



Development Tribunal – Decision Notice

Planning Act 2016 Section 255

Appeal number: 23-018

Appellant: Michelle Boyd

**Respondent
(assessment manager):** Veen Lyall-Wilson

**Co-respondent
(concurrence agency):** Sunshine Coast Regional Council

Site Address: 44 Neerim Drive, Mooloolaba Qld 4557 and described as Lot 161 AM 83319 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the decision of the assessment manager, as directed by the concurrence agency, to refuse a development permit for building works for a class 10a structure being a carport on the grounds that the proposal does not meet the Performance Outcome PO2(d) of the Sunshine Coast Planning Scheme, Dwelling House Code.

Date and time of hearing: 27 June 2023 at 10.30 am

Place of hearing: The subject site

Tribunal: Christopher Robertson — Chair
Catherine Brouwer — Member

Present: Michelle Boyd — Appellant
Trent Boyd — Supporter of appellant
Mitchell Schwieso and Brooke Camarsh — Council representatives

Decision:

The Development Tribunal (Tribunal), in accordance with section s254(2)(d) of the *Planning Act 2016* (PA), sets aside the decision of the assessment manager and orders the assessment manager to re-make the decision within 25 business days of the date of this decision notice, as if the concurrence agency had no requirements and, in the event the assessment manager decides to approve the application, to impose the following conditions:

- a) No side of the carport is to be enclosed;
- b) The front fence and gate are to remain unchanged;
- c) The carport is to be located within the boundary clearance and located no closer than 1.5m to a required window in a habitable room of an adjoining dwelling;
- d) The carport is not to exceed 6.8m in width including eaves and gutters and not within a 1.5m setback from the south side boundary, and the carport is not to exceed 5.5m in depth including eaves and gutters;
- e) The front post / supports are to be setback from the front boundary to achieve a maximum 5m post location from the existing garage wall;
- f) The roof is not to be a gable or hip roof, but a 'flat' or low pitched roof, falling to the street side, so presenting at its street frontage as a simple roof edge reflecting the line of the top of the fence, in order to differentiate it from the house and minimise the visibility and distinctiveness of this structure. The internal height above the existing driveway is not to exceed 2.7m, and the overall height above the existing driveway is not to exceed 3m, nor be above the height of the house lowest gutters; and
- g) The materials and the colours are to be sympathetic to the house and generally unobtrusive.

Background

1. Neerim Drive in the locality of the subject site lies in a north-south direction, with dwellings facing the street generally in an east-west orientation. Dwellings on the eastern side of the street at this locality, address the canal.
2. The subject site faces south-east to Neerim Drive and is 570m² in size. The frontage facing Neerim Drive and has an approximately 2m high fence with an electric gate extending along the whole front boundary which completely obscures the front yard. Behind the fence the front yard is generally evenly divided by the open driveway and a fenced swimming pool.
3. Directly opposite the subject site is a dwelling with carport sited within the 6.0m frontage, with gate-controlled access.
4. The Tribunal inspected Neerim Drive for its streetscape, the visual continuity and pattern of buildings and landscape elements within the street. A substantial contribution to the Drive's visual character is made by the size and two storey height of the majority of the houses, with a majority of these having an approximately 2m high front boundary fence with contiguous vehicular gate, or an approximately 2m high fence returning then contiguous with the garage door. The Neerim Drive streetscape pattern appears to be increasingly, as properties re-develop, one with minimal views of the ground level of the house, driveway and frontage gardens, and having a predominance of built elements back from the front boundary.
5. A properly made application (Application No: CAR23/0128) was made to the Sunshine Coast Regional Council (Council), for building work, for a class 10a open carport, at the subject site, by the assessment manager,
6. Council (dated 26 April 2023) as referral agency, directed the assessment manager to refuse the application as follows:

Council directs **REFUSAL** of CAR23/0128 for:

- 363mm setback from outer most projection of the carport to the road/property boundary in lieu of 6.0m.

For the reasons identified below:

The proposal does not meet performance outcome PO2 (d) of the Dwelling house code:

Sunshine Coast Planning Scheme, Dwelling house code, performance outcome PO2 (d) – Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.

1. *The visual continuity and overall pattern of Neerim Drive comprises of dwellings approximately 4.5m – 6.0m from the road frontage with carports, garages and sheds predominantly setback 6.0m, and the continuity of the built form generally being maintained. It is considered that the carport proposed 363mm from the front boundary is inconsistent with the setback pattern of the street. The proposed carport would not maintain the visual continuity and pattern of buildings and landscape elements within the street in accordance with the Sunshine Coast Planning Scheme 2014 – Dwelling House Code, Performance Outcome PO2 (d).*

2. *The existing dwelling has a double garage and sufficient room on the driveway for two additional vehicles which exceeds the requirements for parking in the Dwelling House code. As such council sees no reason to depart from the planning scheme for the carport.*

7. The appellant's grounds of appeal were that precedent has already been set in Neerim Drive with two other similar carports located within the 6.0 setback area, and which the appellant stated were 'approved by Council', and 'impact the visual continuity and pattern of buildings and landscape elements within the street'.
8. At the hearing the appellant provided the following further justification for their appeal:
 - (a) That they have no other space on the property for cars outside the garage except for the driveway, noting that the swimming pool and its enclosure were there when the owners purchased the property.
 - (b) That the garage is currently used as storage; they have insufficient space within the house for storage. Further, that in the near future they may need the garage for space for their son, who lives with them, and they would like cover over the cars for hail and salt spray protection.
9. At the hearing the Council representatives submitted that the Planning Scheme provisions and development assessments cannot take account of each residential owners' individual needs and uses of the driveway space within the 6m setback from the street frontage boundary.

