



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	20-011
Appellant:	Mark Brown
Respondent (Assessment Manager):	Pure Building Approvals
Co-Respondent (Concurrence Agency):	Sunshine Coast Regional Council
Site Address:	11 Yinneburra St, Yaroomba QLD 4573 and described as Lot 77 on RP 82535 – the subject site

Appeal

Appeal under section 229, Schedule 1, section 1, table 1, item 1 of the *Planning Act 2016* against the refusal of a part of the development application for Building Works (dwelling house and garage extension) as directed by Sunshine Coast Regional Council (**Council**) as the Concurrence Agency for building works assessable against the planning scheme. This was on the grounds that the proposed garage did not comply with the performance for outcomes PO2(d) from Table 9.3.6.3.1 in Section 9.3.6 Dwelling House Code (**DHC**).

Date and time of hearing:	Monday 10 August 2020 at 11:00am
Place of hearing:	The subject site
Tribunal:	Henk Mulder– Chair Neal Charlton - Member
Present:	Mark Brown – Appellant and owner Vince Whitburn – Council representative Cameron Adams – Planner, for the appellant Michael Rolton – Building Designer, for the appellant Gus Schulz – Pure Building Approvals, for the appellant Stewart Magill – Pure Building Approvals, for the appellant Samantha Brown - Owner, for the appellant

Decision:

For the reasons set out below, the Development Tribunal (Tribunal), in accordance with section 254(2) of the *Planning Act 2016* (PA2016) **confirms** the part-refusal directed by Council as a concurrence agency for the Building Works (Dwelling House) and communicated to the Appellant by a decision notice dated 20 April 2020.

Background:

1. The subject site (at 11 Yinneburra Street, Yaroomba) is a regularly shaped allotment of 607sqm with a frontage to Yinneburra Street of approximately 15.1m and contains a dwelling house.
2. Yinneburra Street is located along the beachfront of Yaroomba Beach and many properties along the street are afforded views of the ocean. As one would expect, dwelling houses along the western side of Yinneburra Street are orientated to the rear of the site (away from Yinneburra frontage) to take advantage of the views.
3. The property owner has sought to undertake building works in the form of a forward (west) and side (south) extension of the existing garage with an unenclosed undercover walkway along the garage's other (northern) side. Also proposed are two 23,000 litre underground tanks located as part of landscape works, that is, forward of the setback under the driveway, each with a nominal diameter of 3.5 metre and height of 2.5 metre.
4. Of particular relevance to this appeal, the new garage is intentionally of a large area and with a separate side garage door to suit an intended function for boat or caravan storage.
5. Pure Building Approvals as the assessment manager for the building works application referred the application to Council as a concurrence agency for building works assessable against the planning scheme.
6. Council issued an information request on 17 December 2019 seeking additional information demonstrating no adverse impact would occur to the neighbouring property at 13 Yinneburra Street as a result of the proposed 9.6 metre built-to-boundary garage.
7. Council also requested that that the proposed garage be a re-designed to achieve a front setback of no less than 5.5 metre from Yinneburra Street, a setback which Council considered would be more in keeping with PO2(d) of council's Dwelling House Code (contained within the Sunshine Coast Planning Scheme 2014) which requires amongst other things, that garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.
8. The appellant provided an information request response (**response**) on 26 February 2020. The information provided about the issue of the built-to-boundary wall was resolved to Council's satisfaction. In regard to the garage setback, a revised scheme with 4.5 metre setback was set out, and existing neighbor's circumstances were used as examples for demonstrating a visual continuity and pattern of buildings with landscape elements were maintained in the proposal.
9. Council subsequently issued a part-approval for the proposed garage side boundary setback, and a part-refusal for the proposed garage's front boundary setback of 4.518m as set out in the response in its decision notice dated 8 April 2020 (**Refusal Letter**), citing the following reasons for the refusal:

Council considers that the garage with a 4.518m front setback does not satisfy the requirements of the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO2 (d).

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

10. The appellant lodged an appeal with the Tribunal, received on 5 May 2020.

Jurisdiction and Decision Framework:

11. The Appellant lodged the appeal with the Tribunal under section 229 of the PA2016, against the decision by the assessment manager, as directed by the Council, to give a development approval for only a stated part of the application.

