



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	21- 045
Appellants:	Stephen Maurice Aicher and Donna Michelle Pellisier
Respondent (Assessment Manager):	Alister Marr of Fastrack Building Certification
Co-respondent (Concurrence Agency):	Sunshine Coast Regional Council
Site Address:	48 Wavell Avenue, Pelican Waters and described as Lot 46 on RP 225986 – the subject site

Appeal

Appeal by property owners against a decision notice issued by the Respondent as assessment manager refusing a relaxation for a carport in road setback.

Date and time of hearing	09:30am - 24 January 2022
Place of hearing:	Online hearing
Tribunal:	Kate Isles - Chair Jane Grimmond- Member
Present:	Stephen Maurice Aicher– Owner and Appellant Donna Michelle Pellisier – Owner and Appellant Mitch Schwieso – Council representative Tracey Douglas – Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) replaces the decision of the Respondent dated 30 July 2021 with a decision to approve the development application subject to the following conditions:-

1. The proposed carport must be sited and designed in accordance with the plans provided by Just Patios dated 22/02/2022 with reference numbers A2646a and A2646b demonstrating:
 - a. The carport has a minimum setback to Wavell Ave of 4.5m;
 - b. The minimum setback to the southern side boundary is 50mm; and
 - c. The carport has a maximum building height relative to natural ground of 3.6m.

2. The applicant must seek and gain approval for a Development Permit for Operational Works (Crossover) from Sunshine Coast Council Engineering for the unapproved second crossover on the southern boundary.
3. Such other reasonable conditions as the assessment manager sees fit to impose to satisfy the building assessment provisions.

Background

1. The Appellants purchased the subject site at 48 Wavell Avenue, Pelican Waters, in May 2015. At the time of purchase the property contained a single dwelling house with double garage, pool with deck overlooking Lake Magellan and a timber carport structure approximately 14m x 3.8m along the southern boundary. The carport structure was accessed via a second driveway crossover from Wavell Avenue.
2. On 27 May 2021 the Appellants lodged an application with Sunshine Coast Regional Council seeking a relaxation to the prescribed road setback of 2.6m and side setback of 50mm to accommodate a new carport structure of 9m x 4.135m to replace the existing carport structure which had now been demolished.
3. On 17 June 2021, the Respondent issued an Information Request to the Appellants (then Applicant) inviting them to amend the plans and increase the setback to 4.5m in lieu of the proposed 2.6m. The Appellants elected not to amend the drawings and sought the Respondent's decision based on the plans as lodged.
4. On 30 July 2021 the Respondent, as assessment manager, refused the development application by way of decision notice of refusal.
5. The Appellants lodged an appeal against this decision with the Development Tribunal and a panel was established on 16 September, 2021.
6. A Tribunal member conducted a site inspection on 24 October 2021.
7. A hearing was held via video conference 24 January 2022.

The Appellants' submissions

8. The Appellants, originally from Melbourne, purchased the property in May 2015. They enjoy the outdoors and the house presented good accommodation for the caravan now camper trailer and their boat.
9. The Appellants were not aware that the existing carport structure did not have approval and had assumed that as they were replacing the existing larger structure with a smaller structure that it would gain approval.
10. The Appellants demolished the existing timber framed carport and internal timber fence due to the dilapidated condition and perceived fire risk.
11. The existing caravan and boat storage is located along the southern boundary and accessed via a second concrete vehicle crossover on the southern end of the frontage. The vehicle crossover has been in place prior to 2010 and the concrete between the crossover and the fence was undertaken by the Appellants in June 2015.

12. Based on historical photography the previous carport structure was been in place pre-2010 and was approximately 14m x 3.8m in size.
13. The Appellants submitted drawings for a 9.0m long x 4.135m wide carport to cover a boat and caravan, parked in tandem, with the caravan parked closest to the road. This size of carport results in a carport 37.215 square metres.
14. In order to achieve this 9m long coverage, the carport must be situated within the 6m designated front setback (2.6m setback) and within the 1.5m side setback (50mm setback).
15. The Appellants have justified the construction of a new carport to protect their investments, namely a caravan and boat. The proposed new carport, in their opinion, would be more aesthetically pleasing than the original timber structure and sits behind a large solid front fence.
16. The Appellants presented photographic evidence showing numerous locations in close proximity to their dwelling where carports have been constructed. Just Patios has advised that most of these carports have council approval.
17. The Appellants' view is that there are plenty of carports within the front setback and some right to the boundary in and around their property. Therefore, they are unsure why there were not allowed to have one as well.

