



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	<b>51-18</b>
<b>Appellant:</b>	Garry Macdonald
<b>Respondent: (Assessment Manager)</b>	Alister Marr, Fastrack Building Certification
<b>Co-Respondent: (Concurrence Agency)</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	13 Corryong Place Buderim and described as Lot 46 on RP810753 – the subject site

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### **Appeal**

Appeal made under the *Planning Act 2016*, section 229(1)(a)(i) and Schedule 1, sections 1(1) and 1(2)(g) and Table 1, item 1(a) against the assessment manager's refusal of the appellant's development application for building works (a carport structure).

The refusal was based on the concurrence agency response issued by Sunshine Coast Regional Council on the basis that the proposal conflicts with the requirements of P02 under the Dwelling House code contained in the Sunshine Coast Planning Scheme 2014.

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<b>Date and time of hearing:</b>	11 March 2019 at 2:00pm
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	James Dunstan – Chair Carol Dowd – Member Stuart Smith – Member
<b>Present:</b>	Garry Macdonald – Appellant Rowena Macdonald – Appellant Vince Whitburn – Council Representative Kasaia Bray – Council Representative

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) **confirms** the assessment manager's decision to refuse the development approval for a carport structure as it does not satisfy the performance outcome P02(d) of the Sunshine Coast Planning Scheme 2014, Chapter 9.3.6 Dwelling House Code.

### **Background**

The subject site is a residential allotment located at 13 Corryong Place Buderim. The site is located at the end of a cul-de-sac street and adjoins what appears to be parkland on the eastern side and rear boundaries. The site is 829m<sup>2</sup> and is of a trapezoidal shape.

The building work subject to the appeal, is an existing carport located at the front of the site.

An approval was originally granted by Fastrack Building Certification on 28 April 2014 for the construction of the carport. It was subsequently finalised with a Form 21 Final Certificate being issued by the assessment manager dated 10 June 2014.

On 14 May 2018, an email was sent by Carol Popple from Sunshine Coast Regional Council advising the property had come to council's attention, and that their records showed an approval for the carport in question. It was stated that at the time, there was a non-compliance with the superseded Maroochy Planning Scheme regarding the road boundary setback that was never referred to council.

Subsequently following this correspondence, on 18 May 2018, a concurrence agency referral assessment was submitted to council by Fastrack Building Certification.

On 24 May 18, council issued an information request, reference CAR18/0316 to the assessment manager documenting the following concerns regarding compliance:

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

*The visual continuity and pattern of the street comprises of predominantly dwellings approximately 6m from the road frontage. This carport is in a street that has an open streetscape and therefore would be inconsistent with the visual continuity and pattern of the buildings within the street."*

*"Council requires a design with the proposed item that more closely resembles the requirements of the performance outcomes"*

As part of the response, council provided some alternative siting proposals that in their assessment would be more consistent with the scheme.

A detailed assessment and response, dated 31 July 2018 prepared by the assessment manager was submitted to council, detailing how the carport satisfied PO2(d) as requested by Council, and documenting reasons as to why the alternative sitings were not suitable.

In addition to this, the appellant provided further written response in a letter dated 8 June 2018 outlining their reasons for the siting as constructed, and also provided council with 12 neighbours' letters of support for the carport in the current position.

On 13 August 2018, Council issued a referral agency response, refusing the siting of the proposed carport for the following reasons:

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

*The majority of buildings in Corryong Close appear to be set back approximately 6m from the road frontage, with the continuity of the built form generally being maintained. The proposed carport is set forward of the general line of the buildings in the street. Therefore Council deems that the carport will not maintain the visual continuity and pattern of the buildings within Corryong Close."*

Following the receipt of the Council Referral Agency assessment, the Assessment Manager subsequently issued a Refused Decision notice reference 20140658 dated 12 December 2018.

A hearing was conducted at the subject site commencing at 2pm on 11 March 2019.