12. The Tribunal is of the opinion that a refusal of the development application is:

- (a) a matter under the PA2016 that relates to the *Building Act 1975*, and
- (b) cannot be decided by the QBCC pursuant to the *Building Act 1975*.

13. 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.

14. The development application was accepted as properly made by Council on or about 10 December 2019. At that time, the PA2016 and the SCPS 2014 was in force.

15. 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 PA2016).

Material Considered:

16. The material considered in arriving at this decision comprises verbal submissions at the hearing from the attendant parties to the appeal, observations from a site inspection, as mentioned in this decision, and the following written documents:

- a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal received by the Tribunals Registrar on 5 May 2020.
- b) Information Request from Council as Concurrence Agency, dated 17 December 2019. (**Request**)
- c) Response to the Information Request by Adams + Sparkes Town Planning + Development, (**Response**) dated 26 February 2019
- d) Letter from Council as Concurrence Agency dated 8 April 2020 recommending part approval and part refusal of the Development Application (**Refusal**).
- e) Decision notice from the Assessment Manager advising the applicant of Councils recommendation as Concurrence Agency, dated 20 April 2020 (**Decision notice**) with Drawings 19021 A3.03; 04, and 07 included for the Council approved component of the application.
- f) Eight drawings of plans, elevations, section and detail for the proposed garage from MRA Design being project no 19021, numbered 1-8 with 'Status WD-B', dated 19/12/2019.
- g) Request for additional information sought by the Tribunal from the appellant in an email dated 10/9/2020 (**Tribunal Email**).

- h) Appellant information response to the Tribunal with revised drawings as above marked 'Status - WD-C' dated 15/9/2020 (**appellant email**)
- i) Council response to the Appellant information response in an email to the Tribunal dated Tuesday, 6/10/2020 (**Council email**).
- j) The Planning Act 2016 (**PA2016**).
- k) Planning Regulation 2017 (**PR2017**)
- l) Sunshine Coast Planning Scheme 2014(**SCPS**) including but not limited to the Dwelling House Code (**DHC**).
- m) Queensland Development Code MP1.2 (**QDC MP1.2**).
- n) Sunshine Coast Planning Scheme User Guide (**SCPS User Guide**) **Decision framework**

Findings of Fact:

The Committee makes the following findings of fact:

- 17. The site adjoins the beachfront of Yaroomba Beach at its rear boundary
- 18. The appellant is seeking to extend the existing garage at the site and has made a development application for building work. The application is required to be referred to Council for consideration against its planning scheme.
- 19. The front elevation of the proposed extended dwelling will present two garage doors, and an unenclosed undercover walkway along one side of the main garage. The proposed main garage door is double car width 3.5 metres high x 6.0 metres wide, with a second smaller single car width garage door 2.4 metres high x 2.95 metres wide set back 1.3 metres from the main garage door, by the southern side boundary.
- 20. These garage door dimensions comply with the limits set out acceptable outcome AO 2.2 of the DHC.

Where located on a lot in a residential zone, the total width of a garage door facing a street (and that is visible from the road *frontage*) does not exceed 6 metres within any one plane, with any additional garage door being set back a further 1 metre from the street *frontage* to break up the apparent width of the garage facade.

- 21. Foregoing the issue of the length of the wall that is built to the side boundary for the moment, Council's request sets out performance outcome PO2 (d) of the DHC as the issue for a design change, based on non-compliance with the acceptable outcome AO 2.1 for a 6.0 metre setback.

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

- 22. Council set out how PO2(d) applies to the site as follows:

The visual continuity and pattern of the street comprises predominantly of dwellings approximately 6m from the road frontage with the continuity of the built form generally being maintained.

As the garage is set forward of the general line of the buildings in the street, Council considers that the carport does not maintain the visual continuity and pattern of the buildings within the street.

23. Council describes the information required:

- Provide a re-design of the carport (*sic*) that more closely resembles the requirements of the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO2 (d)

20. The **Response** letter contains a written description for the scope of work to be undertaken, that is:

The proposed extension will result in a reduced front setback of 4.5 metres to outer most projection (OMP) ...

