban neighbourhood precinct:  
...b. Residential activities consist of:  
....iii. Domestic outbuildings are subordinate in appearance and function to the dwelling;  
...c. The design, siting and construction of residential uses are to:  
i. contribute to an attractive streetscape with priority given to pedestrians;  
ii. encourage passive surveillance of public spaces;  
iii. result in privacy and residential amenity consistent with the low density residential character of the area;  
iv. provide a diverse and attractive built form;*

- v. *provide a low rise built form compatible with its surrounds;*
- vi. *incorporate sub-tropical urban design principles that respond to local climatic conditions;*
- vii. *incorporate sustainable practices including maximising energy efficiency and water conservation;*
- viii. *incorporate natural features and respond to site topography;*
- ix. *cater for appropriate car parking and manoeuvring areas on site;*
- x. *be of a scale and density consistent with the low density residential character of the area;*
- xi. *provide urban services such as reticulated water, sewerage, sealed roads, parks and other identified infrastructure.*

15. Planning Scheme Policy – Residential Design (the PSP) can be used to inform assessment to determine compliance with PO3.

16. The PSP includes ‘Section 4.3 Setbacks which includes a figure entitled ‘Setbacks: Suburban neighbourhood precinct example’ which shows:

- a) 5.4 metre front boundary setback to the garage
- b) 3.0 metre front boundary setback to the outer-most-projection

Car ports and other domestic outbuilding are not shown on this diagram.

17. The PSP includes ‘Section 5.4 – Building appearance’ which includes:

- a) a provision stating:  
*Buildings should be designed to:  
... ensure domestic outbuildings do not dominate the street frontage and do not have a negative impact on the streetscape character;*
- b) an example photograph of a dwelling house with a garage setback from the front property boundary, with a statement that:

Carports and domestic outbuildings should not be located within the front setback.

18. The PSP includes ‘Section 5.4 – Car parking’ which includes:

- a) a provision stating:  
*car parking areas are located behind the front of the building;*
- b) an example photograph of a dwelling house with a garage setback from the front property boundary, with a statement that:  
*Garages and carports are to be setback from the frontage to reduce the visual dominance on the streetscape and allow tandem spaces for cars.*

19. The appellant’s representatives provided the Tribunal with ten (10) local examples of properties with carports, garages or other structures in the road boundary setback area.

20. While the Tribunal takes this information into account, it is on the basis of considering the existing landscape elements, pattern of development and visual continuity of the street, in the focus area in the vicinity of 122 Jensen Road, Caboolture.



21. The response provided to the Registrar, by the council on 17 July 2019 indicates of the ten (10) existing carports in the local residential areas, as described by the appellant's representatives at the hearing, seven were constructed without the necessary building approvals and three were approved under previous planning schemes, being:
- a) 34 Jensen Road, Caboolture (approved in 2016)
  - b) 99 Ruby Street, Caboolture - referred to by the appellant as 99 Kent Street (approved in 2015)
  - c) 40 Elof Road, Caboolture (approved in 2012).

This information is permitted as additional evidence with leave from the Tribunal under section 253(5)(a) of the PA.

22. Apart from 34 Jensen Road, Caboolture, the council has not approved any other domestic out buildings forward within the front property setback area, including carports, in the local residential area since the commencement of Moreton Bay Regional Planning Scheme version 1.

### **Reasons for the Decision:**

23. The tribunal finds this development application for a Development Permit for Carrying out building work for construction of a carport conflicts with the relevant parts of the planning scheme and should be refused, for the following reasons:
- a) the planning scheme is clear and deliberate in its intent to prevent domestic outbuildings, which includes carports, from dominating or having a negative impact on streetscape and residential character in the General residential zone - Suburban neighbourhood precinct;
  - b) the existing streetscape of Jensen Road, within the vicinity of 122 Jensen Road, Caboolture is characterised by single detached dwellings with attached double garages located behind the required street frontage boundary setback;
  - c) carports within the front setback area do not form part of the existing streetscape character;
  - d) the proposed carport would have a negative impact on the existing streetscape and residential character of the local area.

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**Debbie Johnson**

**Development Tribunal Chair**

**Date: 26 September 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 -

- (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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