



## Development Tribunal – Decision Notice

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### Planning Act 2016, section 255

<b>Appeal Number:</b>	<b>19-053</b>
<b>Appellant:</b>	Jason Corbett of Jaynar Constructions
<b>Respondent (Assessment Manager):</b>	Stewart Magill of Pure Building Approvals
<b>Co-respondent (Concurrence Agency):</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	9 Silver-Gull Close, Wurtulla, Qld 4575, and described as Lot 367 on CG 803598 – the subject site

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### Appeal:

Appeal under section 229 and schedule 1, section 1, table 1, item 1 of the *Planning Act 2016* against the refusal of a development application for a Carport.

Sunshine Coast Regional Council (**Council**) as the concurrence agency directed the assessment manager to refuse the application on the basis that the development proposed did not comply with the performance for outcomes PO2(b) and PO2(d) from Table 9.3.6.3.1 in Section 9.3.6 Dwelling House Code (**DHC**) from the Sunshine Coast Planning Scheme 2014 (**SCPS**).

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<b>Date and time of hearing:</b>	Thursday 12 March 2020 from 12.30 pm.	
<b>Place of hearing:</b>	The subject site – 9 Silver-Gull Close, Wurtulla, Qld 4575	
<b>Tribunal:</b>	Henk Mulder	- Chair
	Stuart Smith	- Member
<b>Present:</b>	Jason Corbett	- Appellant, Builder
	Stewart Magill	- Assessment Manager
	Declan Magill	- Assessment Manager
	Peter Chamberlain	- Council representative
	Mitchell Schwieso	- Council representative
	Josh Dawson	- Council representative

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) **replaces** the decision of the Assessment Manager as directed by Council as a concurrence agency to refuse the development application for a Carport, with a decision to allow the development application subject to the following conditions:

- a) The Carport is to not exceed a height of 3.60 metres above the surrounding ground level at any point along the roof.
- b) The outermost projection of the Carport is to have a 0.800 metre setback from the street boundary.
- c) The structural pier supports are to have a 1.400 metre setback from the street boundary.
- d) The Carport is to be otherwise as described and shown in the documentation provided with the Notice of Appeal, including the plans elevations, sections, details and perspectives, for materials finishes and general specifications.
- e) Maintain or increase the existing landscaping of the site to the street.

## **Background:**

1. The Site is at the end of a cul-de-sac with a public access walkway as a neighbouring property use, leading to streets beyond. The site is generally a square allotment of 693m<sup>2</sup> with a street frontage of 26.0m metres to Silver-Gull Close. The site is relatively flat, though slightly higher than the street.
2. The property owner sought to undertake building alterations and additions to the residence at the Site, including a new Carport located in front of the dwelling and in the front boundary setback facing Silver-Gull Close. The setback from the street boundary was proposed to be 0.198m.
3. Pure Building Approvals as Assessment Manager submitted a Request for Concurrence Agency Response (Building Works) on or about 5 September 2019 to Council for Building Works Assessable against the Planning Scheme (works associated with a Dwelling House - carport).
4. The material supplied to Council by the Assessment Manager identified:
  - a) An existing and current approval for an enclosed garage set back 2.401m from the street boundary.
  - b) The existence of an older carport, since demolished, set back 2.087m from the street boundary.
  - c) Carports that have been built to boundary in the local area, though not the street.
  - d) A gatehouse constructed to the street boundary, directly opposite the subject site, in the cul-de-sac.
  - e) The promotion of street pattern and continuity being maintained, with no detrimental outcome to the neighbouring properties, a quality of design incorporated, and a mature landscape retained.
5. The Assessment Manager advised in their Tribunal appeal documentation cover letter of 9 December 2019 that Council provided an email response on 10 September 2019 clarifying two points:
  - a) If the roof of the Carport proposed be higher than 3.6 metres then a Code Assessment development application would be required, rather than a Concurrence Response.
  - b) That the proposal appeared to not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcome PO2 (d) as it did not maintain the continuity of the buildings in the street.
6. The Assessment Manager advised in their Tribunal appeal documentation cover letter of 9 December 2019 that Council provided a response on 25 September 2019 in an unknown format recommending the application be withdrawn as the proposal failed to comply with Dwelling House Code Performance Outcome PO2 (d).

7. Council in its decision notice dated 10 October 2019 refused the application (**Refusal Letter**), citing the following:

The proposed carport does not satisfy the requirements of the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcome PO2 (b) and (d).

*PO2 (b) – does not dominate the streetscape.*

*PO2 (d) – maintain the visual continuity and pattern of buildings and landscape elements within the street.*

8. The Appellants lodged an appeal with the Tribunal, received on 9 December 2019.

#### **Jurisdiction:**

9. The onus rests on the Appellants to establish that the appeal should be upheld (see section 253(2) of the PA2016. 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 and was appealed against (see section 253(4) of the PA).
10. The Appellant lodged the Appeal with the Tribunal under section 229 of the PA2016, against the Decision Notice of the Assessment Manager for refusal of the application, based on the concurrence agency response.
11. The Tribunal is of the opinion that a refusal of the development application in this instance is:
- a) a matter under the PA2016 that relates to the Building Act, and
  - b) cannot be decided by the QBCC pursuant to the Building Act.
12. As such the Tribunal has jurisdiction to hear this appeal under the PA2016 schedule 1, section 1 table 1 item 1. The precondition for the application of table 1, in section 1(2)(g) of Schedule 1 is satisfied in this instance.
13. The development application was accepted as properly made by Council, with its response on 10 October 2019. At that time, the PA2016 and the SCPS 2014 was in force.

