



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-030
Appellant:	Stan Slagmolen and Diana Rosada
Respondent (Assessment manager):	Richard Jones
Co-respondent (Concurrence agency):	Sunshine Coast Regional Council
Site address:	95 Cooroora St Battery Hill Qld 4551—the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the refusal of a Development Application for approval of Building Works being additions to a dwelling for a double width carport to be built within the road setback area. The decision followed a referral agency response by the Sunshine Coast Regional Council, directing refusal of the application. Council referenced their assessment and advice against the Sunshine Coast Planning Scheme 2014 – Dwelling House Code.

Date and time of hearing:	1.00pm, 27 th September 2024
Place of hearing:	The subject site
Tribunal:	Debra Johnson—Chair Catherine Baudet—Member
Present:	Stan Slagmolen and Diana Rosada—Appellants Courtney Lowrie—Council representative Zana Larikka—Council representative Shawn Matthews—Council representative Peter Taylor—Building designer Angus Jowett—Building Designer Assistant Richard Jones—JDBA Certifiers

Decision:

The Development Tribunal (“the tribunal”), in accordance with section 254(2)(d) of the PA, sets aside the decision of the assessment manager to refuse the application, and orders the assessment manager to:

- remake the decision within 25 business days of the date of receiving this decision notice, as if the concurrence agency had no requirements; and
- in the event that the assessment manager then decides to approve the application, to include the following conditions in the resultant building works development permit:

- i. the carport's supporting columns be engineered to achieve a 100 x100 mm profile; and
- ii. the carport's roofline features a hip design.

Background

1. The subject site has a site area of 628sq/m. The property is rectangular in shape with a frontage width of 21m facing south onto Cooroora Street. The land slopes down from the house in a southerly direction towards the road, and more so in the southwestern corner, where retaining walls are required.
2. The site contains a single storey rendered brick veneer dwelling with a tiled roof, incorporating a double garage in front, on the eastern side of the property. The garage is now a storeroom and will undergo internal renovation to accommodate another bedroom and a storeroom. The site is fenced on three sides but has no fence along the street boundary.
3. The neighbouring house on the western side is a simple two-storey brick veneer house with tiled roof, while the neighbouring house on the eastern side is a split-level house that appears to be renovated and has a substantial fence along the front boundary. All three homes were developed in the 1980s. There is a mixture of dwellings in the immediate area typical of this period and many of the properties have solid front fences. Directly across Cooroora Street is a golf course, shielded by a bank of trees.
4. The tribunal was informed that the appellants want to renovate their home to accommodate their family's growing needs. They propose using the existing garage to increase their floor area and building a carport in front of the garage to provide cover for their cars. There is minimal opportunity on the site to extend the footprint of the house without severely limiting the outside area and impacting on the amenity.
5. The appellants engaged the services of Taylor'd Distinction, a building design company. The design that was submitted for approval included alterations and additions, a retaining wall, a double width carport situated within the 6m street setback and ornamental greenhouse structures within the side boundary setbacks.
6. On 20 December 2023, the appellants' building certifier submitted a combined development application for building works (DBW) being a retaining wall, and operational works (OPW) being a driveway, that were assessable against the provisions of the planning scheme. The application included a request for a referral agency response under Schedule 9, Part 3, Division 2, Table 3 of the *Planning Regulation 2017*, for proposed building work within the prescribed road and side boundary setback requirements.
7. On 26 April 2024, Council issued a decision notice providing an approval for the retaining wall and the driveway works. The referral agency response approved the siting of the ornamental greenhouse structures but directed the assessment manager to refuse the carport application for the reasons stated in their response.
8. On 17 May 2024, the assessment manager issued a Decision Notice refusing the carrying out of building works assessable under the *Building Act 1975*. The decision stated the following reason:

Directed by Sunshine Coast Council as part of their Referral Agency Response dated 26 April 2024 for the assessment manager to REFUSE the carport (0.947m setback from the outermost projection of the carport to the front boundary, in lieu of 6m).
9. On 28 May 2024, the appellants stated their grounds for appeal and completed and submitted the Form 10 – Notice of Appeal to the Registrar.

Jurisdiction

10. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
11. Schedule 1 of PA, section 1(2) however states *Table 1 may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section.* 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.*
12. The tribunal is satisfied that the application lodged with the assessment manager and the referral of the development application to Council satisfies that requirement, being, a development application for approval of building works under the section 33 of the *Building Act 1975*, which allows alternative provisions to Queensland Development Code (QDC) boundary clearance and site cover provisions for buildings.
13. That application for the carport was subsequently refused by the assessment manager as directed by Council as the referral agency. Table 1 item 1(a) in Schedule 1 of the PA sets out that for a development application an appeal may be made to a tribunal against the refusal or all or part of the development application.
14. The refusal directed by Council and made by the assessment manager have enlivened the jurisdiction of the Tribunal.

