



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-012
Appellant:	Sam Stephens
Respondent: (Assessment manager):	John Dunn
Co-respondent: (Concurrence agency):	Gympie Regional Council
Site address:	139 Old Veteran Road, Veteran Qld 4570 and described as Lot 8 on MCH5406 – 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 for refusal of a Development Permit for Building Works for a Class 10a structure being a carport. The decision followed a referral agency response by the Gympie Regional Council directing refusal of the application on the grounds that the carport would have an extremely adverse effect on the amenity, or likely amenity of the locality and be in extreme conflict with the character of the locality as it does not comply with and cannot be conditioned to comply with the relevant performance criteria PC6 and PC7 of Table 3 – Assessment Criteria of the *Gympie Regional Council adopted amenity and aesthetics resolution – 4 November 2014*.

Date and time of hearing:	Thursday, 25 May 2023 at 10.00am
Place of hearing:	The subject site
Tribunal:	Mark Chapple – Chair Christopher Robertson - Member
Present:	Sam Stephens – Appellant, Deanna Stephens – supporter of the Appellant, Sonia Lynch, and Matthew Adamson – representatives of the Co-respondent Council

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016* (PA), sets aside the decision of the Assessment Manager to refuse the application and orders the Assessment Manager to

- (a) re-make the decision within 25 business days of the date of this Decision Notice, as if the Concurrence Agency had no requirements and
- (b) if the Assessment Manager then decides to approve the application, to include the following conditions in the resulting development building works development application:

- (i) That no side of the carport is to be enclosed.
- (ii) That the Appellant erect a fence no less than 1.2 metres high with a driveway gate across the front boundary from the Northern boundary to at least as far as an alignment with the Southern side of the main dwelling house.
- (iii) That the Appellant plant 10 Lilly Pilly (*Syzygium smithii*) trees between the proposed carport and front boundary on the northern side of the existing driveway and plant 4 Lilly Pilly trees between the alignment of the western boundary of the proposed carport and the Old Veteran Road boundary of the subject side on the southern side of the existing driveway within a distance of not less than 6 metres from the Southern Side of the existing driveway.
- (iv) That the proposed carport be of a colour, shade, and style reasonably consistent with the dwelling house.

Background

The subject site—

- is located where Old Veteran Road meets Tompkins Road and it has frontage to both roads with most of the frontage being to Old Veteran Road. The subject site is on the Eastern side of Old Veteran Road and Tompkins Road.
- Along its frontage the land slopes downward from the North toward the South of the land slopes generally downward from Old Veteran Road and Tompkins Road toward the East.
- development along Old Veteran Road is of mixed style and type dwelling houses, other structures, and rural buildings, on rural residential and rural sized allotments.
- there is an existing dwelling at the subject site, together with a separate garage and shed on the Southern sides of the dwelling house.
- the site has a land area of 12.1151 hectares and is zoned rural.
- dwellings opposite the subject site on the western side of Old Veteran Road are zoned rural residential.

The Appellant made application to John Dunn of JDBA Certifiers for a Development Permit for building works to erect a Class 10(a) building in the form of a carport. The proposed carport was to be located between the house and front boundary with a dimension of (gap) 9 metres x 6 metres with the Western end of the carport having a 6 metre dimension addressing Old Veteran Road and the 9 metre dimension facing South.

The *Adopted amenity and aesthetics resolution 4 November 2015* of the Concurrence Agency Council provides as follows –

(2) Application to Local Government Areas

All applications for building work within the Gympie Regional Local Government Area identified in Section (4) below whether lodged with the Gympie Regional Council or a private building certifier, will require referral to Council as a Concurrence Agency prior to any Development Application for building work being determined by a building certifier.

Section (4) of the Resolution provides –

(4) Category of Building Work

If the proposed building work does not meet the specific provisions contained in this section, then the proposal must be referred to the Council to undertake an assessment against the performance criteria contained in Section (5).

Section (4) Table 2 provides that a Class 10 building proposed to be erected on an allotment between 4001 metre square to 10,000 metre square in a rural zone requires a setback of 15 metres.

Section (5) Assessment Provisions of the Resolution contains the performance criteria to be used by the Council including PC6 which provides 'the location of the building or structure provides for an acceptable streetscape and does not adversely impact upon the amenity of neighbouring properties' and PC7 which provides:

Building or structures are designed and sited to visually integrate with the dwelling house and avoid dominating the street by minimising:

- 1. the width of the structure and*
- 2. the projection of the structure for the main face of the dwelling house.*

The proposed location of the carport as shown in the Building Concurrence Agency Referral Request and attached report dated 20 January 2023 was 5 metres from the Old Veteran Road boundary. In subsequent discussions with the Council the Appellant proposed a 5.8 metre setback from the front boundary.