The Co-Respondents's submissions

18. The Co-Respondent is not supportive of the location of the carport as the structure does not meet the requirements on the Planning Scheme specifically it does not satisfy PO2 of the Dwelling house code which states:-

PO2 - 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.*
19. The Co-Respondent notes that the existing double garage provided on the site achieves the requirements of the Dwelling house code, therefore Council can see no reason to depart from the planning scheme for this proposal.
20. Sunshine Coast Planning Scheme PO2 refers to Garages, carports or sheds, rather than which type of vehicle is to be parked there.
21. The Co-Respondent invited the Appellants by way of Information Request to increase the setback in order to satisfy PO2 that would allow a carport 7.1m long. The site cover for this carport size would be 29.4 square metres. The Co-Respondent has no issue with the side setback encroachment of 1.45m.
22. The Appellants chose not to amend the plans to accommodate the request.
23. The Co-Respondent is of the view that it is bound by the Planning Scheme and given no amended plans were presented it was required to direct refusal of the application based on non-compliance with PO2.

24. In relation to the appeal decision overturning the Co-Respondent's refusal to grant approval for a carport within the front setback at 19 Churchill Street, Golden Beach, the Co-Respondent noted that one carport does not create a pattern, therefore cannot be considered as a precedent.
25. The Co-Respondent's view is that PO2 (d) *the visual continuity and pattern of the buildings and landscape within the street is clear that the performance outcome is specific to the street and not a locality or broader area* The example of Golden Beach is therefore not relevant in this circumstance.

Hearing Observations

26. During hearing, the following observations were made:

- The Appellants acknowledged that during due diligence for the purchase of the property the validity of any approvals for the existing structures was not known and not picked up during the building assessment.
- The Appellants clarified there is no gas on site and that it is a battery inverter for the solar panels which is located in the area where the carport structure is proposed.
- The primary propose for the structure is to protect the camper trailer and boat from the weather.
- The Appellants raised concerns regarding shipping containers sited in and around the area and how they were allowed.
- The Respondent stated that there were local laws governing the length of stay of a shipping container on a property however it was not productive use of time for the Council to investigate every potential non-compliance unless a specific complaint was raised.
- The Tribunal raised the matter of site cover and whether this had been considered as part of the Respondent's assessment. The Respondent advised that site cover had not been considered as that was not part of the application sought.
- The Respondent advised that they did undertake a site inspection prior to the refusal being issued.
- The Respondent's view is that this street has little to no existing encroachment into the road setback and therefore there is no pattern to support a reduced setback to 2.6m.
- The Appellants were asked by the tribunal whether an increased setback to 4.5m would be acceptable to them, to which they replied that it would.

Jurisdiction

27. This appeal to the Tribunal has been made under section 229 of the PA, as a matter that may be appealed to a Tribunal. In Schedule 1 of PA, section 1(2) states Table 1 may apply to a tribunal but only if the matter involves the circumstances set out in paragraphs (a) to (l). Paragraph (g) of section 1(2) states: "a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission."
28. The Tribunal is satisfied that the development application made to Council satisfies that requirement being, a development application for building works approval under the section 33 Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings of the *Building Act 1975*.

29. That development application was subsequently refused by Council. Table 1 item 1(a) in Schedule 1 of the PA states that for a development application an appeal may be made to a Tribunal against a refusal or all or part of the development application.

Decision framework

30. It is noted that:
- The onus rests on the appellants 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 presented 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); and
 - The Tribunal is required to decide the appeal in one of the ways mentioned in s254(2) of the PA.