Decision framework

15. Section 246 of the PA provides as follows (omitting the examples contained in the section):

The registrar may, at any time, ask a person to give the registrar any information that the Registrar reasonably requires for the proceedings.

The person must give the information to the registrar within 10 business days after the registrar asks for the information.
16. 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—(a) other evidence presented by a party to the appeal with leave of the tribunal; or (b) any information provided under section 246.
17. Section 254 of the PA deals with how an appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal (not relevant here) and 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.*

Material considered

18. The material considered in arriving at this decision comprises:

- a. Proposed building works plans prepared by Taylor'd Distinction, approved but annotated by Council and included in the appeal documentation. These building design drawings are identified as Job No 2307- 2042, Sheets R1, R4, R6 and R8, dated 9 February 2024
- b. Early Referral Agency Response notice for CAR23/0875 dated 26 April 2024, directing the assessment manager to partly approve the development application for building works for the Greenhouse Structure located 0.947m from the eastern boundary and having a length of 14.49m, and refuse the development application for the carport located within the 6m setback zone and having a height of more than 3.6m and having a width of 8.62m.
- c. Decision Notice - Refusal issued by the assessment manager being Richard Jones of JDBA Certifiers Reference number BA230972 dated 17 May 2024 for the Carport.
- d. Decision Notice Approval DBW23/0299 & OPW23/0561 for the retaining wall and driveway.
- e. Form 10 Appeal Notice and supporting information as submitted to the Registrar 28 May 2024.
- f. The Planning Act 2016 (PA).
- g. The Planning Regulation 2017 (PR).
- h. The Development Application Rules.
- i. The Building Act 1975 (BA).
- j. The Building Regulation 2021 (BR).
- k. The Queensland Development Code (QDC) Part MP 1.2.
- l. The Sunshine Coast Regional Council's Development.i.
- m. The Sunshine Coast Regional Council Planning Scheme 2014.
- n. The National Construction Code 2022 (NCC).
- o. The verbal submissions made by the parties at the hearing and during the site inspection.
- p. A post hearing submission of a revised building design by Taylor'd Distinction identified as Job No 2307-2042 Sheets A1- A19 dated 4 October 2024. The revision shows a hip roof profile over the proposed carport, rather than gable roof of the same pitch.
- q. Council's written response to the revised building design, received by email through the registrar, 28 October 2024

Findings of fact

19. The hearing for the appeal was held at the appellants' home on the subject site. The tribunal was therefore able to observe the existing double garage area that will be incorporated into additional living area for the residents. The hearing also provided the opportunity to view the front portion of the property selected for the proposed carport, and the context of that location within the street.

20. Whilst on site, the appellants reiterated their justification for the proposed double width carport to be built within the front setback area. Weather protection for their vehicles was a priority and they felt that there was no suitable alternative location for the carport. In their opinion the proposal would have a negligible impact on the streetscape, given the varied and somewhat inconsistent nature of the existing development. The appellants explained that the gable design of the roof blended with the existing structure and presented a harmonious addition rather than a “cheap flat-roofed” alternative.
21. The assessment manager referred to aerial images of the neighbourhood showing other properties in the vicinity that appeared to have reduced building line setbacks. This supporting information had also been provided to Council through their assessment period.
22. As part of the hearing process, all parties took a walk around the front of the property, down the street and around the corner into Teranna Street where there were a few examples of structures built within the street setback area. Council representatives stated that in their consideration of visual continuity and the pattern of the street, it should be confined to the immediate vicinity of the subject site. That is what is visible up and down the street from the property in question. To that point, Council noted the adjacent and other properties in the immediate vicinity did not have carports or structures in the 6m setback area.
23. The building designer stated that the exact wording of Sunshine Coast Planning Scheme’s Dwelling House Code PO2(d) was *maintain the visual continuity and pattern of buildings and landscape elements within the street*. He argued that there is no mention of the existing pattern of buildings having to be in the vicinity of the subject site. Therefore, the Tribunal should consider a street as a whole. The designer also referred to the aerial view of the street, noting several structures in the 6m setback zone.
24. Taylor’d Distinction’s building design plans that were approved, but annotated by Council to exclude the carport, are identified as Job No 2307- 2042, Sheets R1, R4, R6 and R8, dated 9 February 2024. These drawings show a proposed street setback of 0.947m and highlight that section of the carport’s gable roof, that would exceed the 3.6m height limit. The height is exacerbated due to the natural fall of the land towards the street boundary. Minimal dimensions are indicated on these concept drawings, however they do show masonry columns that are 590mm x 190mm. The carport features a flat ceiling.
25. Through Council’s assessment process, revisions were undertaken by the building designer, in response to an information request. The original column size was reduced from 790mm x 190mm to 590mm x190mm and the driveway width was reduced to 6m.
26. Council’s referral agency response directed the assessment manager to refuse the building application based on their assessment against the Sunshine Coast Planning Scheme 2014 – Dwelling House Code. Council specifically referenced—