In summary, the variations to the existing Dwelling House include: Extension of the existing garage to create a longer double garage space; Extend the garage to the south to provide an additional single bay garage that is built to boundary; Replace the existing roof of the front portion of the Dwelling House; Construct an unenclosed walkway along the northern elevation with timber feature support columns; and, alter the overall colour scheme of the Dwelling House to provide an aesthetically pleasing built form when viewed from the street

21. In the **Response** letter, the appellant addresses the street:

In terms of appearance, the proposed building works will result in an alteration to the façade of the Dwelling House, which will improve the streetscape amenity of the site and lessen the overall visual impact of the garage.

The proposal seeks to soften the overall built form with an understated colour scheme that consists of bright white render and lightweight cladding, powder coated charcoal roller doors, light grey toned roof tiles and timber columns to support the proposed walkway.

It is noted that the existing garage is the dominant feature when viewed from the street, being built forward of the existing Dwelling House.

This existing built form component is unable to be altered given the retention of existing Dwelling House.

22. The first paragraph, above, seeks to establish that the new work, despite being much larger and closer to the boundary, provides a lessening of the visual impact of the existing garage. The last paragraph establishes the reduced street boundary setback is necessitated by minimising the extent of the alterations to the existing dwelling, in order to supply sufficient storage of a caravan or boat in the main garage.

23. The drawings also set out two 23,000 litre underground tanks located to the entry driveway, each with a nominal diameter of 3.5 metre and height of 2.5 metre.

24. In the **Response** letter, the appellant addresses the information required by Council for the Performance Outcomes PO2 (d).

This existing built form component is unable to be altered given the retention of the existing Dwelling House.

... the Architect has revised the proposal plans to increase the front setback to the greatest extent possible, without diminishing the use of the garage as intended. As such a front setback of 4.5 metres is now proposed.

It is determined that the proposal complies with PO2 (d) of the Dwelling House Code given that the garage reflects a front setback encroachment similar to that of other properties in Yinneburra Street and therefore does not dominate the streetscape.

The visual continuity and pattern of built form in the streetscape is characterised by the following existing buildings and structures that have been constructed to a front setback similar, if not less, than what is proposed.

- 28 Yinneburra Street – 2.5 metre front setback to carport
- 20 Yinneburra Street - > 1 metre front setback to gatehouse/pool hut
- 2 Yinneburra Street - 4.5 metre front setback to garage and main face of dwelling
- 1/33 Yinneburra Street - 3.5 metre front setback to main face of dwelling
- 2 Geeribach Lane (cnr site encroaching Yinneburra frontage) - 4.2 metre front setback to garage
- 4 Yinneburra Street - 1 metre front setback to carport

A number of the above properties, and others in Yinneburra Street, have built structures within the front setback including roofed walkways, gatehouses and shading devices.

Additionally, majority of surrounding properties have constructed 1.8 metre high timber fencing or rendered brick walls along the front boundary, further contributing to the built form presence when viewed from the street.

The above built forms best represent the existing pattern of buildings in Yinneburra Street, with a 6 metre setback not representing the streetscape character.

It is also noted that the site has a generous amount (of) landscaping in the front setback that is visible to the streetscape and enhances the visual amenity of the site overall. The landscaping is proposed to be retained soften the overall built form and maintain consistency with the landscaping outcome of surrounding properties.

With regard to the above it is determined that the proposed Dwelling House extensions effectively maintain the visual continuity and pattern of buildings and landscape elements within the Yinneburra Street given the existing built form elements within the street and should be supported by Council.

25. Council set out its recommendation to the assessment manager in its decision notice in two parts, with a *part-approval* for the side garage to be built at the boundary for a length of 9.6 metres, and a *part-refusal* for the main garage at the street to be built within a setback of 6.0 metres.

26. With satisfaction between parties of the approval for the side garage, this Tribunal seeks to consider the issue for that part of the work comprising the part-refusal by Council.

27. Council considers that the garage with a 4.518 metre front setback does not satisfy the requirements of the SPCS DHC Performance Outcomes PO2 (d) using the terms from the the Request letter:

The visual continuity and pattern of the street comprises predominantly of dwellings approximately 6m from the road frontage with the continuity of the built form generally being maintained.

As the garage is set forward of the general line of the buildings in the street, the carport does not maintain the visual continuity and pattern of the buildings within the street.

28. The appellant made application to the Tribunal for an Appeal of Council's refusal of the garage elements within 6m of the Yinneburra Street setback, and provided a succinct description for the grounds of Appeal:

A 6 metre setback (is) not representing the streetscape character.

