



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	20 - 007
Appellant:	Greg O'Donnell and Ann Ridge
Respondent: (Assessment Manager)	Luke Neller, Private Certifier A1220960
Co-respondent: (Concurrence Agency)	Sunshine Coast Regional Council
Site Address:	14 Oakmont Drive, Buderim and described as Lot 44 on RP 218618 – the subject site

Appeal

Appeal under s. 229 and Schedule 1, Table 1, Item 1 of the *Planning Act 2016* against the refusal of a Development Application for Preliminary Approval of Building Work for a Class 10a structure, being a carport, on residential premises. The decision followed a concurrence agency response by the Sunshine Coast Regional Council, directing refusal of the application on the grounds that it does not comply with the performance criteria of maintaining the visual continuity and pattern of building and landscape elements within the street.

Date and time of hearing:	Monday 6 July 2020 at 11.30 am
Place of hearing:	The subject site
Tribunal:	Ain Kuru – Chair Elizabeth Anderson - Member
Present:	Greg O'Donnell and Ann Ridge – Appellant Luke Neller - Private Certifier, Assessment Manager, Respondent and agent representing the Appellant pursuant to s. 248 of the Planning Act Daniel Eichorn - Project BA Vince Whitburn - Building Certifier, Sunshine Coast Regional Council

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016* (Planning Act) **sets aside** the decision to refuse the application and:

1. Accepts the following revised drawings (Site Plan - Drawing Number 200712 – A1 – Issue A dated 28/07/2020; Floor Plan - Drawing Number 200712 – A2 – Issue A dated 28/07/2020; and Elevations - Drawing Number 200712 – A3 – Issue A dated 28/07/2020) submitted by the appellant provided the following changes are made to these drawings:

- The proposed carport shall be no wider than 6.2 metres (including eaves, excluding gutters);
 - The four support posts shall be no wider than 200 millimetres and no deeper than 400 millimetres, whether steel or masonry construction with a rendered finish;
 - The carport shall not encroach into the 4.5 metre setback from the street front boundary and no closer to the northern side boundary than the existing house. This siting is to be certified by a licensed surveyor and
 - No part of the proposed carport structure shall be over 2.8 metres above natural ground line as certified by a licensed surveyor.
2. Orders the Assessment Manager to remake the decision within 21 business days of receiving this decision as if the referral agency had no requirements pursuant to section 56 of the Planning Act.

Background:

The Proposal

1. The subject site is rectangular and flat having an area of 803 square metres and road frontage of approximately 22 metres. The lot has been developed for residential purposes with a detached house, single garage and associated improvements such as fencing, paving and landscaping.
2. Surrounding development also comprises detached houses and ancillary structures with landscaping. Most buildings in the vicinity appear to be set back approximately 5 to 6 metres from the road frontage, including ancillary buildings such as sheds and carports, with some occasional exceptions. Landscaping and boundary fencing are well established along the road frontage.
3. The appellants propose to construct a new carport between the house and the road frontage, in front of the existing garage. The appellants advise that as they own more than one car the carport will provide shelter from the weather when arriving at and leaving from the house by car.
4. The proposed carport was documented as 6.2 metres wide and 6 metres deep with a maximum height of 2.7 metres in the refused drawings. Construction comprised six pillars and a lightweight panel roofing sloping back to the house at 4 degrees. The proposed location is in front of the existing garage and house, 4.5 metres from the road frontage. The northern side boundary setback was not documented but was shown to be in line with the house.

Refusal of the Application

5. The owner lodged a development application seeking a Development Permit for Building Work for the proposed carport with Project BA and Luke Neller as a Private Certifier and Assessment Manager.

6. As the proposed carport did not comply with the prescribed road frontage setback of 6 metres under the Sunshine Coast Planning Scheme 2014, the Private Certifier, acting as the Assessment Manager, was unable to decide the application. In accordance with the Planning Act, the application was referred to Council on 31 January 2020. The application was lodged with a written submission, along with aerial photos showing examples of other carports and a petition from some residents in the vicinity stating they have no objections to the proposed carport. On 26 February 2020 the Council directed the private certifier to refuse the application as it did not maintain the visual continuity and pattern of buildings and landscape elements within the street.
7. On 9 April 2020, the Private Certifier subsequently issued a Decision Notice refusing the application as directed by Council.

Grounds of Appeal

8. In summary, the grounds of appeal are:
 - Council has narrowly interpreted the performance outcomes by not taking into account the structure is open, the roof has a low pitch, and the structure reduces the visual impact of cars currently parked in front of the dwelling;
 - The pattern of buildings, landscaping and ancillary structures in the street is not uniform, with each house having its own form and finish;
 - There are premises with carports in front of the dwelling in the area; and
 - The application should be given due consideration and not refused on the grounds that other houses do not have carports in the frontage; and
 - For the reasons outlined in the submission to Council.