JDBA Certifiers made application to the Gympie Regional Council for its response as a Building Concurrence Agency by way of an application dated 20 January 2023. The Gympie Regional Council gave its response as the Referral Agency dated 2 February 2023 directing that the application be refused on the basis that the application 'does not comply with and cannot be conditioned to comply with the relevant performance criteria PC6 and PC7 of Table 3 Assessment Criteria of the Gympie Regional Council adopted amenity and aesthetics resolution – 4 November 2015.'

John Dunn of JDBA Certifiers issued a Decision Notice refusing the application dated 25 March 2023.

Material considered

The material considered in arriving at this decision comprises:

1. Form 10 – Notice of Appeal.
2. Decision Notice Refusal – John Dunn, JDBA Certifiers.
3. Referral Agency Response – Gympie Regional Council – 2 February 2023.
4. Building Concurrence Agency Referral Request and attached report – 20 January 2023.
5. Neighbours Consent – Scott and Alison Wyllie – 15 December 2022.
6. Neighbours Consent – Mary and Roger Sarkissian.
7. Five sheets depicting aerial view of 139 Old Veteran Road, Veteran.
8. Drawings of proposed carport – R & F Steel Buildings.
9. Form 15 – Compliance Certificate for Building Design and Specification - George Zuev – 7 November 2022.
10. Form 15 – Design Summary – George Zuev – 7 November 2022.
11. Letter – Gympie Regional Council to Deanna Rae Stephens – 132 November 2023.

12. Gympie Regional Council – Adopted Amenity and Aesthetics Resolution – 4 November 2015.
13. Email - Deanna Stephens to Building Section, Gympie Regional Council – 22 February 2023.
14. Additional information supporting Council's reason for refusal.
15. Copy plan MCH5406.
16. Drawing – Gympie Regional Council – 24 May 2023 – showing zoning at 139 Old Veteran Road and surrounds.
17. Drawing of garage and shed at 139 Old Veteran Road.
18. Email – Sonia Lynch, Technical Officer, Gympie Regional Council and attached additional information supporting Council's reason for refusal with additional items in red.
19. Email – Sam Stephens to Sonia Lynch – 20 May 2023.
20. Response from Appellant in relation to further information supplied by the Concurrence Agency – 30 May 2023.
21. *Gympie Regional Council Planning Scheme 2013*. Located at <https://www.gympie.qld.gov.au/downloads/file/2699/gympie-regional-council-planning-scheme-2013-version-3-0>

The Tribunal and the parties as a group inspected the subject site and a section of Old Veteran Road to the South and Northwest of 139 Old Veteran Road on the day of the hearing.

Jurisdiction

Section 229(1) of the PA provides that Schedule 1 of the PA (the Schedule), states the matters where there may an appeal to the Tribunal.

Section 1(1)(b) of the Schedule provides that the matters stated in Table 1 of the Schedule, (Table 1) are matters that may be appealed to the Tribunal. However, section 1(2) of the Schedule provides that Table 1 only applies to a Tribunal if the matter involves one of a list of matters set out in section 1(2).

Section 1(2)(g) provides that Table 1 applies to a Tribunal if the matter involves a matter under the PA, to the extent the matter relates to the Building Act (Qld) 1975 other than a matter that must be decided by the Queensland Building and Construction Commission.

In the circumstances, Table 1 applies to the Tribunal in this appeal. Accordingly, the Tribunal is satisfied that it has jurisdiction to hear and decide the appeal.

Decision framework

For this appeal, the onus generally rests with the Appellant to establish that the appeal should be upheld (section 253(2) of PA).

The Tribunal is required to hear and decide the appeal by way of consideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA). However, the Tribunal may nevertheless, but need not consider other evidence presented by a party with the leave of the Tribunal and any information provided under section 246 of the PA.

The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA and the Tribunal's decision takes the place of the decision appealed against (section 254(4)).

The Gympie Regional Council has passed the *Adopted Amenity and Aesthetics Resolution*, 4 November 2015, which begins by stating –

In order to achieve regulatory efficiency and streamline processes, dwelling houses (which include outbuildings) are exempt development and the residential living, residential choice, tourist accommodation (precinct A on plan of development No.1/90 of the development approval for Rainbow Shores), specialised centre (Gympie medical precinct), industry investigation (if at Kybong), rural residential, township, rural and in some instances limited development (constrained land) zones of the Gympie Regional Council Planning Scheme 2013.