#### **Material Considered:**

14. The material considered in arriving at this decision comprises verbal submissions at the hearing from the attendant parties to the appeal, observations from Site Inspection, as mentioned in this decision, and the following written documents:
- a) IDAS Form 2 - Building work requiring assessment against the Building Act 1975;
  - b) Letter Request (**Request**) for a Concurrence Agency Response from Pure Building Approvals to Council, dated 5 September 2019 .
  - c) Council Concurrence Response application form, dated 5 September 2019.
  - d) Eight drawings (**Drawings**) comprising Plans, Elevations and perspectives of the proposal by AK Building Designs dated 21 June 2018, Reference no 17209A.
  - e) Development Site Report via the Council database comprising 16 pages, dated 18 November 2019

- f) Concurrence Agency Response letter dated 12 April 2012 (**Old Approval**) for a garage set back 2.401m from the street boundary with four drawings of plans and elevations and a Title Search accompanying.
- g) Concurrence Agency Response from Sunshine Coast Council dated 10 October 2019 advising refusal of the Development Application for Building Work (**Refusal Letter**).
- h) Decision notice (**Decision**) from the Assessment Manager to the Applicant conveying the Concurrence Agency Response, dated 18 November 2019.
- i) 'Form 10 – Notice of Appeal', with correspondence for the grounds for appeal (**Grounds**) set out by Stewart Magill from Pure Building Approvals and dated 9 December 2019.
- j) The Planning Act 2016 (**PA2016**).
- k) The Planning Regulation 2017 (**PR2017**)
- l) Sunshine Coast Planning Scheme 2014(**SCPS**).
- m) The Dwelling House Code (**DHC**).
- n) Queensland Development Code MP1.2 (**QDC MP1.2**).
- o) Sunshine Coast Planning Scheme User Guide (**SCPS User Guide**)

#### **Findings of Fact:**

15. The Committee makes the following findings of fact:

##### *The Subject Site and Proposal*

- 16. The street is comprised of single storey residences from generally the same era and of a generally consistent palette of materials.
- 17. The existing residence is a single storey, rendered brick and roof tile construction as viewed from the street.
- 18. The Site is set back from the line of properties that form the main length of the street, to allow for the widening of the street that forms the cul-de-sac, and to suit a vehicle turning circle. The front boundary location to the Site is in alignment with the general building setback to buildings in the street, at this side.
- 19. The Site is a generally square allotment of 693m<sup>2</sup> with a street frontage of 26.0m metres to Silver-Gull Close. The site has a Low Density Residential zoning and is in a cul-de-sac with a public access walkway to a nearby street evident on one side.
- 20. There is a neighbour between the Site and the public walkway, around the circle of the cul-de-sac, with its rear boundary facing Silver-Gull Close, comprised of a high timber fence, and, in combination with the public walkway entry adjacent, forming an end-view to the streetscape. There is currently an array of landscaping on the Site's side of the walkway entry, partially covering the rear fence of the neighbour, enabled by the concrete pathway angling away from the Site.

21. There is a Council approval from 2012 for a garage of solid masonry construction set back 2.401m from the street boundary.

### The Application Process

22. The Assessment Manager submitted a Request for Concurrence Agency Response (Building Works) on or about 5 September 2019 to Council for Building Works Assessable against the Planning Scheme (works associated with a Dwelling House - carport). The proposal was for the Carport to be set out forward of the building line and within the front boundary setback of 6.0 metres, such that it would be 0.198 away from the street boundary.
23. Council, as contained in the Grounds, made representation by email that: the height should not be greater than 3.6m above ground for the application to remain a Concurrence Agency Response and not a Development Application for code assessment; that the proposal as described would not be supported as it could not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcome PO2 (d) as it did not maintain the continuity of the buildings in the street; that the application should be withdrawn.
24. Council in its decision notice dated 10 October 2019 directed refusal of the application (Refusal Letter), citing the following:

The proposed carport does not satisfy the requirements of the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcome PO2 (b) and (d).

*PO2 (b) – does not dominate the streetscape.*

The surrounding streetscape comprises residential dwellings with open landscaped front yards and buildings setback approximately 4.5m – 6.0m from the road/property boundary. The proposed carport is set well forward of any other buildings within the streetscape resulting in the structure being out of character with the prevailing streetscape within the nearby area of 9 Silver-Gull Cl Wurtulla. The proposed carport is considered to dominate the streetscape.

*PO2 (d) – maintain the visual continuity and pattern of buildings and landscape elements within the street.*

Silver-Gull Close predominantly consists of traditional sized residential dwellings and associated vehicle accommodation which are generally setback approximately 4.5m – 6.0m from the road/property boundary. A carport with a front setback of 198mm would be inconsistent with the pattern of buildings within the street. As such the proposal does not comply with Sunshine Coast Planning Scheme 2014 – Dwelling House Code, Performance Outcome PO2 (d).