It is also noted that the site has a generous amount (of) landscaping in the front setback that is visible to the streetscape and enhances the visual amenity of the site overall. The landscaping is proposed to be retained soften the overall built form and maintain consistency with the landscaping outcome of surrounding properties.

With regard to the above it is determined that the proposed Dwelling House extensions effectively maintain the visual continuity and pattern of buildings and landscape elements within the Yinneburra Street given the existing built form elements within the street and should be supported.

29. At the hearing the appellant advised the constraint of the garage length for caravan storage was at a minimum possible, as amended in the Response letter, being 4.518 metre to the outer most projection of the fascia. This was still in contrast with the 5.5 metre sought by Council, lessened from the DCP criteria of 6.0 metre.

30. The appellant advised that there was little viability in additional demolition to the residential component beyond the current extent of demolition proposed, as the change in level between concrete slabs, and the different floor levels further back.

31. The presentation of the large garage door visible from the street, with the entry walkway down the side was described by the appellant as residential in character, and in keeping with a varied setback and range of built elements visible elsewhere in the street.

32. The appellant identified that acceptable outcome AO3 of the DHC allows a part of a dwelling house other than a garage, carport or shed to have a setback of 4.5 metres. The appellant promoted the scenario that if not for simple elements such as a sliding door instead of a roller door, the proposal would satisfy the front setback requirement as being residential in nature.

33. At the hearing, a discussion about the use of the term 'pattern' in regard to the streetscape ranged from being so diverse as to contain no pattern and precluding any opportunity for continuity, to discussing particular features of the residences in the street from which a pattern of limited elements may be discernible.

34. The streetscape at inspection showed a range of residences, the use different materials, a variety of built structures at entries, by pools, and within varied setbacks which included some variable topography of a small hill. An array of residential dwellings occur in the street.

35. It was identified by the appellant that the residence the subject of the application has all of the habitable areas focused toward the rear boundary with the beach. The appellant promoted the Sunshine Coast region for its residential lifestyle and conveyed the view that a lack of a coherent pattern of setbacks is a regional characteristic.

36. The appellant raised the idea of whether the street has or can have a regular character, and then whether a regular pattern was feasible, especially considering the proximity to the beach of the Site. The proposal integrates with its distinct location facing the beach, and the streetscape is a consequence of living that way.
37. Council identified that an internal review comprised of up to eight people established the decision of the refusal using the drawings provided, a site view, and an assessment of the street pattern. This took into account a review of the garages and carports in the street.
38. Council consider the setback as proposed does not satisfy the criteria described in PO2(d) of the DHC
39. The Tribunal sent a request via email to all parties for a minor amendment to the proposal:

The amendment should focus on the front boundary setback to the street which forms a part of the streetscape. This may incorporate the addition of built and landscaped detail that is designed in a manner that responds to section 9.3.6.2 (2)(a) Purpose and Outcomes of the Dwelling House Code:

- (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;

Such built elements may include, for example: a portico entry structure; the existing proposed colonnade extended to the front entry at a lower height; specific, integrated, landscaping description.

41. The **appellant email** supplied a new edition of the drawings setting out entry landscaping to the corners of the front boundary, including a pedestrian gatehouse structure, fencing or screening to the walkway from the driveway, and additional width at the front for planting. The email read in part:

Please see attached a copy of revised set of plans, which have been amended to provide an outcome that better responds to section 9.3.6.2 (2)(a) Purpose and Outcomes of the Dwelling House Code. The proposal achieves this outcome through the inclusion of the following changes in the plans:

- The inclusion of a pedestrian gatehouse adjacent to the northern boundary, which matches existing gatehouses within the street (adjacent house north of the site and opposite the subject site) and brings the pedestrian entry of the site forward of the proposed garage
- The inclusion of additional landscaping along the frontage of the site to soften the built form relaxation
- The stepping of the existing front fence and the inclusion of landscaping in front of the front fence, which provides a positive contribution to the existing streetscape

42. The **Council email argued** that the Tribunal should be excluded from being able to make any assessment of section 9.3.6.2 (2)(a) Purpose and Outcomes of the Dwelling House Code, based on Planning Regulation 2017 (**PR2017**), Schedule 9, Part 3, Division 2, Table 3.