Matters raised at the Hearing

9. Luke Neller stated:
 - Other carports in the area are located in front of houses;
 - The proposed encroachment of 1.5 metres is only minor;
 - The design and colour of the proposed carport, including the brick pillars, will integrate with the appearance of the house;
 - Under the House Code a patio can be sited 4.5 metres from the road frontage, and so the only difference to a carport is what is parked underneath; and
 - The purpose of the House Code is to prevent roller doors being constructed on carports, but this is not the appellant's intention.
10. In response, Vince Whitburn stated:
 - Council considered the application in accordance with the law which states that the carport must conform to the pattern of buildings in the street, emphasising that the relevant performance outcome referred to the street and not the area;
 - Council staff carried out a street inspection and reviewed aerial mapping to examine the pattern of buildings in the street. Council subsequently assessed the street to have a pattern of houses and car accommodation set back at 6 metres, with only one exception;
 - A report on the application was prepared and considered at a management meeting within Council; and
 - There are separate rules for patios and carports and therefore they cannot be compared.

Further Information Requested

11. The exact dimensions and details of the carport were not clear to the Tribunal as the drawings did not indicate whether the outline of the house showed the line of the wall or the eave, and there were some discrepancies between the drawings lodged with the application and engineering drawings shown on site.
12. The Tribunal requested the appellant amend the drawings to accurately show the proposal and provide copies of all relevant documentation.
13. The revised plans show a carport which is 7 metres wide and 5.9 metres deep with a maximum height of 2.8 metres. The setback to the street is 4.5 metres however the side setback is now shown as one metre, which is closer than the existing house. Construction comprises four rendered brick pillars measuring 300 millimetres by 400 millimetres supporting two painted steel beams and insulated roof panels sloping back to the house. The proposed location is in front of the existing garage door of the house and measured from the eave is 4.5 metres from the road frontage and 1 metre from the side boundary. The proposed carport is located 1.5 metres forward of the existing house, which projects forward in an "L" shape form along the southern boundary.
14. The Tribunal also requested the Council provide copies of any internal reports relating to the assessment of the referral application including a report mentioned by Council's representative at the hearing examining the pattern of buildings on the street.
15. The Council Assessment Report provided by Council did not include any detailed assessment however stated:

The visual continuity and pattern of buildings in the street comprises predominantly of dwellings with vehicle accommodation 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.

16. The Council Assessment Report was forwarded to the appellant's representative requesting comment but only if it contained any new material. Project BA advised that the Report did not contain any new material that was not discussed at the hearing.
17. The revised plans were also forwarded to Council requesting comment but only if it contained any new material. No advice was received from Council.

Jurisdiction:

1. The appeal is made pursuant to section 229 of the Planning Act. Specifically, the appeal is made against the refusal of a development application for building work in accordance with sections 1(1) and 1(2)(g) and Table 1 of Schedule 1 of the Act.
2. The Tribunal notes that the Decision Notice issued by the Assessment Manager is for a refusal for a Preliminary Approval for Building Works while the application was for a Development Permit for Building Work. This is addressed below in Reasons for the Decision.

Decision Framework:

1. Pursuant to section 253 (2) of the Planning Act the onus rests on the appellant to establish that the appeal should be upheld.
2. Pursuant to section 253 (4) of the Planning Act 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.
3. Pursuant to section 246 of the Planning Act the Tribunal, through the Registrar, may request any information it reasonably requires to decide the appeal.
4. The Tribunal can decide the appeal in one of the ways mentioned in section 254(2) of the Planning Act.

Material Considered:

The material considered in arriving at this decision comprises:

1. Notice of Appeal (Form 10) received by the Tribunal Registrar on 15 April 2020 including:
 - a. petition signed by 11 nearby residents - 22 to 25 August 2019;
 - b. DA Form 2 building work application - undated;
 - c. drawings of proposed carport (Dwg No CD02-Rev A) - undated;
 - d. Request for Concurrence Agency Response - 31 January 2020;
 - e. e mail from Vince Whitburn to Project BA - 03 February 2020;
 - f. Referral Agency Response - 26 February 2020;
 - g. Preliminary Approval Decision Notice refusing the application - dated 9 April 2020;
 - h. aerial photographs of nearby examples of carports - undated;
 - i. drawings of approved carport at 77 Alfriston Drive, Buderim - 02 April 2019;
 - j. grounds for appeal; and
 - k. authority for Project BA to act on behalf of owners - undated;
2. Council Assessment Report Application No CAR20/0033 received on 22 July 2020;
3. Email from Appellant's representative dated 24 July;
4. Revised drawings received on 4 August 2020 comprising:
 - a. Site Plan Dwg No 200712 - A1 - 28 July 2020;
 - b. Elevations Dwg No 200712 - A3 - 28 July 2020; and
 - c. Floor Plan Dwg No 200712 - A2 - 29 July 2020.