25. From the SCPS User Guide, section 6.2 Assessable Development Requiring Code Assessment sets out that:

... a proposal which complies with the acceptable outcomes of the applicable code is automatically taken to comply with the corresponding performance outcomes and all higher order outcomes of the code (overall outcomes and purpose of the code). Similarly, a proposal which complies with the performance outcomes of the applicable code is automatically taken to comply with the higher order outcomes of the code.

Where a proposal does not comply with the acceptable outcomes or performance outcomes of an applicable code, development complies with the code where it complies with the purpose and overall outcomes of the code.

26. As again set out in the SCPS User Guide, section 6.2 Assessable Development Requiring Code Assessment, where the Performance Outcomes are not met, assessment against the higher order of Purpose and Overall outcomes of the code are considered against the proposal.

Where a proposal does not comply with the acceptable outcomes or performance outcomes of an applicable code, development complies with the code where it complies with the purpose and overall outcomes of the code.

27. The DHC section 9.3.6.2 sets out these higher order outcomes sought from the proposal:

9.3.6.2 Purpose and overall outcomes

- (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;
  - (b) a *dwelling house* is sited and designed to protect the amenity and privacy of neighbouring residential premises;
  - (c) a *dwelling house* provides a high level of amenity to the residents of the *dwelling house*; and
  - (d) a *dwelling house* is provided with an acceptable level of *infrastructure* and services.

28. In responding to the direction of the Refusal letter, the appellant set out in the Grounds that the proposal satisfies Council criteria through the following: The proposal

- a. contributes positively to the streetscape through variation and qualitative design,
- b. ensures an unaffected amenity to neighbours in a location of minimal traffic
- c. supplies a necessity for covered car parking to the site
- d. is in an existing streetscape that is not especially coherent with individual residential designs.

The Hearing

29. The Appellant clarified the circumstances of the site conditions, where the circumstances of the cul-de-sac establishes mitigating conditions for a setback at the site. This included being able to see that any work at or near the front boundary is in effect visually aligned with the rest of the houses to this side of the street. The appellant sought to establish a distinct nature of the Site for the application to be considered feasible.

30. Council confirmed that the SCSP establishes an alternate set of criteria to the Queensland Development Code as sought in the DHC, and that the proposal can only be assessed against the performance criteria contained therein, being the PO2 (b) and (d) as described.

31. Council conveyed the view as set out in the Refusal that the structure as proposed would dominate the streetscape by virtue of being so proximate to the street boundary. This was described as pedestrian traffic adjacent to the bulk of a structure at the boundary.

32. Council considered that the minimum 4.50m to 6.0m setback visible in the street, apart from a single gatehouse built to the boundary, established the pattern of the street. The 190mm setback proposed in the application consequently did not maintain the identifiable pattern of the street.

33. Council questioned whether the need was there for a Carport to serve the residential requirements, based on existing approvals.
34. In regard to the existing approval for a garage within the 6.0m boundary setback, Council advised the existing approval was preferable to building 190mm from the street boundary, albeit with an open carport.
35. The height of the proposed carport was described by the Appellant as not considered nor sought to be above the height of 3.60m, obviating the issue for a development application instead of the current concurrence agency response.
36. The Appellant proposed setting the outermost projection of the Carport further back from the street by 1.0m, and that a cantilever from the structural columns of an additional 0.6m would significantly alleviate any effect of the property dominating the streetscape, in this location.
37. Council considered such a negotiated proposal to continue to not be acceptable for the reasons set out to date. This mainly included dominating the streetscape and being inconsistent with the visual continuity and pattern of buildings within the street.

**Reasons for the Decision:**

38. The consistent street pattern is as described by Council as constituting traditional sized residential dwellings, including vehicle accommodation with 4.5m – 6.0m setbacks from the street boundary.
39. The existing streetscape is markedly different and changed by the conditions of the cul-de-sac. These conditions include the neighbouring properties to the west constituted by their rear boundary fencing, a public walkway angled away from the site as a major element of the street vista, and the neighbour directly opposite having established a built structure at its street boundary.
40. The proposal as conditioned is not considered to dominate the streetscape on the basis that it is not a visual component of the streetscape unless viewing from or very near the cul-de-sac and end of the street, and once visible, forms a part of the array of distinct conditions that the cul-de-sac presents, being the walkway, landscape elements, rear boundary fences, and neighbouring built to boundary roofed structure.
41. The proposal as conditioned is considered to maintain the localised range of variation of the cul-de-sac, in contrast with the recognisable streetscape to that part of the street separate from the cul-de-sac.
42. Further, the proposal as conditioned ensures the consistent pattern of the street is maintained through diminished visibility, until the conditions of the differences at the cul-de-sac gain exposure, whereby the proposal as conditioned is complementary.

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**Henk Mulder**

**Development Tribunal Chair**

**Date: 15/04/2020**

## **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 Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001

**Telephone (07) 1800 804 833**

**Email: [registrar@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)**