In accordance with the Planning Regulation 2017, Schedule 9, Part 3, Division 2, Table 3, the referral agency assessment is subject to the identified 'matters referral agency's assessment must be against', which is limited to whether the proposed carport (*sic*) complies with the qualitative statement (performance outcome) associated with the alternative provision; in this case limited to PO2 only.

As such, Council (and the Tribunal) are unable to consider the Purpose and Overall Outcomes of the Code in their assessment of the proposal in accordance with the Planning Regulation 2017.

43. **Council** also set out in SCPS 5.3.3(3)(a)(iii), where a proposal does not comply with the Performance Outcome, development complies with the DHC when it complies with the purpose and overall outcomes of the code.

5.3.3 Determining any requirements for accepted development and the assessment benchmarks for assessable development

(3) The following rules apply in determining assessment benchmarks for assessable development:-

(a) assessable development requiring code assessment:-

(iii) that complies with:-

(A) the purpose and overall outcomes of the code complies with the code;

(B) the performance outcomes or acceptable outcomes of the code complies with the purpose and overall outcomes of the code

Reasons for the Decision:

45. The application is unable to establish its qualitative assessment for the visual continuity of the streetscape whether DHC PO2(d) is considered, or based on the DHC Purposes and Outcomes. In contrast with the nearby residences, the application makes insufficient design consideration for the residential streetscape required for its proposed garage setback.

46. The garage elevation to the street is significant, in its own right, and is readily compatible or acceptable as a residential use, especially for its location. However, in presenting closer to the street, the proposal is considered in regard to its neighbours as a part of the visual continuity and pattern of the street, in accordance with the SCPS. The elements for height, distance, type, size, scale, materials, finishes, and landscaping are all a part of what can visually be considered as establishing linkages, commonalities, differences, consistency and distinctness to the streetscape which affect those parts of the whole street.

47. When setbacks are considered, the site inspection and the addresses referred to in the **Response** letter establish that carports, landscape structures, and entry gatehouses are mostly within the front boundary setback criteria, rather than garages.

48. There are two garages described by the appellant in this context of within the front boundary setback criteria, at 2 and 1/33 Yinneburra Street. The former is across the road, and nearby. Dated late 20th century, it has the garage within the dwelling, and AO3 may apply. It also has David Low Way on its rear boundary and has reason to be nearer to the quieter Yinneburra Street boundary. The latter at 1/33 is at the other end of the street, around a bend and by a road intersection. It presents as a residential dwelling that has a diagonal corner within the front boundary setback and is highly planted and landscaped along the street. Its impact for these circumstances has minimal bearing to the subject Site.

49. As a garage, the proposal is not reflective of the boundary encroachment of surrounding residences. It is bigger, closer and more openly visible than its neighbours. The proposal does not aim to modify the effect of the garage facing the street, as its neighbours have. This is made relevant when the main garage is at a maximum extent for size and area, and would be forward of most garages in the street, only changed by landscaping structures or carports.

50. Where garages are facing the street, the newer residences - also considered more aligned to the current SCPS - are overlaid with landscaping, materials, and additional residential functionality, such as balconies, all of which serve to modify the vehicle entry. This can be seen to its neighbours at 5, 7 and 19 Yinneburra St, all on the Eastern or beach side. This has not been achieved in the proposal and sets the proposal apart from this part of the street.

51. The appellant supplied a revised proposal for landscaping and an entry gatehouse and screening or low fenced colonnade. This served to demonstrate landscaping and the entry gatehouse structure will not moderate the elevation to the garage doors, within the proposed setback. The extent of driveway, hard surface and the excavation for water tanks contribute to reducing the opportunities for integrating a satisfactory array of elements at the street.
52. It is not demonstrated that the garage is not forward of the general line of the buildings in the street, and in regard to the scale, sightline and closer proximity of the garage doors, there is little that can be compared in the neighbourhood. As such, even with the alterations proposed by the appellant during the course of the proceedings, it will change the streetscape, rather than form a part of the existing continuity, as described in the DHC.
53. The Tribunal has reconsidered the relevant evidence and has formed the view that the appellant has not discharged his onus to establish that the decision should be altered as he contends and accordingly that the appeal should be upheld.

Henk Mulder

Development Tribunal Chair

Date: 26 November 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:

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