



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal number:</b>	<b>23-010</b>
<b>Appellant:</b>	Terry and Gayle Simpson
<b>Respondent (Assessment manager):</b>	John Dunn
<b>Co-respondent (Concurrence agency):</b>	Sunshine Coast Regional Council ('Council')
<b>Site address:</b>	16 Tareel Street, Wurtulla Qld 4575, formally described as Lot 139 on W93211 ('the subject site').

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### **Appeal**

Appeal under section 229(2) and schedule 1, sections 1(1)(b) and 1(2)(g), and table 1, item 1, of the *Planning Act 2016* ('the PA') against the assessment manager's decision to refuse the appellant's application for a building works development permit for additions and alterations to an existing Class 1a dwelling house, including a new Class 10a carport, on the subject site ('the application').

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<b>Date and time of hearing and site inspection:</b>	Tuesday, 20 June 2023 at 10:00am
<b>Tribunal:</b>	Neil de Bruyn – Chairperson Rebecca Moore – Member
<b>Present</b>	Gayle Simpson – appellant Richard Jones – appellant's agent Mitch Schwieso – Council representative

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### **Decision:**

1. The Development Tribunal ('the tribunal'), in accordance with section 254(2)(d) of the PA, **sets aside** the decision of the assessment manager to refuse the application, and orders the assessment manager to:
  - a) remake the decision within 25 business days of the date of receiving this decision notice, as if the concurrence agency had no requirements; and
  - b) in the event that the assessment manager then decides to approve the application, to include the following conditions in the resultant building works development permit:
    - i. The design and siting of the approved Class 10a carport is to be in accordance with Taylor'd Distinction plans dated 26 July 2022 (Dwg Nos 2206-1939 R1 to R9);

- ii. a minimum 1.5m wide landscape screening buffer, comprised of native screening species, must be provided at the frontage of the site, between the front boundary and the proposed alfresco; and
- iii. roof structures must have non-reflective surfaces and be in colours that blend in with the existing dwelling house.

## Background

2. The subject site is a rectangular residential site, formally described as Lot 139 on W93211, with an area of 555m<sup>2</sup>. The subject site is located at 16 Tareel Street in Wurtulla, within the Sunshine Coast Regional Council local government area. Tareel Street is a minor access street containing low-rise, low-density residential land uses only.
3. The subject site is included within the Low Density Residential Zone under the Sunshine Coast Planning Scheme 2014, being the current planning scheme for the subject site ('the planning scheme'). The subject site is also within the Protected Housing Area Precinct and the Kawana Waters Local Plan Area and is subject to planning scheme overlays relating to acid sulphate soils and building heights.
4. The subject site contains a substantial dwelling house, which addresses and gains access from Tareel Street, forming its north-eastern boundary.
5. The appellant proposes to undertake additions and alterations to the existing dwelling house, including the addition of the new, two-bay Class 10a carport that is the main subject of this appeal, to be located within the existing driveway.
6. The application was made to the assessment manager for a building works development permit for the proposed development. There is no evidence before the tribunal as to the date upon which the application was made; however, this omission is not considered to be significant in the circumstances of this appeal.
7. The tribunal infers, from the submitted material, that the plans submitted together with the application were those prepared by Taylor'd Distinction and dated 26 July 2022 (Dwg Nos 2206-1939 R1 to R9) ('the submitted plans'). These plans show the proposed carport to be located to a 551mm setback to the Tareel Street frontage, and to a 69mm setback to the north-western side boundary of the subject site (adjoining 18 Tareel Street).
8. The submitted plans also showed other proposed alterations and additions, in the form of a roofed alfresco and a small gatehouse, that are not directly material to the key issues of this appeal.
8. The proposed carport is shown on the submitted plans as being entirely open on all sides, with 'Colorbond' roof sheeting and supported by four timber posts.
9. Pursuant to section 33 of the Building Act 1975 ('the BA') and section 1.6 of the planning scheme, the Dwelling House Code ('the code') under the planning scheme specifies alternative siting provisions to those set out in the relevant part of the Queensland Development Code. Of relevance to this appeal, the code includes Acceptable Outcome 2.1 ('AO2.1'), which requires a carport to have a setback to a road frontage of at least 6m. Clearly, the proposed 551mm frontage setback does not achieve AO2.1.
10. For section 54 of the PA, schedule 9, part 3, division 2, table 3 of the Planning Regulation 2017 specifies that a development application for building work that does not meet a quantifiable standard for an alternative provision under section 33 of the BA requires referral to the applicable local government as a concurrence agency. Accordingly, on 23 August 2022, the application was referred to Council for a design and siting assessment and response.

