



## Development Tribunal – Decision Notice

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### Planning Act 2016

<b>Appeal Number:</b>	05 – 18
<b>Appellant:</b>	David John and Suzanne Sadler
<b>Assessment Manager:</b>	Christopher Paul Fahey of Suncoast Building Consultants
<b>Concurrence Agency:</b>	Sunshine Coast Regional Council (Peter Chamberlain)
<b>Site Address:</b>	39 Hewitt Street, Coolum Beach, Queensland and described as Lot 54 on RP 88316 (the subject site)

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### Appeal

Appeal under section 230 of the *Planning Act 2016* (PA) against a decision of the Assessment Manager, Suncoast Building Consultants, to refuse a development permit for building work for a Class 10a structure, being a carport. The decision followed a concurrence agency response by the Sunshine Coast Regional Council, directing the Assessment Manager to refuse the application because it does not comply with the performance criteria PO2(d) of Dwelling House Code with respect to maintaining the visual continuity and pattern of building and landscape elements within the street.

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<b>Date and time of hearing:</b>	10.30am Friday, 11 <sup>th</sup> May 2018
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Shane Adamson – Chair Elizabeth Anderson – Member
<b>Present:</b>	David Sadler – Appellant Peter Chamberlain – Sunshine Coast Regional Council Chris Fahey - Suncoast Building Consultants

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the PA **confirms** the decision of the Assessment Manager on 25 January 2018 to refuse the application for a carport on the subject land.

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 has an area of 607m<sup>2</sup> and is located in a residential area. The site has been improved by a single storey dwelling and associated landscaping, but currently does not have any covered parking available.

The proposed shade sail carport has been constructed and is located within the 6m front setback area of the dwelling. According to the proposal plans the carport is to be 6.9m x 4m and located 0.6m from the front road boundary and 1.5m from the western side boundary.

The shade sail is attached to the house and fixed to 2 steel posts approximately 2.5m in height near the front boundary. The carport roof is constructed of dark coloured permeable shade sail fabric and is approximately 2.45m above the concrete driveway surface.

The application made for a development permit for building work was lodged with Sunshine Coast Building Consultants, being the Assessment Manager. The application was required to be referred to the Sunshine Coast Regional Council being a referral agency for the application. This is because the carport does not comply with the acceptable benchmarks in terms of siting (6m from the frontage) under the Sunshine Coast Planning Scheme 2014 (planning scheme).

The relevant assessment benchmarks are contained in part 9.3.6 Dwelling House Code under the planning scheme, in particular performance criteria PO2 under Table 9.3.6.3.1, which states:

*Garages, carports and sheds:*

- (a) preserve the amenity of adjacent land and dwelling houses;*
- (b) do not dominate the streetscape;*
- (c) maintain an adequate area suitable for landscapes adjacent to the road frontage; and*
- (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*

The acceptable benchmarks (outcomes - AO2.1) state the carport is to be setback at least 6m from the road frontage, is not to exceed a height of 3.6m and is to have a total floor area of 56m<sup>2</sup>. It is noted that AO2.1(a) is an alternative solution under the QDC. The proposed development is to meet the performance outcome and does not have to meet the acceptable outcomes.

It is noted that under performance outcome PO3, Setbacks in Residential Zones, acceptable outcome AO2 provides that a dwelling be setback 4.5m from the road frontage, other than for a garage, carport or shed. Consequently, the planning scheme specifically intends that a dwelling can have a reduced building setback, but carports are to be located at least 6m from the road frontage unless satisfying other provisions, such as performance outcome PO2.

A referral agency response was provided by the Sunshine Coast Regional Council on 14 November 2017, directing the assessment manager to refuse the application for the following reasons:

*The application is refused as the proposed development does not comply with and cannot be conditioned to comply the following performance criteria:*

*Garages, carports and sheds:*

- a) ...*
- b) ...*

- c) ...
- d) *maintain the visual continuity and pattern of buildings and landscape elements within the street.*

The applicant subsequently lodged an appeal with the Development Tribunal on 25 January 2018.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 25 January 2018.
2. Oral submissions provided by the Applicant at the hearing and the Sunshine Coast Regional Council representatives at the hearing.
3. The Committee's on-site inspection of the subject site and immediate locality prior to the hearing.
4. The *Planning Act 2016*.
5. The Dwelling House Code – Sunshine Coast Planning Scheme 2014.
6. Photographs taken during the site inspection.
7. Development Application Decision Notice refusing the application.

### **Findings of Fact**

The Tribunal makes the following findings of fact:

- the existing house is set back approximately 7 metres from the front boundary, with a patio on the north eastern side setback approximately 10.5m from the front boundary;
- the house is close to the western side boundary and set back approximately 2.3m from the eastern side boundary, which does not allow suitable access for a vehicle or to construct a carport 6m from the frontage;
- the proposed carport is made of lightweight building materials, including slim poles and has a fabric roof with a relatively low profile;
- the carport has been constructed and the area of the frontage concreted, and is mostly screened by an existing hedge which extends into the road reserve; however, the fact that the carport has been constructed has no bearing on the assessment being made;
- the proposal plans show a 600mm wide setback to the road frontage which could contain landscaping to screen the development;
- the site is significantly constrained in terms of providing suitable onsite parking with access to the side and rear of the dwelling being restricted;
- the appellant advised at the hearing that due to the amount of traffic using Hewitt Street it was desirable to enter and leave the site in a forward gear;
- no carport could be constructed on the land and comply with the 6m front setback requirement; however, a carport could be constructed on the eastern side, but would encroach about 1.5m into the setback area;
- the majority of housing in the immediate locality appears to be set back approximately 6m from the road frontage, with the continuity of the built form generally being maintained.

## **Reasons for the Decision**

The proposed development is for a lightweight carport structure and is unlikely to have a significant impact upon the streetscape or the adjoining residential properties. Despite this, the proposed carport will not maintain the visual continuity and pattern of buildings and landscape elements in the street and therefore does not meet performance outcome (PO2(d))

While the dwelling currently does not have a covered carport or garage and access is restricted to the rear, a carport could be provided near the eastern boundary, while maintaining approximately a 4.5m setback to the frontage, which would be more desirable. Consequently, this is not a ground that would warrant approval of the application.

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**Shane Adamson**  
**Development Tribunal**  
**Chair Date: 16 July 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

**Telephone (07) 1800 804 833 Facsimile (07) 3237 1248**