



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-063
Appellant:	Craig Hogan t/a Pergola Specialist
Assessment manager:	a) Sunshine Coast Regional Council b) Zac Williams, Pinnacle Certification
Concurrence agency: (if applicable)	b) Sunshine Coast Regional Council (Council)
Site address:	15 Pamphlet Place Pelican Waters Qld 4551 and described as Lot 210 on RP 896480 – the subject site

Appeal

This is a dual appeal made against two related applications for a single structure as follows:

- a. Appeal made under the Planning Act 2016 (PA), section 229(1)(a)(i) and schedule 1, section 1(2)(g) and table 1, item 1(a) against the assessment manager's (Council's) refusal of a development application for extension to a Dwelling House (carport to accommodate vehicle and caravan) on the basis that the proposal conflicts with the Dwelling House code provisions of the Sunshine Coast Planning Scheme 2014
 - b. Appeal under the Planning Act 2016 (PA), section 229(1)(a)(i) and schedule 1, section 1, table 1, item 1(a), against the assessment manager's (Certifier's) refusal, at the direction of the Concurrence Agency (Council), of a development application for building work for the construction of a carport on the basis that the proposal conflicts with provisions of the Queensland Development Code (QDC MP1.2).
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Date and time of hearing:	Friday 16 February 2024 at 10.30am
Place of hearing:	The subject site
Tribunal:	John Panaretos – Chair Elisa Knowlman – Member
Present:	Jim Shingles – Appellant's agent Peter McCarthy – Property Owner Natalie McCarthy – Property Owner Tiani Tydd – Council representative Zana Larikka – Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decisions:

- a. by Council as assessment manager; and
- b. by the assessment manager, as directed by Council as concurrence agency,

to refuse the development application for building work with respect to the construction of a Class 10a carport 16 metres long at a setback of 0.5 metres from the side boundary.

Background

1. The appellant proposed to construct an open sided carport 16m long and 4.2 metres wide, with a 2° pitched roof average 3.4 metres high, to provide protection to a vehicle and caravan in tandem. The structure, to be of steel and Colorbond with Trimdek roof, 64m² floor area and furnished with stormwater gutter and underroof dimmable lights, is located between the existing house and side boundary, with a 0.5m setback to the side boundary. The proposal triggers development applications under the QDC MP1.2 and the Sunshine Coast Planning Scheme, as follows:
 - a. The proposal conflicts with Acceptable Outcome AO2.1(c) *has a total floor area that does not exceed 56m²* of the Dwelling House Code of the planning scheme. Subject to paragraph 5.5.3(2) and (3) of the planning scheme, the proposal triggers a Code Assessment application, assessable against Performance Outcome PO2 of the Dwelling House Code;
 - b. The proposal conflicts with Acceptable Solution A2(a)(i) of the QDC MP1.2 which requires that *'where the height of that part [of the building or structure] is 4.5m or less'*, the side boundary clearance is 1.5m. Consequently, the proposal was referred to Council as Concurrence Agency and assessed against Performance Criteria P2.
2. The subject site has an area of 1,081m² and is zoned Low Density Residential under the planning scheme.
3. Extension to a Dwelling House (Carport) is accepted development in the zone, but converts to code assessment due to non-compliance with the Acceptable Outcomes of the Dwelling House Code, with Council as assessment manager. The appellant made application to Council for Code Assessment on 16 November 2023.
4. The Council also had a role as concurrence agency for assessment against the building assessment provisions of the QDC MP1.2.
5. The Council refused both applications for the following reasons:
 - a. As assessment manager, Council stated that the proposal's proximity to the side boundary *'...does not preserve the amenity of adjacent land and dwelling houses.'* As required by PO2(a) of the Code. In particular, Council referred to the *'height, bulk, and significant length of the structure in conjunction with its proximity to the side boundary'*.
 - b. As concurrence agency, Council directed the assessment manager to refuse the application since it does not satisfy P2(b) and (c) of QDC MP1.2 for the following reasons respectively:

- *‘The length and height of the proposed carport, being above the height of the neighbouring properties patio and located within close proximity to the side boundary, would impact the provision of light to habitable rooms on adjoining lots.’*
- *‘The scale and proximity of the proposed carport would negatively impact the visual amenity of residents of the adjoining premises.’*

Tribunal jurisdiction

6. This appeal raised questions of the Tribunal’s jurisdiction since the Form 10 notice of appeal identifies the decision notice dated 28 November 2023 as the decision under appeal. That corresponds to the building certifier, Mr Wilkins’s, ‘Decision notice refusal’.
7. In that ‘Decision notice refusal’ Mr Wilkins states under ‘1. Details of refusal’, ‘The assessment manager was directed to refuse the application by Sunshine Coast Regional Council in accordance with their referral agency role. The refusal is solely because of the direction of the referral agency.’
8. This suggests that the Tribunal may only decide the issues in Council’s Referral Agency Response, that is, compliance with Performance Criteria P2(b) and (c) of the QDC MP 1.2.
9. However, it is also noted that the supporting information to the appeal includes reference to Council’s Decision Notice – Refusal. Further, the Council Decision Notice – Refusal and Referral Agency response were given under a single cover letter in response to a combined application. This suggests that it may be open for the Tribunal to decide both of the matters raised by the parties.
10. Subsequent to the hearing and to clarify the parties’ understanding of whether the appeal covered both decisions, the Tribunal invited submissions from the parties on their understanding of the matters subject to appeal. No response was received from the appellant, but by emails forwarded 1 May 2024, Council and the respondent/certifier confirmed in their responses that they understood both matters to be subject to appeal, i.e. Council’s decision as assessment manager and the Certifier’s assessment manager decision.
11. In light of these confirmations, the Tribunal has taken the view that the omission on the Form 10 application was purely an administrative oversight. The Tribunal also notes that construction of the proposed carport is dependent on the approval of both applications to proceed, thus it is appropriate for the matters to be conjoined in a single appeal.
12. It is noted that the respondent/certifier’s representation of 1 May 2024 stated that the scope of appeal included a carport height of 3.8m (consistent with plans originally lodged with Council and a proposed relaxation of Acceptable Outcome AO2.1(b) of the Dwelling House Code and Acceptable Solution A2(d)(i) of QDC MP 1.2). However, the plans lodged with Form 10 Notice of Appeal were for the lower height building described above and the Tribunal was not presented with evidence relating to a 3.8m high structure, thus this was not within the scope of the Tribunal’s deliberations.