11. Council issued an information request dated 2 September 2022. The information request noted that (among other matters not directly relevant to the key issues of this appeal) the proposed carport was considered to be inconsistent with the achievement of PO2(a) of the code, in that the sub-standard frontage and side setbacks of the proposed carport would adversely impact the amenity of the adjoining dwelling house to the north-west (No. 18 Tareel Street).

12. PO2 of the code provides as follows:

*Garages, carports and sheds:*

- a) *Preserve the amenity of adjacent land and dwelling houses;*
- b) *....;*
- c) *...; and*
- d) *...*

13. Insofar as achievement of PO2(a) was concerned, the information request went on to suggest that a written statement from the owner(s) of 18 Tareel Street, confirming that they had full knowledge of the proposed carport design and that the proposed carport would not diminish their amenity, could assist Council's further assessment of compliance with PO2(a) of the code.

14. It appears, from the evidence before this tribunal, that the owner of No 18 Tareel Street provided a signed letter, dated 14 September 2022, confirming that it had viewed the submitted plans, understood the proposed siting and height of the carport and had no objections.

15. On 16 February 2023, Council completed its assessment of the application and issued its referral agency response dated 17 February 2023, directing part-approval and part-refusal of the application. Of direct relevance to this appeal, the referral agency response directed the assessment manager to refuse that part of the application involving the proposed carport, on the grounds that the 551mm frontage setback would not achieve PO2(d) of the code. Notably, this aspect of the referral agency response did not cite any conflict with PO2(a), which was a focus of Council's information request, or the side setback encroachment of the carport, in its grounds for directing refusal of the carport development.

16. PO2(d) of the code provides as follows:

*Garages, carports and sheds:*

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

17. Council's referral agency response directed the approval of other aspects of the application, including the proposed alfresco, subject to conditions requiring:

- a) the provision of a minimum 1.5m wide landscaping screen between the alfresco and the frontage of the subject site, to contain native screening species; and
- b) the alfresco roof structure to be non-reflective and of a colour to blend in with the existing dwelling house.

18. The assessment manager duly issued a decision notice dated 9 March 2023, apparently refusing the application in its entirety (that is, including those aspects of the proposed development for which Council had not directed refusal). No reasons were given for the apparent refusal of the proposed alfresco and gatehouse.

19. The appellant duly lodged this appeal with the tribunal registrar on 22 March 2023.
20. A site inspection and hearing was held on the subject site on Tuesday 20 June 2023 at 10:00am.

### **Material considered**

21. The following material has been considered by the tribunal in this appeal:
- a) 'Form 10 – Notice of Appeal' lodged with the tribunal's registrar on 22 March 2023.
  - b) The assessment manager's decision notice dated 9 March 2023.
  - c) Partly completed DA Form 2, accepted by the assessment manager pursuant to Section 51(4)(c) of the PA on 9 March 2023.
  - d) Form 56 'Notice to the local government that a private certifier has been engaged' dated 9 March 2023.
  - e) Form 20 – 'Lodgement of building work documentation' (undated).
  - f) Council's referral agency response dated 17 February 2023, including marked-up copies of Taylor'd Distinction Drawing Nos. 2206-1939/R1, R5, R7 and R8 (all dated 26 July 2022).
  - g) Letter dated 14 September 2022 from Masib Pty Ltd, owner of adjacent premises at 18 Tareel Street, submitted in response to Council's below-mentioned information request.
  - h) Council's information request dated 2 September 2022.
  - i) Referral documents, including completed Council form 'Request for Concurrence Agency Response (Building Work)' dated 23 August 2022 and JDBA Certifiers' Consultant report of the same date.
  - j) Plans prepared by Taylor'd Distinction and dated 26 July 2022.
  - k) The *Planning Act 2016* and the *Planning Regulation 2017*.
  - l) The Sunshine Coast Planning Scheme 2014.

