



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	22-060
Appellant:	Paula Ogilvie and Simon Reed
Assessment manager:	Richard Holden
Co-respondent (Concurrence agency):	Sunshine Coast Regional Council
Site Address:	71 Edmund Street Shelly Beach and described as Lot 4 on RP 75116 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the decision of the assessment manager, as directed by the concurrence agency, refusing a development permit for building works for a class 10a structure, being a carport, on a residential site. The council directed refusal on the grounds that the proposed carport did not meet the provisions of the Sunshine Coast Planning Scheme 2014, Dwelling House Code PO2(a), (b), and (d) and PO18(a) and (c).

Time and date time of hearing:	10.30am on 20 December 2022
Place of hearing:	The subject site
Tribunal:	Anthony Roberts – Chair Catherine Baudet – Member
Present:	Paula Ogilvie and Simon Reed – Appellants Susan Ward (Suncoast Building Approvals) – representing the Assessment Manager Cameron Wilson-Yapp and Stefan Martin – Sunshine Coast Regional Council

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* replaces the decision of the Assessment Manager dated 16 November 2022 with another decision, namely to approve the design and siting of the proposed carport on the subject land as shown on Drawing No. E193-CC-01 prepared by Excelfit Pty Ltd and dated 29 August 2022.

Background

1. The subject site of this appeal is:
 - a. a gently sloping allotment located at the corner of Edmund and King Streets, Shelly Beach with an 18m frontage to King Street;
 - b. 627m² in area containing a two-storey dwelling house including a swimming pool and well landscaped grounds (including a substantial bamboo hedge along the eastern side boundary);
 - c. zoned Residential under the Sunshine Coast Planning Scheme 2014.
2. The proposed carport is:
 - a. to be located 0.15m minimum from the King Street boundary and 0.1m to the eastern side boundary;
 - b. 6.0m in length with a width of 6.5 m and area of 39m²;
 - c. 3.2m in height to the street frontage;
 - d. lightweight in design with open walls and a skillion roof sloping towards the eastern boundary.
3. As the proposed structure triggers assessment against the relevant performance criteria of the Sunshine Coast Planning Scheme 2014 due to the proposed siting within the 6m front setback, the assessment manager lodged a request for a referral agency response for building work on 26 September 2022.
4. On 14 November 2022, Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for the lengthy reasons abbreviated as follows:

1. The proposal does not meet the Performance Outcome PO2 (a), (b) & (d) of the Dwelling House Code within the Sunshine Coast Planning Scheme 2014:

PO2 (a) – Garages, carports and sheds preserve the amenity of adjacent land and dwelling houses - The proposed carport would likely impact the amenity of the adjacent dwellinghouse to the east. (...)

PO2 (b) – Garages, carports and sheds do not dominate the streetscape - The proposed carport would likely have a dominant presence on the streetscape. The surrounding streetscape comprises residential dwellings with open landscaped front yards. The majority of garages, carports and sheds within the street are consistently setback 6 metres from the road frontage, which would make the size and height of the proposed garage look far more dominant to the streetscape due to the reduced front setback. As a result, the proposed carport would likely have a significant dominating impact on the streetscape...

PO2 (d) – Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street - The proposed carport would not maintain the visual continuity and pattern of buildings within the street. The visual continuity and pattern of 'the street' predominantly comprises of other garages, carports and sheds setback approximately 6 metres from the road

frontage, with the continuity of the built form being maintained... (...)

2. (...) The proposal does not meet the Performance Outcome PO18 (a) & (c) of the Dwelling House Code within the Sunshine Coast Planning Scheme 2014:

PO18 (a) – The dwelling house preserves the amenity of adjacent land and dwelling houses and does not dominate the streetscape having regard to building character and appearance – The proposed carport would likely have a dominant presence in the streetscape due to the design and appearance of the structure and the proposed setback. (...)

PO18 (c) – The dwelling house preserves the amenity of adjacent land and dwelling houses and does not dominate the streetscape having regard to building mass and scale as seen from neighbouring premises – The impact of the scale and mass of the proposed carport to the adjoining lot to the east would be greatly emphasised by the minimal front setback... (...)