Material considered

13. The material considered in arriving at this decision comprises:
 - a. ‘Form 10 – Appeal Notice’, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar 30 November 2023.

- b. Sunshine Coast Planning Scheme
- c. Queensland Development Code MP1.2
- d. Verbal submissions made by both parties at the hearing
- e. Photos submitted by the appellant at the hearing and supplementary evidence received via email by the Registrar on 4 March 2023
- f. Plans of neighbouring house submitted by Council subsequent to the hearing
- g. Email submissions regarding the scope of the appeal by Tye Lincoln for the respondent/certifier and Zana Larikka for Council both dated 1 May 2024.

Findings of fact

14. The Tribunal makes the following findings of fact:

- a. The subject site has an area of 1,081 m² and is zoned Low Density Residential under the planning scheme.
- b. An average height of 3.4 metres and width of 4.2 metres at 2° roof pitch yields a maximum height of 3.47 metres. This is within the 'acceptable' heights for carports of 3.6 metres in the Dwelling House Code and 'mean height' of 3.5 metres in the QDC MP1.2.
- c. The QDC MP1.2 applies two 'acceptable' side setback options based on building height, i.e. either A2(a) 1.5 metres for a structure up to 4.5 metres high, or alternatively A2(d) for carports, 0.0 metres setback where mean height is a maximum of 3.5 metres and length does not exceed 9 metres and it is no closer than 1.5 metres to a required window in a habitable room of an adjoining dwelling. Hence, a side setback of 0.5 metres would be acceptable if the length of the structure were reduced from 16 metres to 9 metres.
- d. Performance Outcome PO2 of the Dwelling House Code of the Sunshine Coast Planning Scheme 2014 requires that, amongst other things, carports preserve the amenity of adjacent land and dwelling houses.
- e. Performance Criteria P2 of the QDC MP1.2 requires that, amongst other things, buildings and structures provide adequate daylight and ventilation to habitable rooms on adjoining lots and do not adversely impact the amenity of residents on adjoining lots.
- f. It was argued for the appellant that utility/service areas of the neighbouring house were located along the side facing the proposed structure and that a shorter structure would not provide sufficient vehicle and caravan protection. Council's view was that the proposal would impact external entertainment and clothes drying area as well as habitable rooms of the neighbouring house.
- g. The appellant suggested clearing vegetation along the common boundary with the neighbouring house to reduce existing shadowing of the neighbouring house and external drying area.
- h. The suggestion of a transparent or translucent roof, such as polycarbonate sheeting, to allow sunlight to the neighbouring house and drying area, was declined by the appellant since it would not be sufficiently robust to withstand hail damage. Council

also opposed this option as being insufficient to negate the impact on the neighbouring house.

- i. Arguments presented in the appeal documents and at the hearing were supplemented by further evidence, as follows:
 - The appellant presented photos of shadows falling on the neighbouring house and drying area from trees and existing structures (although not comprehensive shadow diagrams) as well as well-articulated reasons for approval based on the need for the carport (primarily protection from weather and bat excrement), negotiations with neighbours and alternative design options offered.
 - Council forwarded plans of the adjoining house at 14 Pamphlet Place, which were submitted in association with an extension application involving side boundary relaxations in 2014, to demonstrate the position of internal living areas. The plans show that the north-western side of the house, facing the subject site, accommodates both habitable rooms as well as utility rooms.
- j. At the hearing, Council stated that it had no concerns that ventilation to the neighbouring house would be restricted but confirmed its objection to the bulk of the structure and its proximity to the side boundary impacting on its amenity, particularly sunshine to internal living areas and the external drying area.

Reasons for the decision

15. The Tribunal has determined that it has jurisdiction over both matters subject to this appeal.
16. The length and floor area of the proposed structure in proximity of the side boundary would generate a perception of bulk and thus impact the visual amenity of the adjoining residence.
17. Sunlight to windows of habitable rooms and external areas of the adjoining house would be compromised by the proposal.
18. Although the proposal offers a 0.5 metre setback, it has not been demonstrated that sunlight to internal living areas and the external drying area of the neighbouring house will not be compromised, impacting the amenity of the neighbouring house.
19. Notwithstanding shadowing from existing vegetation, the proposed structure is to the north-west of the neighbouring house, exacerbating shadowing of the house in winter.

John Panaretos
Development Tribunal Chair

Date: 13 May 2024

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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