



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	18-18
Appellant:	Peter Francis De Waard
Assessment Manager:	Kawana Building Approvals
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council
Site Address:	18 Ngungun Street, Dicky Beach in the State of Queensland and described as Lot 125 on RP 64307 – the subject site

Appeal

Appeal by Peter Francis De Waard (Appellant) under section 229 and Item 2 of Table 1 of Schedule 1 of the Planning Act 2016 (PA) against the decision of the Assessment Manager to refuse a change application in respect of a Class 10a Carport. The Sunshine Coast Regional Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the change application as it did not meet and could not be conditioned to meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, being performance outcome PO2(b) of Table 9.3.6.3.1 of the Dwelling House Code.

Date and time of hearing:	28 June 2018 at 10.30am
Place of hearing:	The subject site
Tribunal:	Samantha Hall – Chair Belinda Scott - Member
Present:	Peter De Waard – Appellant John Zulpo – Appellant’s builder Vince Whitburn - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) **confirms** the decision of the Assessment Manager to refuse the class 10a Carport.

Please be advised that you may elect to lodge an appeal/declaration about this matter in the Planning and Environment Court (the Court). The Court appeal period starts again from the date you receive this Decision Notice which should be attached to the Court appeal lodgement documentation.

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>

Background

The subject site is located at 18 Ngungun Street, Dicky Beach, more formally described as Lot 125 on RP64307. The subject site is included in the Low Density Residential Zone of the *Sunshine Coast Planning Scheme 2014* (SCPS 2014).

The subject site comprises an existing single storey 3 bedroom dwelling house with a single car garage at the front, facing onto Ngungun Street.

On 9 May 2016, the Appellant lodged a development application for building work for a class 10a carport with the Assessment Manager (Council reference number RAB16/0282). Following discussions with Council officers prior to lodgement, the carport the subject of the development application was a 6 metre by 6 metre open carport with a garage door and a gable roof, with a similar roof pitch to that of the existing dwelling house. The Assessment Manager referred the development application to the Council as concurrence agency because the proposed carport was located 433mm from the front boundary of the subject site, being within the 6 metres setback prescribed by Acceptable Outcome A02.1 of table 9.3.6.3.1 of Part 9.3.6 (Dwelling House Code) of the SCPS 2014 (Dwelling House Code).

The Appellant's material accompanying the Form 10, stated that Mr Whitburn of the Council contacted the Appellant to discuss the proposed carport and to advise him that the Council would direct the Assessment Manager to refuse the development application if the carport remained in its current form. The Appellant alleged that Mr Whitburn suggested the development application be amended to remove the garage door and gable roof, leaving the carport completely open and with a flat roof to better comply with the requirements of the Dwelling House Code of the SCPS 2014.

The Appellant decided to amend the development application to a carport with a flattish skillion roof without a gable or garage door. The Council approved the amended carport on 22 June 2016 (Development Approval RAB16/0282).

The Appellant was not satisfied with the design of the approved carport and on or around 17 January 2018, lodged an application with the Assessment Manager for a timber carport with a pitched tiled gable roof, to be at the same pitch as the adjoining dwelling house and attached to the existing roof of the dwelling house to appear as an extension to the house. The dimensions of the proposed carport were 6 metres x 5.945 metres and it was to include a roller garage door and partially enclosed side walls. The setback of the carport was to be 219mm from the front boundary to the northern corner post and 2243mm from the front boundary to the southern corner post of the carport. The side setback of the proposed carport was to be 1500mm to match the existing dwelling house's side setback.

At the hearing of this appeal, there was some uncertainty as to whether this later application was a fresh development application or was a change to the development approval. An email sent by the Council after the hearing of the appeal, dated 28 June 2018, confirmed that the application was an application for a change to the development approval and retained the Council reference number RAB16/0282. The Appellant confirmed the accuracy of this by email dated 29 June 2018.

Accordingly, the Tribunal has considered the application lodged on or around 17 January 2018 to be a change application for the purposes of the PA (change application). In the absence of any issue being raised in the appeal regarding the nature of the change application, the Tribunal has not considered whether the requirements of the PA in respect of a change application have been met, except to proceed on the basis that it is an "other change" rather than a minor change to the development approval.

By letter dated 24 January 2018, the Council issued an Information Request as concurrence agency which stated that:

“This application has been assessed and Council considers that the carport with a gable roof does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO2(b)

PO2 (b) do not dominate the streetscape

The raising of the roof from a flattish skillion roof to a pitched gable roof will have a dominating appearance upon the streetscape.

