



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	19-017
Appellant:	Southern Cross Sheds
Assessment Manager:	Luke Neller of Project BA
Concurrence Agency:	Sunshine Coast Regional Council
Site Address:	1 LORIEN AVENUE COOLUM BEACH and described as Lot 1 on RP 143827 – the subject site

Appeal

Appeal under section 229 and Schedule 1, section 1, table 1, item 1 of the *Planning Act 2016* against the refusal of a development application for a Carport.

Sunshine Coast Regional Council (**Council**) as the concurrence agency directed the assessment manager to refuse the application on the basis that the development proposed did not comply with the Performance or outcomes PO2(b) and PO2(d) from Table 9.3.6.3.1 in Section 9.3.6 Dwelling House Code from the Sunshine Coast Planning Scheme 2014 (**SCPS**).

Date and time of hearing:	Thursday 8th August 2019 from 12 noon.
Place of hearing:	The subject site – 1 Lorien Avenue Coolum Beach and described as Lot 1 on RP 143827.
Tribunal:	Henk Mulder - Chair Tamara Peverill - Member
Present:	Luke Neller - Project BA, building certifier, for the Appellant Tracy Brock - The owner and applicant Ken Brock - The owner and applicant Peter Chamberlain - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the Planning Act 2016 (PA) **confirms** the decision of the Assessment Manager to refuse the development application, the subject of the Proposed Development.

Background:

1. The property owner (Applicant) engaged Southern Cross Sheds to design and construct a new Carport to be located in front of the existing dwelling facing Lorien Avenue on the subject land.
2. Southern Cross Sheds submitted a Development Application to Project BA (Assessment Manager) on behalf of the Applicant for Preliminary Approval for design and siting only – Carport.
3. The Assessment Manager made a request for a concurrency agency response to the Sunshine Coast Council (**Council**) on 23 October 2018 based on the Planning Regulation 2017 (**PR2017**) Schedule 9 Part 3 Division 2 Table 3 - Building work for Design and Siting. This request set out specific responses to the Performance Outcomes PO2 from the Dwelling Code in the Sunshine Coast Planning Scheme(**SCPS**):

Sunshine Coast Planning Scheme – Dwelling House Code – PO2

Alternative Provision to the QDC for front setback, height, floor area and roller door width of sheds and carports

Performance Criteria:	Justification for compliance with performance criteria
Garages, Carports and Sheds: -	
(a) Preserve the amenity of adjacent land and dwelling houses;	<ul style="list-style-type: none"> • The proposed carport is located 3m from the side boundary sufficient to preserve the amenity of adjacent dwelling house. • The carport is a non-habitable structure unlikely to impede the amenity of the adjoining house.
(b) Do not dominate the streetscape	<ul style="list-style-type: none"> • Due to the lot being a corner lot, and 6m setback being required for both road frontages, there are no alternative sitings possible. (Please see attached supporting documents) • The location has been chosen because it is not only the only possible siting but it also causes the least impact to the streetview and amenity of the surrounding area. • The carport is to have a 10 degree roof pitch to help reduce the height and minimise its impact
	<ul style="list-style-type: none"> • on the streetscape. • The carport will be heavily screened by the existing front fence shielding it from the streetscape. • The carport is small in scale compared to the existing dwelling and will appear subordinate, not dominating the streetscape.
(c) Maintain an adequate area suitable for landscapes adjacent to the road frontage	<ul style="list-style-type: none"> • The proposed shed is to be constructed over an existing driveway unsuitable for landscaping applications.
(d) Maintain the visual continuity and pattern of buildings and landscape elements within the street.	<ul style="list-style-type: none"> • The carport design will be fitting with the existing dwelling making it appear continuous with the pattern of buildings within the street. • The carport will be fitting with similar structures in the street, for example 17 Lorien Ave (59RP207098)

4. Council responded on 12 November 2018 with an information request which raised two issues. Council sought to clarify a conflict with the application description for a height in excess of 3.6 metres for the Carport. Council advised that it had not adopted the Queensland Development Code (QDC) as an alternative provision for the height, and that the height should be reduced to comply or a separate code assessable application for a development permit for building works should be undertaken.
5. Council also sought in its information request to have the carport setback increased “..so that the building is consistent with the patterns of buildings in the street”.

6. The Assessment Manager submitted a response to the information request on behalf of the applicant on 16 January 2019. The issue for the Carport height was not directly addressed, with information provided regarding the setback.
7. The response for the setback issue conveyed the proposal to be an appropriate consequence of relevant issues including the land fall into the site from the boundary; the effect of two street setbacks; the fence line not matching the boundary line ameliorating the proposed setback and ultimately more in keeping with some surrounding setbacks that are within the 6.0 metre requirement.
8. Council in its decision notice dated 25 January 2019 refused the application (Refusal Letter), citing the following:

P02 (b) do not dominate the streetscape.

- The carport is positioned forward of the general line of the dwellings within the streetscape and Council considers that it will have a dominating appearance when viewed from the street.

P02 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.

