



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-020
Appellant:	Mariska Wiese and Pieter Wiese
Respondent: (Assessment manager)	Veen Lyall-Wilson (Pronto Building Approvals)
Co-respondent: (Concurrence agency)	Sunshine Coast Regional Council (referral agency)
Site address:	8 Centenary Crescent, Maroochydore Qld 4558, described as Lot 60 on SP239116 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal, at the direction of the concurrence agency, of a development application for a development permit for building work for construction of an 'open carport' (Reference Pronto Building Approvals Decision Notice 240047, Sunshine Coast Regional Council CAR24/0062).

Date and time of hearing:	Friday 9 August 2024 at 1.00 pm.
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Lisa Lambie – Member Michael Yau – Member
Present:	Mariska Wiese (Appellant and property owner) Pieter Wiese (Appellant and property owner) Zana Larikka (Sunshine Coast Regional Council, Co-respondent) Logan Talbot (Sunshine Coast Regional Council, Co-respondent)

Decision:

The Development Tribunal, in accordance with section 254(2)(c) of the *Planning Act 2016* **replaces** the decision of the Assessment Manager to 'refuse' the Building Development Application (Pronto Building Approvals Decision Notice 240047) with a decision that the Development Permit for Building Work **be approved**, with the following conditions:

- A minimum set back of 2.2 metres of the northern outermost part of the carport from the front property boundary.
- A minimum set back of 4.0 metres of the southern outermost part of the carport from the front property boundary.
- The maximum building height of the carport not to exceed 3.6 metres above the existing level of the driveway.

- d. Such other conditions, as the assessment manager reasonably requires to ensure compliance with the building assessment provisions.

Background

The subject site

1. The subject site is an irregular shaped rectangular shaped block of 601 square metres developed with a single storey residence. The subject site is located on the high side of the inner curve of Centenary Crescent, with truncated frontages to Centenary Crescent of 16.9 metres and 10.4 metres resulting in a total frontage to Centenary Crescent of 27.3 metres.

The proposal

2. The proposal is for the construction of an open carport attached to the roof of the existing dwelling and attached to the roof of the existing carport that itself is attached to the side of the existing dwelling. This carport would be accessed from the existing driveway. The truncation of the front property boundary to Centenary Crescent would result in the outermost part of the northern side of the proposed carport being located 2.2 metres in from the front property boundary and the outermost part of the southern side of the proposed carport being located 4.0 metres in from the front property boundary.

Assessment of the application

3. On 10 April 2024, the Referral Agency, Sunshine Coast Regional Council, directed the Assessment Manager that the application be refused.
4. Council's stated reasons for refusal were:

The proposal does not meet Performance Outcome PO2 (d) of the Dwelling house Code:

PO2 - Garages, carports and sheds:-

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

Council's grounds for refusal were stated as:

"The proposed carport would not maintain the visual continuity and pattern of buildings and landscape elements in the street. There do not appear to be any other carports in Centenary Crescent, within close proximity to the subject site, that are as close as 2.2 metres to the front boundary, noting the dominant pattern of structures in the street are located 4.5 metres to 6 metres to the front boundary. Whilst there is a single example of a carport within the front setback at 35 Centenary Crescent, it is more than 170 metres from the subject site, and never attained a lawful setback relaxation approval from Council. Regardless, one example does not comprise the dominant pattern of building in the street. As such, the proposed carport would not comply with Performance Outcome PO2 (d).

Jurisdiction

5. 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.
6. 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, subsection 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).

7. 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 Building Act 1975, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
8. 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

9. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
10. 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.
11. 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)).
12. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

13. The material considered in arriving at this decision was:
 - a. 'Form 10 – Notice of Appeal' (with the supporting documents and further information contained therein).
 - b. 'Development Application – Refusal' issued by the Assessment Manager (Veen Lyall-Wilson of Pronto Building Approvals) dated 11 April 2024.
 - c. 'Referral Agency Response Directing Refusal' issued by Sunshine Coast Regional Council, dated 10 April 2024.
 - d. Sunshine Coast Regional Council 'Dwelling House Code: PO2 - Garages, carports and sheds: 23 January 2024.