During the assessment of the original application, a pitched gable roof was discussed with the owner and was indicated as being non-compliant with the DHC PO2 (b). The original application was approved on the basis that the carport had a low slim profile.

At this stage, Council has not refused the application and provides an opportunity for the applicant to withdraw the application and obtain a part refund.

You are invited to discuss the Performance Outcome to ascertain if further information can be submitted to Council which may help in further assessment or changing the design to achieve a compliant Performance Outcome.”

The Appellant did not submit any changes to the change application following the Council's Information Request.

By letter dated 5 March 2018, the Council issued a concurrence agency response in respect of the change application stating that the Council *“assessed the proposed amendment to RAB16/0282 and considers that the amended carport does not comply and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014 Performance Outcomes PO2 for Garages, Carports and Sheds items (b)....PO2(b) do not dominate the streetscape.”*

While not clearly directing the Assessment Manager to refuse the change application, the concurrence agency response goes on to state the following:

“Reason for refusal

- *The raising of the roof from a flattish skillion roof to a pitched gable roof will have a dominating appearance upon the streetscape.”*

On 11 April 2018, the Assessment Manager issued a decision notice refusing the change application which stated that the reasons for the refusal were *“Refer Sunshine Coast Council refusal letter dated 5/3/18”*.

The Appellant lodged a Notice of Appeal (Form 10) with the Tribunal's Registrar on 17 April 2018.

The Appellant's Form 10 identified the Appellant's grounds of appeal to be that the proposed carport with a pitched gable roof, garage door and partially enclosed, would not dominate the streetscape by reference to other structures in the same street and surrounding streets.

The appeal was heard on 28 June 2018 at 10am at the site.

During the hearing, discussions turned towards whether there was any compromise position available between the parties. During this discussion, Mr Whitburn, the Appellant and Ms Scott engaged in a conversation about the features of structures which could be considered by the Council for compliance with the relevant planning scheme provisions.

Following the hearing, the Tribunal members and the Appellant conducted a walk along the length of Ngungun Street to consider structures that the Appellant had suggested in the hearing were similar to the carport the subject of the change application. Mr Whitburn declined to attend this

inspection, having viewed the street on a previous occasion and expressed content that the Tribunal members and the Appellant conduct the inspection in his absence.

At the end of this inspection, the Appellant expressed to the Tribunal members that he couldn't visualise the alternative features of a carport structure that were raised during the discussion that he had with Mr Whitburn and Ms Scott. Ms Scott offered to compile some images to demonstrate those features to assist the Appellant to consider alternatives to the structure the subject of the change application.

The images compiled by Ms Scott were distributed to the parties by email from the Registry dated 2 July 2018. The Registry's email also asked the parties to provide notice to the Tribunal if the parties wished to explore a resolution of the appeal, otherwise the Tribunal would proceed to decide the appeal.

By email dated 4 July 2018, the Appellant advised the Registry that the Appellant did not wish to explore a resolution of the appeal and confirmed that the Appellant wished to proceed with the Tribunal's consideration of the change application the subject of the appeal.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 17 April 2018.
2. A file note dated 9 March 2018 of a conversation held between the Appellant and Mr Peter Chamberlain of the Council, a hard copy of which was provided to the Chairperson at the hearing on 28 June 2018.
3. A visual inspection by the Tribunal members and the Appellant conducted by foot along the length of Ngungun Street after the hearing on 28 June 2018.
4. An email dated 28 June 2018 from Lorraine W of the Council to the Tribunals Registrar attaching a copy of the Appellant's amended development application.
5. An email dated 28 June 2018 from the Appellant to the Tribunals Registrar attaching a full electronic copy of the plans submitted to the Council.
6. An email dated 29 June 2018 from the Appellant to the Tribunals Registrar confirming that the copy of the amended development application sent by the Council by email dated 28 June 2018 was a true and correct copy.
7. An email dated 2 July 2018 from the Tribunals Registrar to the parties providing examples of alternative features of carport structures that were discussed during the hearing.
8. An email dated 4 July 2018 from the Appellant to the Tribunals Registrar requesting that the Tribunal proceed to decide the appeal based upon the development application as considered by the Council.
9. The *Planning Act 2016* (PA).
10. The *Planning Regulation 2016* (PR).
11. The *Sunshine Coast Planning Scheme 2014* (SCPS 2014).
12. The *Queensland Development Code MP 1.2*.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The subject site is a 607m² lot located at 18 Ngungun Street, Dicky Beach and is included in the Low Density Residential Zone in the SCPS 2014.
2. The side boundaries of the subject site are both 40.555m in length while the front and rear boundaries are both 15.514m wide. The subject site is an irregularly shaped rectangle.
3. The subject site is flat and Ngungun Street is the first street back from Dicky Beach and parallel to the beach.
4. The subject site is not constrained by any local government or Unity Water infrastructure.
5. The subject site is not affected by any easements.
6. The following improvements were noted on the subject site at the hearing:
 - (a) a single storey brick veneer freestanding dwelling house with a tiled gable roof and attached garage;
 - (b) part of the existing attached garage had been converted to a home office which reduced the internal size of the garage such that it could no longer accommodate the parking of any cars;
 - (c) a single width driveway allowed for the parking of only one (1) car on the subject site;
 - (d) a swimming pool at the rear of the site, its approval status unknown.
7. The existing dwelling house was compliant with the setback provisions of the SCPS 2014 and the Queensland Development Code MP1.2.
8. Part 7.2.6 of the SCPS 2014 is the Caloundra Local Plan Code, which characterises the area of Dicky Beach as a traditional beachside setting comprising predominately of dwelling houses.
9. The subject site is included in Precinct LDR1 (Protected Housing Area) of the Low Density Residential Zone of the SCPS 2014.
10. Part 6.2.1 of the SCPS 2014 is the Low Density Residential Zone Code (LDRZ Code). Section 6.1.1.2 of the LDRZ Code provides the purpose and overall outcomes of the code, which relevantly states the following overall outcome:

“(g) development is designed and located in a manner which makes a positive contribution to the streetscape and is sympathetic to the existing and intended scale and character of the surrounding development.”
11. The Dwelling House Code contains the relevant assessment provisions that the Council considered when assessing the change application.
12. Section 9.3.6.2 (Purpose and overall outcomes) of the Dwelling House Code relevantly provides the following (emphasis added):

(1) *The purpose of the Dwelling house code is to ensure dwelling houses achieve a high level of comfort and amenity for occupants, maintain the amenity and privacy of neighbouring residential premises and are compatible with the character and streetscape of the local area.*

(2) *The purpose of the Dwelling house code will be achieved through the following overall outcomes:-*

(a) *A dwelling house incorporates a high standard of design and makes a positive contribution to the streetscape character of the area in which it is located.*

13. "Dwelling house" is defined in Schedule 1 of the SCPS 2014 to mean "a residential use of premises for one household that contains a single dwelling. The use includes out-buildings and works normally associated with a dwelling house and may include a secondary dwelling."

14. "Streetscape" is also defined in Schedule 1 of the SCPS 2014 to mean (emphasis added) "*the collective combination of urban form elements that constitute the view of a street and its public and private domains. These elements include buildings, roads, footpaths, vegetation, open spaces and street furniture.*"

15. As identified above, the proposed carport the subject of the change application does not comply with the setback requirements of Acceptable Outcome A02.1 of the Dwelling House Code. Therefore, the relevant Performance Outcome must be considered.

16. Performance Outcome PO2 of table 9.3.6.3.1 of the Dwelling House Code (PO2) relevantly provides that:

"Garages, carports and sheds:-

(a) ...

(b) do not dominate the streetscape;".

17. The SCPS 2014 does not provide a definition of "dominate". Turning to the dictionary definition of dominate, the Macquarie Dictionary relevantly defines it as "*to tower above; overshadow*".

18. The SCPS 2014 provides a consistent intent for the frontage of lots in Ngungun Street, requiring they be "sympathetic to", "compatible with" and "make... a positive contribution to" the streetscape and character of the "local area" and "surrounding development". This is then reinforced by PO2 which requires carports to "not dominate the streetscape".

19. The Appellant took the view in the hearing and in the material accompanying the Form 10, that the "streetscape" intended by the SCPS 2014 encompassed not just Ngungun Street, but also the streets surrounding it or the "neighbourhood". Based upon this view, the Appellant provided detailed photographic comparisons of similar structures in those other streets to that proposed in the change application.

20. Mr Whitburn expressed the Council's position, being a more limited interpretation of "streetscape" as including only the properties in Ngungun Street and only those within the same block as the subject site.

21. The Tribunal, upon considering the provisions of the SCPS 2014, is of the view that the meaning of "streetscape" is not as broad as the Appellant suggested. The definition of

“streetscape” in Schedule 1 of the SCPS 2014 identifies a streetscape to constitute “the view of a street and its private and public domains”. This definition refers to “a street” and not several streets or a neighbourhood.