- The visual continuity and pattern of buildings in the street comprises predominantly of carports approximately 6m from the road frontage with the continuity of the built form generally being maintained. As the carport is set forward of the general line of the buildings in the street, Council considers that the carport will not maintain the visual continuity and pattern of the buildings within the street.

9. The Refusal Letter also contained the following reference to the issue of height:
10. The Appellants lodged an appeal with the Tribunal, received on 17 April 2019.

The Hearing:

11. The hearing allowed the following additional background information to be conveyed by each of the parties:
12. Mr Peter Chamberlain as Council representative advised the concurrence agency does not distinguish between primary and secondary boundaries on a corner lot, and requires a 6 metre setback to both boundaries. Council applies a blanket rule of not approving structures within 6 metre setbacks. This proposal is a precedent, and Council could not support the proposal. Based on the scale of setback, alternative schemes would most likely not be supported either.
13. Mr Luke Neller for the appellant advised that the applicant had sought to undertake a development application (preliminary approval for Design and Siting only) that would be restricted to making an assessment about the location and setback. The issue for height of the proposed Carport would be the subject of a later development application, in a format yet to be determined of a Code Assessable application, as advised by Council in their Information request letter of 12 November 2018, or as a Concurrence Agency response as discussed by Mr Neller, all subject to resolution of the location and setback issues.
14. The issue for the existence and continued use of the existing garages under the main roof was not sought by the appellant due to the fall from the street and being required to egress in a vehicle in reverse, by the corner of the two streets. Alternative options for reducing the driveway fall and egressing safely were not preferred by the appellant, as stated in the hearing, and this led to the creation of a raised concrete parking platform over the existing driveway.

Jurisdiction :

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 PA).
16. The Appellant lodged the Appeal with the Tribunal under section 229 of the PA2016, against the Decision Notice of the Assessment Manager for refusal of the application, based on the concurrence agency response.
17. The Tribunal is of the opinion that a refusal of the development application in this instance is:
 - (a) a matter under the PA2016 that relates to the Building Act, and
 - (b) cannot be decided by the QBCC pursuant to the Building Act.
18. As such the Tribunal has jurisdiction to hear this appeal under section 1(2)(g) of Schedule 1 of the PA2016.

Decision Framework:

19. The development application was accepted as properly made by Sunshine Coast Regional Council, with its response on 12 November 2018. At that time, the PA2016 and the SCPS 2014 was in force.

Material Considered:

20. The written material considered in arriving at this decision comprises:
 - i. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 17 April 2019.
 - ii. Project BA as the Assessment Manager submission to Council for Concurrence Agency referral of Building Work for Design and Siting dated 23 October 2018.
 - iii. Information request letter from Council as the Concurrence Agency dated 12 November 2018 FOR application no. CAR18/0740.
 - iv. Information request response by the Assessment Manager to Council dated 16 January 2019.
 - v. Concurrence Agency Response from Council dated 25 January 2019 instructing Assessment Manager to refuse Development Application for Building Work.
 - vi. The following drawings from Southern Cross Sheds: Site Plan; Elevation, both unnumbered, and marked 'A1', 'A2' by the tribunal for identification purposes.
 - vii. Additional uncredited drawings including an aerial photograph with attached notes supporting the proposal, undated, unnumbered and marked 'B1' by the tribunal for identification purposes; a street view photograph of the site and entry driveway and the proposed Carport in outline, undated and unnumbered, and marked 'B2' by the tribunal for identification purposes.
 - viii. IDAS Form 2 - Building work requiring assessment against the *Building Act 1975*.
 - ix. The Planning Act 2016 (PA2016).
 - x. The Planning Regulation 2017 (PR2017).

- xi. Sunshine Coast Planning Scheme 2014 (SCPS).
- xii. The Dwelling House Code (DHC).
- xiii. Queensland Development Code MP1.2 (QDC MP1.2).

Findings of Fact:

22. The Committee makes the following findings of fact:

The Subject Site and Proposal

- 23. The Subject Site is a rectangular corner allotment of 623m² with a long frontage of 24 metres to Entwood Avenue and short frontage to Lorien Avenue of 19 metres.
- 24. The site topography is distinct with significant stone retaining wall within the site along Entwood Avenue, establishing a level ground area below both street boundaries, for the residence. The level of the street falls as it goes from Entwood Avenue, the corner and to Lorien Avenue. There exists a sewer drain near and parallel to the northern boundary, from Entwood Avenue.
- 25. The Subject Site contains a two-story residential dwelling with a double garage and a driveway facing Lorien Avenue. The street address is given as Lorien Avenue, with the residential entrance facing Entwood Avenue.
- 26. Recently a new raised concrete pad used as an open double car park has been constructed approximately 2.0 metres from the garage doors, and at a maximum height of approximately 1.20 metres above ground at the highest point near to the garage doors.
- 27. A high fence carries around both street frontages. The location of the fence relative to the boundary at the Carport location on Lorien Avenue was unclear on the evidence. It was described at the hearing by Mr Luke Neller for the appellant as being closer to Lorien Avenue than the boundary location. The parties were unable to clarify the specific location of the property boundary.
- 28. The proposed carport is 6.39m wide x 6.0m long, 2.7m to the underside and 3.26m to the ridge from the top of floor slab. The overall height of the carport from existing ground level is approximately 4.46m.