5. Accordingly, the Assessment Manager issued a Decision Notice on 16 November 2022 refusing the proposed development based exclusively on the Referral Agency Response from Council.
6. The Appellant subsequently appealed this decision by lodging with the Registrar a Form 10 – Notice of Appeal on 22 November 2022.
7. The hearing for the appeal was held at the subject site on 20 December 2022 at 10.30am. The Tribunal had the opportunity to view the positioning of the proposed structure from the subject site, neighbouring properties, and the streetscape more generally.

Material considered

8. The Tribunal considered the following material:
 - a. Form 10 – Appeal Notice, grounds for appeal and correspondence/attachments accompanying the appeal lodged with the Tribunals Registrar 16 September 2022
 - b. The Planning Act 2016 (PA)
 - c. The Planning Regulation 2017 (PR)
 - d. The Building Act 1975 (BA)
 - e. The Building Regulation 2006 (BR)
 - f. The Queensland Development Code (QDC) Part MP 1.2
 - g. The Sunshine Coast Planning Scheme 2014 (the Plan)
 - h. Sunshine Coast Plan Dwelling House Code (the Code)
 - i. The verbal submissions made by the parties at the hearing and during the site inspection.

Jurisdiction

9. The Tribunal has jurisdiction to hear the appeal under the PA section 229(1)(a)(i) and Schedule 1, sections 1(1)(b), 1(2)(g) and Table 1, item 1(a) being an appeal by the Appellants against the refusal of the development application by the Assessment Manager at the direction of the Concurrence Agency.

Decision framework

10. Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:
 - (2) Generally, the appellant must establish the appeal should be upheld.
 - (4) The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.
 - (5) However, the tribunal may, but need not, consider— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.

11. Section 254 of the PA deals with how an appeal such as this may be decided. The first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal and is not relevant here) are as follows:
 - (1) This section applies to an appeal to a tribunal against a decision.
 - (2) The tribunal must decide the appeal by-
 - (a) confirming the decision; or
 - (b) changing the decision; or
 - (c) replacing the decision with another decision; or
 - (d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or
 - (e) [not relevant].
 - (3) However, the tribunal must not make a change, other than a minor change, to a development application.

12. Section 33 of the BA (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover. The Sunshine Coast Planning Scheme Dwelling House Code contains alternate provisions to the QDC.

13. As the proposal does not meet Acceptable Outcome A02.1 set out in the Code, it must be demonstrated to meet the relevant Performance Outcomes of the Code namely, PO2 and PO18.

Matters in dispute

14. It was common ground between the parties at the hearing that the 'neighbouring amenity' considerations of the QDC (MP 1.2), PO2(a) of the Code and PO18 of the Code were not relevant as the proposed structure did not exceed 9m in length adjoining the eastern boundary and written confirmation of support for the proposal was provided by the adjoining neighbour at 55 King Street.

15. The proposal is therefore required to be assessed against the relevant Performance Outcome PO2(b) and (d) which state as follows:

Garages, carports and sheds:-

(b) do not dominate the *streetscape*; and

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

16. Additionally, the proposal is required to be assessed against only the streetscape considerations of PO18 which state as follows:

The dwelling house does not dominate the streetscape having regard to:-

(a) building character and appearance;

(b) views and vistas; and

(c) building mass and scale as seen from neighbouring premises.