The Amenity and Aesthetics Resolution has been adopted to ensure that in line with community expectations, Council retains regulatory control over building work which may have an extremely adverse effect on the amenity, or likely amenity of the locality or is in extreme conflict with the character of the locality in which it is proposed.

The resolution is stated as:

Made in accordance with Schedule 7, Table 1, Item 17 of the Sustainable Planning Regulation 2009 (SPR) where building work for a building or structure may:

- (i) Have an extremely adverse effect on the amenity or likely amenity of locality, or*
- (ii) Be in extreme conflict with the character of the locality.*

The *Planning Regulation 2017*, section 22, provides: -

22 – Referral Agencies Assessment Generally – Act, ss54, 55 and 56

- (i) Schedules 9 and 10 prescribe –*
 - (a) for section 54(2)(a) of the Act, the Referral Agency for Development Applications stated in the schedules and*
 - (b) section 55(2) of the Act, the matters of the Referral Agency –*
 - (i) May or must assess the Development Application against and may or must assess the Development Application having regard to...*

Schedule 9, Division 2, Table 1, Item 1 provides –

Table 1 – Particular class 1 and 10 buildings and structures involving possible amenity and aesthetic impacts	
Column 1	Column 2
1. Development application requiring referral	<p>Development application for building work that is assessable development under section 1 and is for a building or structure that is –</p> <p>(a) a single detached class 1(a)(i) building, class 1(a)(ii) building made up of not more than 2 attached dwellings or a class 10 building or structure; and</p>

	<p>(b) in a locality, and of a form, for which the local government has, by resolution or in its planning scheme, declared that the form may –</p> <p>(i) have an extremely adverse effect on the amenity or likely amenity of the locality; or</p> <p>(ii) be in extreme conflict with the character of the locality.</p>
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Section 2 of the resolution provides –

(2) Application to local government areas

All applications for building work within Gympie Regional Council Local Government Area identified in section (4) below, whether lodged with Gympie Regional Council or a private building certifier, will require referral to Council as a concurrence agency prior to any development application for building work being made by a private certifier.

Section (4) of the resolution provides –

(4) Category of building work

If the proposed building work does not meet specific provisions contained in this section, then the proposal must be referred to the Council to undertake an assessment against the performance criteria contained in section (5).

Section (5) of the resolution includes the following –

(5) Assessment Provisions

Council, as a concurrence agency, will determine the suitability of proposed buildings or structures and when necessary, provide reasonable and relevant conditions with regard to the amenity and aesthetic provisions below .

Table 3 – Assessment Criteria of the resolution includes the following:

Table 3 – Assessment Criteria

Class 10 (Garages, Carports, Sheds, and other structures)

(...)

PC6 The location of building or structures provides an acceptable streetscape and does not adversely impact the amenity of neighbouring properties`.

PC7 Building structures are designed and sited to visually integrate with the dwelling house and avoid dominating the street by minimising –

- (i) width of the structure, and*
- (ii) projection of the structure for the main face of the dwelling house*

Submissions of the parties

In support of its position Council argues that the proposed carport would

...have an extremely adverse effect on the amenity, or likely amenity of the locality and be in extreme conflict with the character of the locality, as it does not comply with and cannot be conditioned to comply with the relevant performance criteria PC6 and PC7 of the Table 3 – Assessment Criteria of the Gympie Regional Council adopted Amenity and Aesthetic solution – 4 November 2015.

In support of their position the Council notes –

- the proposed location is well forward of the line of the existing dwelling and associated dwellings on site.
- the proposed carport would sit in an elevated position in comparison to the existing buildings at the subject site presenting to the street as a primary focal point.
- the proposed carport would be a dominant feature even with the proposed landscaping.
- other examples of outbuildings located other than as required by Table 2 of the resolution - those have been constructed in conjunction with dwellings on those lots.
- given the size of the subject lot, ample opportunity exists to locate additional undercover parking which would maintain an acceptable streetscape.
- when the proposed carport is considered in conjunction with existing Class 10 buildings, there would be a total gross floor area of Class 10 buildings of 225 metres square if the proposed carport were erected.