22. The subject site is positioned within a short residential block bounded by the intersections of Bell Street to the north and Coochin Street to the south. Ngungun Street continues to the north of Bell Street, crosses Ann Street and ends abruptly shortly thereafter. The irregular and relaxed configuration of Ngungun Street is unlike the traditional grid pattern of residential streets to the west of the subject site. A product of a beachside precinct, Ngungun Street provides access to beachfront properties and accordingly follows the irregular pattern created by the Dicky Beach coastline. This is a unique feature of the streetscape of Ngungun Street.
23. When applying the definition of “streetscape” to the current appeal, the Tribunal finds that the “view of a street”, would be confined to the view of that part of Ngungun Street from the intersection of Ngungun Street with Bell Street looking south and from the intersection of Ngungun Street with Coochin Street looking north. This is due to the irregular street pattern of Ngungun Street, combined with the sectioning of the street by three cross streets, which separates Ngungun Street into three distinct “streetscapes”.
24. Accordingly, for the purposes of PO2, the “streetscape” would not extend beyond the block on which the subject site is located, which comprises only 8 houses. The “streetscape” would not include the broader Ngungun Street above Bell Street or below Coochin Street, nor would it include any of the examples located in surrounding streets provided by the Appellant.
25. The question then to be considered is whether the relevant streetscape of Ngungun Street would be “dominated” by the carport the subject of the change application.
26. The relevant streetscape in Ngungun Street consists of residential dwellings with a mixture of open fronted allotments and up to 1.8m high front and side boundary fences or walls with soft landscaping. The 8 dwelling houses within the relevant streetscape of Ngungun Street are setback at least 6m from the front boundaries.
27. The result of the irregular street configuration of the relevant streetscape of Ngungun Street increases the exposure of the frontage of the subject site when viewed from the street and in particular looking south, from the intersection with Bell Street.
28. The intent of the Caloundra Local Area Plan for the beachside precinct of Dicky Beach is to maintain landscaped open setbacks with minimal building bulk encroaching to front street boundaries.
29. The change application is for an attached carport with a gabled tiled roof to match the gables of the existing dwelling house and is entirely set forward of the line of the dwelling house, with the closest point to the front road boundary being only 219mm.
30. The expressed intent of the Appellant is for the proposed gabled carport to appear as an extension of the existing dwelling house. This would result in a possible ridge height of the proposed gabled carport of approximately 3750mm. This significantly exceeds the original approved flattish roofed carport height of around 2600mm.
31. Mr Whitburn noted in the hearing that as the proposed carport would look like an extension of the existing dwelling, it “would definitely dominate the streetscape”, as all the dwelling houses within the relevant streetscape of Ngungun Street are setback at least 6m from the front boundaries and there are also no carports within that setback area.

32. The Tribunal agrees with the evidence provided by the Council that the combination of the proposed gabled roof, the proximity of the carport to the front boundary and the appearance of the proposed carport as an extension to the existing dwelling would combine to give the proposed carport a dominating appearance within the relevant streetscape when viewed from Ngungun Street.
33. This dominating appearance in the streetscape would be particularly noticeable when viewed from the intersection of Ngungun Street and Bell Street, due to the exposed nature of the subject site resulting from the slightly curved configuration of Ngungun Street.

Reasons for the Decision

34. The Tribunal is of the view that the change application does not comply with Performance Outcome PO2(b) of Table 9.3.6.3.1 of the Dwelling House Code.
35. The change application proposes a carport that has a gabled roof, partially enclosed side walls and a roller garage door.
36. The Tribunal finds that the “streetscape” in this appeal consists of that part of Ngungun Street from the intersection of Ngungun Street with Bell Street looking south and from the intersection of Ngungun Street with Coochin Street, looking north.
37. All dwelling houses within the relevant streetscape of Ngungun Street are setback at least 6m from the front boundaries and there are no other carports within that setback area.
38. The Tribunal is satisfied the proposed carport would “dominate” the streetscape in which the subject site is situated primarily because it would appear as an extension of the existing dwelling house, thereby visually extending the dwelling house to 219mm within the front site boundary. The dominating effect of the proposed carport would be further exacerbated by the roller door and partially enclosed sides, which would add a bulk and scale to the proposed structure not currently apparent in the approved open carport.
39. The Tribunal therefore confirms the decision of the Assessment Manager to refuse the change application for the reason that the proposed change to the approved carport design would dominate the relevant streetscape of Ngungun Street.

Samantha Hall
Development Tribunal Chair
Date: 10 August 2018

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
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

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