Findings of fact

17. The Tribunal makes the following findings of fact:

Visual continuity and pattern of buildings and streetscape elements

- a. In relation to the grounds for refusal identified by Council, the Appellants contend that the carport is necessary to provide weather protection for the Appellants' vehicles (utilising an existing concrete slab) and put forward the following relevant grounds for appeal:
- i. There is no viable alternative for the siting of the structure as the Edmund Street frontage is restricted by a bus stop and the existing vehicle crossover is in the safest location in regard to traffic;
 - ii. There are several instances in King and Edmund Streets (and in the immediate neighbourhood) of buildings and structures encroaching on the 6m required setback;
 - iii. The streetscape in King and Edmund Streets is visually diverse due to the varied (low, medium and high density) zonings and inconsistency of setbacks of buildings and structures;
 - iv. The open-sided design and lightweight structure of the carport will ensure minimal impact to the streetscape;
 - v. The existing besser-block walls abutting the proposed carport (southern and eastern road boundaries) are to be removed to improve flow of light and ventilation;
 - vi. The adjoining neighbours (at 55 King Street) have advised in writing that they hold no objection to the proposed development.
- b. Council contends that the proposed carport fails to satisfy criteria PO2 and PO18 of the Code as:
- i. The surrounding streetscape comprises residential dwellings with open front yards. The majority of garages, carports and sheds within the street are consistently setback 6 metres from the road frontage;
 - ii. The visual continuity and pattern of the streetscape predominantly comprises of other garages, carports and sheds setback approximately 6 metres from the road frontage, with the continuity of the built form being maintained;
 - iii. The size and height of the proposed carport would likely have a significant dominating impact on the streetscape due to the reduced front setback;

- iv. Whilst there are two carports within the required front setback in the relevant streetscape (42 Edmund Street and 6 Queen Street), these structures have not sought or received a Concurrence Agency Referral for Building Works approval, nor received a lawful building approval, and cannot be considered as creating the pattern of buildings in the street.
- c. Based upon the site inspection conducted at the hearing, the Tribunal finds that King Street generally presents both as a mixed streetscape - with low density development on the northern side and medium/high density development on the southern side and varied streetscape - with a variety of built form and some structures (eg. substantial concrete boundary fence and gatehouse) visually intruding into the required setback.
- d. At the hearing, the Council representative identified that the 'streetscape' relevant to the proposal ran along Queen/King Streets in the near vicinity of the site and emphasised that existing instances in the streetscape in question were likely not lawful and cannot be taken to represent a precedent for the proposal.
- e. The Tribunal finds that in the light of the context of the prevailing mixed development in the streetscape and the existence of visual intrusion of structures into the front setback line, the visual continuity and pattern of buildings and streetscape elements will be unaffected by the proposed siting of the carport.

Dominance of proposed structure

- f. Alongside concerns about the intended location of the carport, Council holds concerns that the height (3.2m) and width (6.5m) of the proposed carport would result in it dominating the streetscape.
- g. Having regard to the lightweight design of the proposed carport, the sightlines along the approaches to the subject site and the intended demolition of existing besser-block fences along the front and side boundaries abutting the carport, the Tribunal considers that the proposed structure would not likely present as visually dominant in relation to the established streetscape.

Reasons for the decision

- 18. In this appeal, the Tribunal considers the Appellants have satisfied the onus of demonstrating the appeal should be upheld. Therefore, the Tribunal has determined to replace the decision of the Assessment Manager with another decision, namely to approve the design and siting of the proposed carport on the subject land for the reasons identified below.
- 19. The Tribunal found that King Street exhibits both a 'mixed' streetscape - in terms of the nature and density of development and a 'varied' streetscape – in terms of variety of built form and instances of intrusion of structures into the required setback.
- 20. In this context, the Tribunal considers that the siting of the proposed carport (for which there is no feasible alternative) would not materially affect the continuity and pattern of buildings and landscape elements within the street.

21. Given the lightweight design and profile of the proposed structure, sightlines along the approaches to the subject site and the intended removal of the solid fence structures abutting the proposed carport, the proposed structure is unlikely to dominate the established streetscape.
22. Further, the immediate neighbours most likely to be impacted by the proposed development (55 King Street) have provided written endorsement in support of the approval of the proposed carport.
23. The Tribunal therefore considers the mutually reinforcing streetscape provisions of Performance Outcome PO2 and Performance Outcome PO 18 of the Code have been satisfied.

Anthony Roberts

Development Tribunal Chair

Date: 9 February 2023

Appeal rights

Schedule 1, Table 2, item 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

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au