Jurisdiction

10. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
11. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the

preconditions stated in section 1(2) of schedule 1.

12. The Tribunal has jurisdiction to determine this appeal under section 229(1)(a)(i), schedule 1, section 1, table 1, item 1(a), and schedule 1, section 1(2)(g) of the Act.

Decision framework

13. The appellant as the recipient of the decision notice must establish that the appeal should be upheld (under section 253(2) of the PA).
14. 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 the subject of this appeal (under section 253(4) of the PA).
15. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and the Tribunal may seek the views of any person.
16. The Tribunal is required to decide the appeal in one of the following relevant ways set out in section 254(2) of the PA:
 - (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...*(...)

Material considered

17. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 11 May 2023.
 - (b) Sunshine Coast Planning Scheme 2014.
 - (c) '7.2.20, Mooloolaba/Alexander Headland Local Plan Code,' Sunshine Coast Planning Scheme 2014.
 - (d) '9.3.6 Dwelling House Code,' Sunshine Coast Planning Scheme 2014.
 - (e) MP 1.2 Design and Siting Standard for Single Detached Housing – On Lots 450m² and Over, Queensland Development Code. March 2010.
 - (f) Planning Act 2016 (QLD).
 - (g) Correspondence from Sunshine Coast to Pronto Building Approvals dated 26 April 2023.
 - (h) Decision Notice – Refusal – 230233, Pronto Building Approvals to owners of subject site, Michelle and Trent Boyd dated 10 May 2023.
 - (i) Drawings and diagrams from Coastal Patios on the proposed carport as provided by the appellant as part of the Appeal, undated and numbered.

- (j) Strategic Policy: Assessment of Amenity and Aesthetics Considerations for Particular Building Work – Carports.’ Sunshine Coast Regional Council, endorsed by Council, 19 July 2018. Council representatives at the hearing stated this overlay was applied for a trial period only and is no longer in force.

Findings of fact

18. The Tribunal makes the following findings of fact:

- (a) The Mooloolaba/Alexander Headland Local Plan Code,’ Sunshine Coast Planning Scheme 2014, makes no specific reference to Neerim Drive nor any visual continuity or pattern of built environment within the local environs of the subject site.
- (b) The built environment and landscaping of Neerim Drive is a diverse mixture of housing types and frontages, a number of which have high fencing (approximately 2m) and driveway gates, which impacts upon any visual continuity of the street.
- (c) Property fencing no higher than 2m is prescribed fencing under Schedule 1 of the *Building Regulation 2021* and is beyond the remit of local government to regulate.
- (d) The two examples raised by the appellant as existent carports within the 6.0m frontages within the locality are not relevant as: the structure on the Western side of the street of Neerim Drive had not received Council approval (Source –Council representatives); and, the structure on the eastern side (opposite the subject side) was erected under the Strategic Policy: Assessment of Amenity and Aesthetics Considerations for Particular Building Work – Carports, which is no longer in effect. Regardless, the subject site would not qualify under this planning overlay, as it did not have an ‘attribute’ of being a ‘lot that has (have) both street and water frontages.’
- (e) The carport design as currently proposed conflicts with Performance Outcome PO2(b) and (d) of the Dwelling House Code, Sunshine Coast Planning Scheme as it would dominate the streetscape with its height, bulk and lack of visual separation from the main dwelling.
- (f) Acceptable Solution A2(d) of the MP 1.2 Design and Siting Standard for Single Detached Housing – On Lots 450m² and Over, Queensland Development Code offers another Outcome for consideration. However, the carport as currently proposed would have a visual impact on the streetscape, with the visibility of its height and bulk forward of the house, and with its lack of difference from the main dwelling giving some appearance of the house having developed closer to the street within the house setback distance.

Reasons for the decision

19. That a less dominant carport on this subject site and located solely over the current driveway, with the current approximately 2m high front boundary fence and gate, has the potential to present a visual distinction between the carport and dwelling, and not be prominent in the streetscape within this section of Neerim Drive. Therefore, there is the potential for a less dominant carport, with amended style, bulk and size proportions, to not noticeably impact nor substantially diverge from the visual continuity and overall pattern of buildings and landscape elements of this section of Neerim Drive.

20. This house and drive frontage and the proposed carport situation and potential role in the the Neerim Drive streetscape pattern of buildings and landscape elements, including full boundary frontage 2m fences and gates, is unique in the Neerim Drive context.

Dr Christopher Robertson
Development Tribunal Chair

Date: 3 August 2023

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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