Findings of fact

14. The tribunal makes the following findings of fact:

Findings concerning the proposed development

15. The view of the proposed carport from both sides of Centenary Crescent is substantially restricted because of the proposed carport's location on the inner curve of Centenary Crescent.
16. The proposed carport would mainly be seen from the adjoining properties and from the opposite side of Centenary Crescent because of the curve of Centenary Crescent.
17. When viewed from the north from Centenary Crescent the proposed carport would not extend beyond the existing height and bulk of the existing dwelling constructed on the

subject site. The proposed carport would also be considerably masked by the 3 metre high dense hedge and the higher, mature dense landscaping located adjacent to the front side property boundary on the adjacent property (6 Centenary Crescent).

18. When viewed from the south from Centenary Crescent the proposed carport would not extend beyond the existing height and bulk of the two storey dwelling and its second storey balcony constructed on the adjacent property (6 Centenary Crescent).

Relevant findings concerning the streetscape

19. The Tribunal finds the streetscape of concern to the south of the subject property extends to the common property boundary between 13 and 15 Centenary Crescent.
20. The Tribunal finds the streetscape of concern to the north of the subject property extends from opposite the subject site to 5 Centenary Crescent.
21. The adjacent property to the north of the subject site (6 Centenary Crescent) is a two storey dwelling, with the main dwelling set back substantially behind the second storey balcony that is set back approximately 6 metres from the front property boundary. This property has a 1.5m high stone wall on its frontage adjacent to the subject property behind which is mature dense landscaping ranging from approximately 3 to 5 metres in height.
22. The next property to the north (identified as 4 and 4a Centenary Crescent) extends to the corner of Centenary Crescent. It is a two storey dwelling set back approximately 6 metres from the front property boundary. The front of this property presents as a 1.8 metre high solid colourbond fence with approximately 200mm high slatted timber railings above, with matching double driveway gate, giving the appearance of a 2 metre high full front boundary fence.
23. The properties on the opposite side of the street with views of the subject property are:
 - a. 5 Centenary Crescent—A low set single storey house with double garage, set approximately 1 metre below street level, with a lightweight, open fence approximately 1.2 metres high along its frontage, and with two large street trees located on the council verge.
 - b. 7 Centenary Crescent—A low set single storey house with double garage, set approximately 600mm below street level, with hedges at the front boundary, approximately 800mm high, and two large street trees.
 - c. 9 Centenary Crescent—A low set single storey house with double garage, set approximately 800mm below street level, with a low 700mm hedge for a quarter of its frontage and one medium sized street tree.
 - d. 11 Centenary Crescent—A low set single storey house with double garage, set approximately 500mm below street level, with a concrete hardstand for parking across all of its front yard. It is unfenced, with no street front trees.
 - e. 13 Centenary Crescent—A low set single storey house with double garage, set approximately 700mm below street level, with a low sparse hedge approximately 800mm high with no street front trees.
 - f. 15 Centenary Crescent—A high set house with a single garage set approximately 1 metre below street level, unfenced with one large street tree.
24. The properties on the same side of street, to the south of the subject property, will have little or no view of the proposed carport. These are as follows:
 - a. The adjacent property to the south (10 Centenary Crescent) is a low set single storey duplex. The front boundary set back is about 4.5 metres with low-lying planting and ground cover along the front boundary.

- b. The next property to the south (12 Centenary Crescent) is a low set, single storey house. The northern half of the front boundary consists of a timber fence on top of a retaining wall, with a combined height of approximately 2.3 metres.
- c. 14 Centenary Crescent is a highset house set back approximately 4 to 5 metres from the front property boundary with a double vehicle and boat carport to the south. There is approximately 10 metres of 1.2 metre high shrub landscaping at the front, together with a mature tree about 4 metres high.

Reasons for the decision

- 25. The key aspects of concern are:
 - a. The height and setback of the proposed carport.
 - b. Maintenance of the visual continuity and pattern of buildings and landscape elements within the street.
 - c. Maintaining an acceptable streetscape given the bulk of the existing dwelling and the adjoining dwelling and its proposed setback and the setbacks of neighbouring buildings.
 - d. The impact on the amenity of residents on the adjoining lot.
- 26. With regard to the Sunshine Coast Regional Council *Dwelling House Code* and Performance Outcome PO2(d), the Tribunal formed the opinion that the proposed carport would not significantly interrupt or disrupt the visual continuity and pattern of buildings and landscape elements within the street.

Derek Craven Kemp
Development Tribunal Chair

Date: 22 August 2024

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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