### **Jurisdiction**

22. Section 229(1) of the PA provides that Schedule 1 ('the schedule') of the PA states the matters that may be appealed to a tribunal.
23. Section 1(1)(b) of the schedule provides that the matters stated in Table 1 of the schedule ('Table 1') are the matters that may be appealed to a tribunal. However, section 1(2) of the schedule provides that Table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
24. Section 1(2)(g) provides that Table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the BA, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
25. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

## **Decision framework**

26. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
27. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA); however, the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal, or any information provided under section 246 of PA.
28. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal's decision takes the place of the decision appealed against (section 254(4)).
29. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

## **Findings**

30. The tribunal notes that the assessment manager's apparent decision to refuse the application in its entirety was inconsistent with the Council's referral agency response, and associated direction to refuse only that part of the application that was concerned with the proposed carport.
31. At the outset, the tribunal finds no reason to uphold the assessment manager's apparent decision to refuse those aspects of the application not concerned with the proposed carport.
32. The Council's grounds for directing refusal of the proposed carport were solely that the proposed frontage setback of 551mm to Tareel Street fails to achieve PO2(d) of the code, as mentioned in paragraph 16 above.
33. PO2(d) provides that a carport is to maintain the visual continuity and pattern of buildings and landscape elements within the street.
34. At the site inspection, the tribunal walked the full length of Tareel Street, in order to gain a clear understanding of the character of its streetscape, and the pattern of buildings and landscape elements within the street. It was found that the streetscape includes numerous substantial boundary walls, gates, fences and hedges (many of which were estimated to be 1.8m to 2m in height), most of which were solid and non-transparent in nature. Significantly, it was also noted that the subject site has a high (estimated to be 2m in height) barrier fence and gate extending the full length of the frontage.
35. During the inspection, the tribunal also noted three existing carports clearly sited within the 6m acceptable outcome for frontage setbacks, albeit noting Council's advice to the effect that no approval records exist for these structures.
36. Against the above background, the tribunal finds that the lightweight, open-sided carport proposed by the appellant will not be inconsistent with the visual continuity and pattern of buildings and landscape elements within the Tareel Street streetscape, given the very substantial and visually bulky structures and landscape elements already present in the vicinity. In particular, the tribunal finds that the proposed carport will be visually screened to a large extent by the existing gate and fence located along the frontage of the subject site.
37. Accordingly, the tribunal finds that the proposed carport will not be inconsistent with the achievement of PO2(d) of the code. The tribunal accepts the evidence provided by Council to the effect that the proposed carport is consistent with the achievement of the

other aspects of PO2 (that is, PO2(a) to (c), inclusive) and therefore finds that compliance with the code will be achieved.

### **Reasons for the decision**

38. The tribunal, in accordance with section 254(2)(d) of the PA, has decided this appeal as set out in paragraph 1 above.

39. The tribunal's reasons for this decision are that:

- a) There is no evidence before the tribunal that provides any basis to uphold the assessment manager's decision to refuse those aspects of the application not concerned with the proposed carport; and
- b) for the reasons stated in paragraphs 34 to 37, the lightweight, open-sided carport proposed by the appellant, and as shown in the submitted plans, will maintain the visual continuity and pattern of buildings and landscape elements within Tareel Street and will therefore achieve PO2 of the code.

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**Neil de Bruyn**  
**Development Tribunal Chair**  
**Date: 28 June 2023**

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

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