Findings of Fact:

The Decision Making Process

1. At the hearing, the appellant and co-respondent agreed that the relevant criteria against which the application must be assessed was performance outcome PO2 of the Dwelling House Code of the Sunshine Coast Planning Scheme, which states:

Garages, carports and sheds:-

(a) preserve the amenity of adjacent land and dwelling houses;

(b) do not dominate the streetscape;

(c) maintain an adequate area suitable for landscapes adjacent to the road frontage; and

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

2. A search of the Sunshine Coast Regional Council online site report on 12 July 2020 indicates the subject site is located in the Low Density Residential Zone in the Sunshine Coast Planning Scheme 2014. Notwithstanding any overlays, a carport is defined as a class 10 building in the National Construction Code. Pursuant to s. 16 of the *Planning Regulation 2017* a class 10 building cannot be made assessable under a planning scheme. Further, pursuant to s. 33 of the *Building Act 1975*, the Queensland Development Code (QDC) applies to the siting of class 10 buildings unless alternative siting provisions are contained in a planning scheme. The Dwelling House Code of the Sunshine Coast Planning Scheme provides an alternative siting provision for the siting of carports in AO2.1 which states:

Where located on a lot in a residential zone, a garage, carport or shed:-

(a) is setback at least 6 metres from any road frontage;

(b) does not exceed a height of 3.6 metres; and

(c) has a total floor area that does not exceed 56 m².

Note—AO2.1(b) and (c) do not apply to a garage under the main roof of a dwelling house.

Note—AO2.1(a) alternative provision to QDC.

3. Schedule 9, Part 3, Division 2, Table 3 of the Planning Regulation states where an alternative siting provision to the Queensland Development Code applies in respect of building work, and that quantifiable standard is not satisfied, then the local government is a referral agency. In accordance with the Regulation, the referral agency must assess whether the proposed building complies with the qualitative statement, which is Performance Outcome PO2 of the Dwelling House Code.

Reason for Refusal

4. The application was referred to Council on 31 January 2020 for assessment against the above performance criteria. On 26 February the Council directed the Private Certifier to refuse the application for the following reason:

The proposal does not meet the Sunshine Coast Planning Scheme 2014 Dwelling House Code (11 November 2019), Performance Outcome PO2 (d).

PO2 (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 dwellings with associated car accommodation approximately 6 m 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, the carport will not maintain the visual continuity and pattern of the buildings within the street.

Pattern of Buildings

5. When examining the aerial photographs of the street, there is a clear pattern of buildings set back at the same distance from the road frontage. This is noted in the Council Assessment Report which states that vehicle accommodation associated with dwellings in the street is set back 6 metres from the road frontage.
6. However the intent of the Planning Scheme provision must be to maintain the visual amenity when viewed from the street rather than from above. Consideration therefore must be given as to whether the proposed carport maintains the visual continuity and pattern of buildings on the street.
7. The Tribunal could find only one other example on the street of a carport possibly built closer than 6 metres to the road frontage. However, the Tribunal also noted several other carports and garages which due to their size and appearance also disrupted the visual continuity of the street, as did many 1.8 metre high fences. On the other hand, extensive and established landscaping on some lots obscured buildings.
8. A carport is an open structure and its visual impact depends on its overall size, the size of the posts, whether it is partially enclosed by a wall, its roof form and associated landscape elements. The Tribunal makes the following observations about the visual impact of the carport:
 - the large rendered posts, which are intended to complement the finish of the house walls, will be clearly visible from the street;
 - while the roof structure is lightweight, it is 2.8 metres high and will obscure part of the house roof, and will bring the mass of the house forward to the street;
 - in supplying the Tribunal with more accurate drawings, the appellant has increased the width of the carport from 6.2 metres to 7.0 metres, reduced the depth from 6 metres to 5.9 metres, and increased the height from 2.7 metres to 2.8 metres;
 - the reduction sought to the road frontage setback is small, being from 6 metres to 4.5 metres; and
 - established landscaping and other structures within the road frontage break up the consistent building setbacks.

Reasons for the Decision:

1. The Tribunal considered the revised drawings and determined that with some design changes to reduce the bulk of the posts and maintain the size and setbacks as proposed in the original application, the proposed carport would satisfy Performance Outcome PO2 (d) of the Dwelling House Code to maintain the visual continuity and pattern of buildings in the street. In coming to this conclusion, the tribunal noted the letters of support from surrounding residents, the design of the structure and its integration with the design of the house.

Form of Assessment Manager's Decision – administrative error

2. The Tribunal notes that the Decision Notice issued by the Assessment Manager is for a refusal for a Preliminary Approval for Building Works while the application was for a Development Permit for Building Work. Pursuant to section 60(5) of the Planning Act, an Assessment Manager may give a preliminary approval for all or part of the development

application even though a development permit was sought. However the Planning Act does not allow an Assessment Manager to change an application if deciding to refuse it.

3. While the Tribunal does not have the same powers as the Planning and Environment Court to deal with non-compliance matters, the Tribunal is of the view that this is an administrative error as the referral agency has in any case directed the Assessment Manager to refuse the application pursuant to section 56 of the Planning Act.

Ain Kuru

Development Tribunal Chair
Date: 15 September 2020

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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