Material Considered

31. The material considered in arriving at this decision comprises:
- Form 10 – Appeal Notice, grounds for appeal lodged with the Tribunal’s registrar on 12 August, 2021.
 - Decision Notice number 20210703 – Refusal by Fastrack Building Approvals dated 16/08/21.
 - Sunshine Coast Council Referral Agency response (Planning Act 2016) dated 30 July 2021,
 - Sunshine Coast Council Information Request Concurrence Agency, Planning Act 2016 dated 4 June 2019, for 19 Churchill Street, Golden Beach.
 - Just Patios (Qld) Pty Ltd drawings for 19 Churchill Street, Golden Beach.
 - Just Patios (Qld) Pty Ltd drawing number 2646a Site Plan and 2646b Elevations stamped Refused by Fastrack Building Approvals dated 16/08/2021.
 - Form 15 Compliance certificate for building design or specification dated 13/04/2021, stamped Refused by Fastrack Building Approvals dated 16/08/2021.
 - Photographs of 48 Wavell Avenue showing original carport.
 - Information Request from Tribunal to the Appellants dated 21 December 2021, requesting further details on site cover, a site plan relevant to this block, date of property purchase, stormwater drainage of proposed carport roof and confirmation from gas hot water heater supplier that installing a roof above it will not cause a fire hazard.
 - Information Request from Tribunal to the Co-Respondent dated 21 December 2021, confirming the minimum distance between 2 driveways on a single lot street frontage in the Low Density Residential zone, and whether the second driveway has operational works approval.
 - Copy of QDC Part NMP1.1 Driveways.
 - Site inspections to confirm submitted information about the existing infrastructure and landscaping.
 - Planning and Development online information for the subject site and surrounding residential properties.

- Real Estate online information for the subject site, showing original carport.
- Nearmaps aerial views of the property showing the historical development of the original carport.
- The Planning Act 2016 (PA)
- The Planning Regulation 2017 (PR)
- The Development Application Rules
- The Building Act 1975 (BA)
- The Building Regulation 2006 (BR)
- The Queensland Development Code (QDC) Part MP 1.2
- The Sunshine Coast Planning Scheme 2014
- The Sunshine Coast Planning Scheme 2014 Golden Beach/Pelican Waters Local plan code
- The National Construction Code 2019 (NCC)
- Australian Standard 2890.1-2004 Parking facilities – Off-street car parking.

Findings

32. The Tribunal makes the following findings:-

Sunshine Coast Planning Scheme 2014

- A dwelling house is a defined use in Schedule 1 of the Sunshine Coast Planning Scheme 2014 which states: “*A residential use of premises for one household that contains a single class 10 dwelling. The use includes out-buildings and works normally associated with a dwelling house and may include a secondary dwelling*”. Therefore by definition, any building application for a carport is interpreted as an application pertaining to a dwelling house.
- The subject lot is zoned *Low Density Residential* and is in the Precinct LDR1 known as the Protected Housing Area. Allotments in the LDR1 precinct are primarily limited in their opportunity to obtain an approval to develop anything other than a single dwelling house use as defined by the planning scheme.
- Part 5, Material Change of Use tables of assessment, Table 5.5.1 states: “*within the Low Density Residential zone, a dwelling house is accepted development provided it meets the acceptable outcomes of the Dwelling house code. Where proposed development does not meet the acceptable outcomes for the use code, the development becomes code assessable*”.
- Part 5 Building Works Tables of assessment, Table 5.7.1 states: “*building works (for all zones) is accepted development if the applicable use code (Dwelling House code) and the Transport and Parking code identifies acceptable outcomes applicable to accepted development*”.
- Section 9.3.6.2 Purpose and overall outcomes of the Dwelling House Code states in part: “*The purpose of the Dwelling house code is to ensure dwelling houses achieve a high level of comfort and amenity for occupants, maintain the amenity and privacy of neighbouring residential premises and are compatible with the character and streetscape of the local area.*”
- Part 9.3.6.1 sets out the application of the Dwelling house Code provisions as follows: “*(1) This code applies to accepted development and assessable development identified as requiring assessment against the Dwelling house code by the tables of assessment in Part 5. (2) The acceptable outcomes in Table 9.3.6.3.1 are requirements for applicable accepted development. Where accepted development does not meet the prescribed acceptable outcomes, the development becomes assessable development and can be assessed against the corresponding*

performance outcomes. Council becomes the assessment manager in this situation.”