During the hearing the following representations were made:

Appellant:

- A building approval was granted in 2014 for the structure
- The Appellant believed all legislative requirements for the works have been satisfied;
- There are 2 other existing similar structures in the street;
- The proposed alternative siting locations from council are not suitable due to other existing structures on the site (swimming pool) and the vehicular crossover location;
- All surrounding neighbours have been consulted and have no objections to the structure
- Amenity of surrounding neighbours and the streetscape is not impacted;

### Co-Respondent (Council):

- An application was lodged to council for relaxation which did not address all Performance Outcome (PO's) requirements in initial submission made and as such an information request was made;
- Council considered all the requirements of the PO and considered that although the structure satisfied most of the outcomes, the main issue was PO2(d) regarding continuity and pattern of the streetscape not being maintained. As there is no precedent for other carport structures in the street, it is not in keeping with the streetscape;
- Alternative siting options were provided with the information request.

Further submissions were requested regarding the validity of the application and the question of jurisdiction to hear the appeal in the context of the existing approval already being completed. Council made submissions that the original approval may have been in breach of the legislation and should be invalidated. The submission documented that the certifier had not lodged a concurrence agency referral at the time of the original approval.

The respondent (assessment manager) provided a submission that in their interpretation, the subject structure is defined under the Queensland Development Code MP1.2, as an *Open Carport* and not a *Carport*.

The respondent further submitted that in their interpretation, as the structure is defined as an open carport, and not a *carport*, that the planning scheme codes do not apply. This interpretation is based on the planning scheme only providing alternative siting for a *carport*, which is defined separately under QDC. It is their determination that an *open carport* is not a carport and is not considered to be subject to the alternative siting provisions under the planning scheme and that the siting provisions of QDC MP1.2 apply. The assessment manager further determined the *open carport* structure, located over the existing driveway crossover, satisfied the provisions of QDC MP1.2, A1(c).

Council provided in their further submissions a response to this interpretation referencing a previous decision by the former Building and Development Dispute Resolution Committee, reference 32-16, where this interpretation had been considered previously. Council also raised the query regarding how the *open carport* could have complied with the provisions of A1(c)(ii) as there is an existing double garage on the dwelling providing existing onsite alternative parking provisions.

### **Jurisdiction**

The tribunal has made the determination under schedule 1, section 1, table 1, item 1 of the PA.

### **Decision framework**

It is noted that

- The onus rests on the appellant to establish that the appeal should be upheld (s253(2) of the PA);
- 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 appealed against (s253(4) of the PA);
- The tribunal may nevertheless (but need not) consider other evidence present by a party with leave of the tribunal or any information provided under s246 of the PA (pursuant to which the registrar may require information for tribunal proceedings);
- The tribunal is required to decide the appeal in one of the ways mentioned in s254(2) of the PA.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 13 December 18.
2. The letter of submission dated 10 December 2018 prepared by Garry and Rowena MacDonald
3. Assessment manager submission dated 7 December 2018 prepared by Alistar Marr from Fastrack Building Certification;
4. Email correspondence dated 14 May 2018 from Carol Pople to Fastrack Building Certification regarding setback non-compliance;
5. Concurrence agency referral application dated 18 May 2018 by Fastrack Building Certification
6. Information request reference CAR18/0316 issued by Council to the Assessment Manager dated 24 May 2018;
7. Assessment manager response to information request dated 31 July 2018
8. Appellant response to information request dated 8 June 2018;
9. Referral agency assessment dated 13 August 2018;
10. Fastrack Building Certification Refusal reference 20140658 Decision dated 12 December 2018;
11. Fastrack Building Certification Approval reference 20140658 dated 28 April 2014
12. Fastrack Building Certification Form 21 Final Certificate dated 10 June 2014
13. Email submission from Council regarding current approval records for the site dated 12 March 2019;
14. Email submissions from Council dated 18 April 2019, 24 April 2019 and 26 April 2019;
15. Email submissions from the Certifier dated 26 April 2019
16. Chapter 9.3.6, Dwelling House Code, Sunshine Coast Planning Scheme 2014,
17. Queensland Development Code MP1.2;
18. Former Building and Development Dispute resolution Committee Decision 32-16 submitted by Council;
19. The Planning Act 2016 (PA);
20. The Planning Regulation 2017 (PR);
21. The Building Act 1975 (BA);
22. The Building Regulation 2006 (BR);
23. The Sustainable Planning Act 2009 (SPA)

## Findings of Fact

The tribunal makes the following findings of fact:

1. The certifier made a submission regarding the carport, being defined under QDC MP1.2 as an “*Open Carport*” is not subject to the requirements of the planning scheme, as it is designated to address carports and therefore was not provided with alternative siting provisions under section 33 of the BA to A1(c) of MP1.2.
2. The certifier in their assessment, determined the open carport structure, located over the existing driveway crossover, satisfied the provisions of QDC MP1.2, A1(c) and did not require a concurrence agency referral.
3. The tribunal has considered this submission and found that the Sunshine Coast Planning Scheme does not provide a definition for carports, however QDC provides definitions as follows:

**Carport** – means a class 10a building, other than a garage, providing covered vehicular parking;

**Open Carport** – means a carport with:

- a) Two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another building or a side or rear allotment boundary; and
- b) Not less than one-third of its perimeter open

4. The definition of *Open Carport* includes within it the phrase “*means a carport*”. This phrase within the definition encompasses and enables the broader definition of a carport. The tribunal considers that the definition of an open carport cannot be used without the broader definition of carport also being applied to the structure.
5. As the Sunshine Coast Planning Scheme Dwelling House Code provides alternative siting provisions specifically relating to a *carport*, it is considered that QDC MP1.2 does not apply for the siting of the structure and the alternative provisions of the planning scheme prevail.
6. The Sunshine Coast Planning Scheme 2014, Dwelling House code P02 is considered to be the applicable assessment criteria for design and siting of a carport as an alternative siting provision to QDC as per section 33 of the BA.
7. The application was correctly referred to council as a concurrence agency under schedule 9, table 3 of the PR.
8. The items for consideration under the concurrence agency referral were the setback to the road boundary under P02 of chapter 9.3.6 of the Sunshine Coast Planning Scheme, Dwelling House Code.
9. The reason for refusal stated in the concurrence agency advice is as follows:  
*“P02(d) maintain the visual continuity and pattern of buildings and landscape elements within the street*  
*The majority of buildings in Corryong Close appear to be set back approximately 6m from the road frontage, with the continuity of the built form generally being maintained. The proposed carport is set forward of the general line of the buildings in the street. Therefore Council deems that the carport will not maintain the visual continuity and pattern of the buildings within Corryong Close.”*
10. It is determined by the tribunal that the carport, being located forward of the main building line, **Does Not** maintain the visual continuity of the streetscape, as the majority

of the streetscape is well setback from the frontage, with no other examples of similar structures with the same extent of encroachment present in the surrounding streetscape.

11. Therefore as the structure does not satisfy the performance outcome PO2(d), the tribunal **confirms** the refusal issued by Fastrack Building Certification reference 20140658 Decision dated 12 December 2018.
12. It is noted and has been considered that a development approval for the carport structure was originally granted by the Assessment manager on 28 April 2014 allowing the building works to commence.
13. The carport was constructed and a subsequent Form 21 Final Certificate was issued by the assessment manager upon completion of the works dated 10 June 2014.
14. It is considered by the tribunal that this approval from 2014 is separate to the decision being considered under this appeal, and that this approval remains in force on the property.

### **Reasons for the Decision**

The tribunal has considered all the information provided and has assessed the proposed carport is assessable against the requirements of the Sunshine Coast Planning Scheme Dwelling House code. Although QDC contains two separate definitions, the definition of an open carport includes the phrase "*means a carport*" which encompasses it within the broader definition.

The carport structure when assessed against P02 of the scheme, does not satisfy the performance criteria of P02(d) of the Dwelling House Code. This is due to the structure being well forward of the main building line, with no other similar structures within the same streetscape. As there are no other examples of this type of structure on the streetscape, the tribunal is not satisfied that it meets the requirements of P02(d) as, in the tribunal's opinion, it does not maintain visual continuity of the streetscape.

It is noted that there is an existing development approval dated 28 April 2014, where development has been carried out and a final certificate has been issued, dated 10 June 2014. The decision that the tribunal has made regarding the assessment manager's decision made in 2018, does not have any impact on the existing approval and it is the opinion of the tribunal, based on the information available to it at the time of this decision, that the original approval is still in force on the site for the development.

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**James Dunstan**  
**Development Tribunal Chair**  
**Date: 7 May 2019**

## 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 Facsimile (07) 3237 1248**

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