The Application Process

- 29. The Assessment Manager lodged a Concurrence Agency referral to Council for a new Carport in October 2018, citing a trigger of PR2017 Schedule 9 Part 3 division 2 Table 3 - Building work for Design and Siting. The proposal was for the Carport to be set out on the pre-existing concrete platform over the original driveway, and 0.2 metres from the boundary at Lorien Avenue.
- 30. In DA Form 2 - Building work details, the applicant had not marked in question 16(a) which type of approval was being sought - Development permit or Preliminary Approval. However, in 16(d) the applicant provided a written description of the work as "Carport - Application for Preliminary Approval for Design and Siting ONLY".
- 31. Council processed the application as a Development Permit for Building Works (Carport).
- 32. Council sought further information regarding height and front setback in their letter of 12 November 2018. The SCPS Section 1.6 'Building work regulated under the planning scheme' Table 1.6.1 establishes the DHC to be an alternative assessment provision for boundary clearance (setback) and site cover for the proposed Class 10 building. Council advised that height is not an alternative provision contained in the DHC. Council advised

that as the issue for height is Code Assessable in the PA2016, the Concurrence Agency referral should be withdrawn and a separate Development Application for the current proposal for height would be required.

33. In regard to making application for Preliminary approval, an Editors Note from the SCPS Section 1.6 'Building work regulated under the planning scheme' establishes that a Preliminary approval can be sought, and is then a referral agency's response:

Editor's note—in a development application, the applicant may request preliminary approval for building work. The decision on that development application is taken to be a referral agency's response under section 57(1) of the Act, for building work assessable against the *Building Act 1975*.

34. The Assessment Manager provided a response to the Information request from Council on behalf of the applicant and in regard to the setback alone. This response indicated that the existing circumstances of the corner site constrained the setback to be as shown with: the topographic constraints for slope and access; the condition of two 6.0 metre setbacks to the streets consuming 42% of the lot; a sewer line to the north; the desire for a reasonable site use, and the location of the existing dwelling. As well the applicant noted the existing fence line is 3.0 metres forward of the boundary, ameliorating the impression of close proximity to a boundary; cited several dwellings as close as 4.3 metres to the street boundary.
35. Council sought the decision to be refused based on PO2(b) and PO2(d) of the DHC Table 9.3.6.3.1 in their letter of 25 January 2019.

The Hearing

36. The location of the Carport was based on the pre-existing raised concrete platform, and that prior to the construction of the platform the alternatives for off street parking that served the owners had been considered by the owners with the Assessment Manager.
37. Council's representative at the hearing, on site, emphasised the setback criteria and noted any existing variations in the street were decisions from earlier planning schemes or unapproved structures.
38. The Appellant's representative, also the Assessment Manager, emphasised that the nature of the street was one of variety for height, scale, materials, where the visual continuity of Lorien Avenue can be ascertained from the variety, with which the proposal is a complementary element. Mr Neller also described the proposal as mimicking the form of the residence with a straight ridge to gable ends, and that it is sustainable for its diminutive scale to sit in the location proposed without dominating the streetscape.
39. The Appellant's representative also emphasised the application was seeking a Preliminary approval for Building and Design, and that any issue for height of the proposed Carport would be the subject of a later development application, and that the Tribunal members should reflect this in their assessment.
40. Council's representative indicated that irrespective of the type of application being sought (Development Permit or Preliminary Approval) their decision is unchanged.

Reasons for the Decision:

41. As an application for Preliminary Approval for Building work for Design and Siting, where the DHC has alternative provisions to QDC MP1.2, the proposal is not considered to satisfy the criteria and relevant provisions for setback and streetscape.
42. The proposal for the new Carport is distinct in Lorien Avenue for its proximity to the boundary. In its uncompromising form, the proposal will be a featured element in the street, in contradiction of DHC Table 9.3.6.3.1 PO2(b) and PO2(d).

43. The examples for carports in the street do not reflect the proposal at the subject site in regard to setback or visible form.
44. The fence location by the driveway has not been relied upon to make an assessment of the setback.
45. The existence of the raised platform for carparking is not considered as of sufficiently imperative in nature to warrant exemption from the DHC provisions for setback.
46. In regard to any consideration for the height above ground of the Carport proposal, the Tribunal consider the nature of the application to consider Design and Siting as exclusive of height to be problematic. Whilst the applicant appears readily able to request Preliminary approvals in a staged process as made apparent in the Editors Note from SCSP Section 1.6, the elements of Design, Siting and height are regularly integrated. The issue for height above natural ground of the Carport proposal has been put to one side as the proposal is not considered to satisfy the relevant provisions for setback and streetscape even assuming a compliant height of the carport.

Henk Mulder

Development Tribunal Chair
Date: 4 October 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:

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