- Table 9.3.6.3.1 sets out Performance Outcomes and Acceptable Outcomes for the Dwelling House Code, the relevant assessment criteria are listed below. Acceptable outcome AO2.1 states in part: “*Where located on a lot in a residential zone, a garage, carport or shed:- (a) is setback at least 6m from any road frontage; (b) does not exceed a height of 3.6m; Note AO2.1 (a) alternative provision to the Queensland Development Code (QDC) Performance outcome”.*
- Construction of the new carport at the requested size of 37.2 square metres would result in a total area for car parking of 67.9 square metres. This exceeds the allowable area of 56 square metres permitted under Table 9.3.6.3.1 of the Dwelling House code.
- Acceptable outcome AO9 of the Dwelling House Code states: “Access driveways, internal circulation and manoeuvring areas and on-site car parking areas are designed and constructed in accordance with:(a) IPWEA Standard Drawings SEQ R-049, R-050 and R-056 as applicable and (b) AS2890 Parking Facilities- Off-street parking”. IPWEA Standard Drawings SEQ R-049 and R-050 are not applicable in this instance as they provide the technical details for residential driveway and crossovers. The driveways and crossovers are existing, in this instance and no changes are proposed. However, Performance outcome PO9 also states: “The design and management of access, parking and vehicle movement on the site facilitates the safe and convenient use of the dwelling house by residents and visitors”.
- Part 9 Developments: 9.1 Preliminary (2) of the Scheme states: Use Codes and other Development codes are specific to each planning scheme area. Thus, the Golden Beach/ Pelican Waters Local Plan Performance outcomes and Acceptable outcomes are given precedence to the provisions of the Dwelling house code and the Transport and parking code in this matter. There are two specific references to low density development in the Golden Beach area and neither contradict or override the outcomes sought in the Dwelling House Code or the Transport and Parking code pertaining to this matter. These are found under 7.2.13.2 and 7.2.13.3.
- Under 7.2.13.2 Context and setting provisions for the Local Plan of Golden Beach/ Pelican Waters, reference is made to the residential communities of Golden Beach and Pelican Waters stating: “*Both of these neighbourhoods are generally characterised by dwelling houses on conventional sized lots and canal allotments”.* This is clearly evident in that part of Wavell Ave, in which the subject site is located.
- Table 9.3.6.3.1 Acceptable outcomes A02.1 of the Dwelling House Code states in part that “*Where located on a lot in a residential zone, a garage, carport or shed:- c) has a floor area that does not exceed 56m².*”

The Queensland Development Code (QDC)

- The Dwelling House Code contains some alternate provisions to the QDC. The QDC Part MP1.2 is the standard for the Design and Siting requirements applicable to Class 1 Dwellings and Class 10 structures on residential sites over 450 m² in area. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions. In this instance, the Dwelling House Code AO2.1 (a) provides some alternative siting provisions to the QDC A1 (a), therefore the 6m setback provisions (for a garage or a carport) of the Dwelling House Code apply to the proposed development.

- Under QDC MP1.2 A02 (d) (ii) the total length of all buildings or parts, of any class, within the boundary clearance is not more than 9m along any one boundary. There is an existing Patio that is built to the boundary at the rear of the site.
- Under QDC MP1.2 A03 the maximum area covered by all buildings and structures roofed with impervious materials, does not exceed 50% of the lot area. The Appellants have advised that the existing site cover is 379 square metres. Thus, the addition of the proposed carport would increase the site cover to approximately 54% although that area would require verification by survey.
- The subject site is shown as having a street frontage of 22 metres on Just Patios drawing A2646a site plan.
- QDC NMP 1.1 Performance Criteria 4 allows a width of residential driveways to be 2.4 metres. For clarity, a **driveway** is on private land. It starts at the dwelling (e.g. house), garage or carport and ends at the property boundary. A **vehicular crossing** is on public land. It starts at the property boundary and ends at the road. A vehicular crossing must be safe for pedestrians to walk across and it must avoid creating stormwater problems.
- The existing block has two vehicular crossovers, one for cars at the northern end of the frontage, the other at the south end for accessing the caravan and boat. The Respondent advised that the second driveway on the southern boundary does not have an Operational Works approval. However historical evidence shows that a vehicular crossover existed at the kerb on 25th January 2010.

Reasons for the Decision

33. Based on all of the evidence and submissions, the Tribunal is satisfied that the Referral Agency Response from Sunshine Coast Council dated 30 July 2021 and refusal notice from Fastrack Building Approvals dated 16 August 2021 should not have been issued.
34. The Tribunal is of the view that the amended drawings provided with an increased setback of 4.5m satisfies PO2 and therefore the relaxation should be approved.
35. It is noted that while construction of the proposed reduced size carport with a length of 7.1 metres would result in a site cover exceeding 50% allowable under QDC MP1.2, the Sunshine Coast Council planning scheme does not have a maximum permitted site cover defined. The Tribunal is of the view that the proposal would satisfy P3 of MP1.2.

Kate Isles

Development Tribunal Chair

Date: 21 April 2022

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:

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