In support of this appeal, the Appellant relies on matters including the following –

- the proposed carport is to be built where the current driveway exists and where cars are currently parked.
- it would not be functional, due to space and other considerations, to place the proposed carport near the house or buildings on site.
- the ridged roof and colour scheme of the proposed carport will match the house.
- there will additional front fencing, an electric gate, bitumen driveway and extra planting along the fence line.
- nearby properties have fully enclosed sheds that do not meet minimum boundary setbacks.
- the proposed carport would offer enhanced security and safety for vehicle occupants moving between the car and house.

Findings of fact

The Tribunal makes the following findings of fact –

- (a) The neighbourhood in which the subject property is located is a combination of rural and residential rural use with land at 12, 20 and 34 Tompkins Road on the subject site and land at 150 to 217 Old Veteran Road being zoned rural and land at 11, 21 and 51 Tompkins Road, 57 to 131 Old Veteran Road, 2, 8 and 7 Osprey Drive and 140 to 204 Old Veteran Road being zoned rural residential.'
- (b) Neighbours, Scott and Alison Wyllie of 139 Old Veteran Road and, Clare and Russell Hopkins of 12 Tompkins Road and Mary and Roger Sarkissian of 140 Old Veteran Road, have consented to a carport being built in front of the house on the subject site 5.8 metres from the boundary.
- (c) The streetscape around the subject site comprises dwellings and outbuildings of various ages, styles and location relative to the front boundary.
- (d) 139 Old Veteran Road has a site area of approximately 12.151 hectare and a frontage at various bearings of approximately 195 metres. The subject site is undulating, primarily falling from Old Veteran Road in an easterly direction.
- (e) The neighbourhood around the subject site includes lots with land areas of 12 Tompkins Road – 8.94 hectares, 20 Tompkins Road – 4.307 hectares, 34 Tompkins Road – 4.264 hectare, 217 Old Veteran Road – 7.9070 hectare, 140 Old Veteran Road – 1.57 hectare, 162 Old Veteran Road – 2.512 hectare, 166 Old Veteran Road – 2 hectare, 128 Old Veteran Road – 2.226 hectare, 114 Old Veteran Road – 2.345 hectare
- (f) The streetscape along Old Veteran Road and Tompkins Road is addressed predominantly by open space.

Reasons for decision

The *Gympie Regional Council adopted amenity and aesthetics resolution – 4 November 2014* is stated to be made ‘in accordance with Schedule 7, Table 1, Item 17 of the *Sustainable Planning Regulation 2009 (SPR)*’. The application the subject of this appeal is assessed under the PA. The Tribunal finds that the *Gympie Regional Council adopted amenity and aesthetics resolution – 4 November 2014* is a ‘resolution’ for the purpose of ‘*Planning Regulation 2017 Schedule 9, Division 2, Table 1, Item 1*’. The Tribunal notes that there no requirement that a resolution be passed in contemplation of the regulation. In the circumstances, the Tribunal finds that the council was a proper Concurrence Agency.

In this appeal, the Tribunal considers the Appellant has satisfied the onus to demonstrate the appeal should be upheld and the Tribunal has decided to set aside the decision of the Assessment Manager, and order that it be remade, for the following reasons:

- (a) In the absence of a surveyed and particularised streetscape for the locality, considering the length of frontage of the subject site to Old Veteran Road of approximately 195 metres, the mixed rural building types and ages visible from the road, the rural roadside verge of 10 metres in depth that visually dominates Old Veteran Road and the dimensions of the proposed carport 6 metres x 10 metres, with a 6 metre dimension addressing Old Veteran Road, the Tribunal finds that even allowing for the elevated nature of the proposed carport site, the location of the carport provides for an acceptable streetscape and does not adversely impact the amenity of neighbouring properties.
- (b) In assessing the amenity of the neighbouring properties, the Tribunal has taken into consideration the consent of neighbours at 12 Tompkins Road, 153 Old Veteran Road and 140 Old Veteran Road. The Tribunal notes that the consents from owners mention a setback of 5.8 metres but after considering this the Tribunal finds that the consents still carry weight in deciding this issue.
- (c) The Tribunal has considered the size of the neighbouring allotments and the proximity of the proposed carport to any existing or likely development on those allotments and finds that considering the dimensions of the proposed carport relative to the frontage of the subject site to Old Veteran Road, that with the conditions imposed by its decision, the proposed carport will not dominate the street. The Tribunal notes that the fence and planting required by the condition will break up and soften any visible impact of the proposed carport on the streetscape.

Mark Chapple

Development Tribunal Chair
Date: 26 June 2023

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:

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