PO2(b) *Garages, carports and sheds do not dominate the streetscape*; and

PO2(d) *Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street*.
27. Council found and stated in part, respectively:

The proposed carport would be positioned 0.947m from the front boundary and would exceed the maximum height of 3.6m. Further, the carport would have a bulky fascia and columns and is 8.62m wide, which would further exasperate (sic) the appearance of dominance. The carports on adjoining properties on the same block between Coonowrin St and Teranna St are no closer than 6m of the front boundary.

Other carports existing within the broader streetscape (west of Ninderry Close and east of Lyon Street) are typically setback further from the front boundary and well under 3.6m in height. Other existing carports in the street are also open structures with a skillion roof and slender post profile. The proposed carport would therefore dominate the streetscape;

and

The proposed carport would be positioned 0.947m from the front boundary. Existing buildings are predominantly setback 6m from the front boundary, with few exceptions. Where there are instances of carports within the front setback they are predominantly under 3.2m high and setback further than 1.5m. Considering this, the proposed carport would therefore not maintain the visual continuity and pattern of buildings in the street.

The Queensland Development Code (QDC)

28. QDC MP 1.2 applies to new building work for single detached dwellings, Class 1 and associated Class 10 buildings and structures on lots 450m² and over in area.
29. QDC Acceptable Solutions A1 and A2 outline the required building line setbacks from the road, side and rear boundary lines. A1(a) states:

For a detached dwelling, garage or a carport the minimum road setback is –

 - (i) 6m; or
 - (...)

A2(a) states:

The side and rear boundary clearance for a part of the building or structure is –

 - (i) where the height of that part is 4.5m or less - 1.5m; (...)
30. A2 goes further to qualify exemptions and conditions pertaining to this requirement, the exemptions could apply to an open carport structure:
 - (c) Structures may be exempted from A2 (a) where –
 - (i) the structure is not a deck, patio, pergola, verandah, gazebo or the like other than one permitted under A2 (c) being primarily a horticultural structure;
 - (ii) the structure is not used for entertainment, recreational purposes or the like;
 - (iii) a screen, fence or retaining wall or a combination of screens, fences or retaining walls is not more than 2m in height.
31. A2 (d) Refers to structures which could include an open carport and states:

Subject to A2(c), class 10a buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where –

 - (i) the height of a part within the boundary clearance is not more than 4.5m and has a mean height of not more than 3.5m; and
 - (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;
32. However, despite the provisions outlined in the QDC, a local government may adopt alternative boundary clearances and site cover provisions for Class 1 and 10 buildings in their local planning scheme. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions.

Sunshine Coast Planning Scheme 2014

33. The Sunshine Coast Planning Scheme, Part 9.3.6 Dwelling House Code PO2, contains alternative siting provisions to that prescribed in the QDC.

34. 9.3.6.2 outlines the purpose and overall outcomes for the Dwelling House Code and states in part:
- (1) *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.*
 - (2) *The purpose of the Dwelling house code will be achieved through the following overall outcomes:-*
 - (a) *a dwelling house incorporates a high standard of design and makes a positive contribution to the streetscape character of the area in which it is located;*
 - (b) *a dwelling house is sited and designed to protect the amenity and privacy of neighbouring residential premises;*
 - (c) *a dwelling house provides a high level of amenity to the residents of the dwelling house;*
 - (d) *a dwelling house is provided with an acceptable level of infrastructure and services;*
-
35. 9.3.6.3 outlines the relevant performance outcomes and acceptable outcomes for a Dwelling House and Table 9.3.6.3.1 sets out the requirements for accepted development and performance outcomes and acceptable outcomes for assessable development.
36. A02.1 being and acceptable outcome for Garages, Carports and Shed states in part:
- 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;*
- Note—A02.1(a) alternative provision to QDC.*
37. PO2 provides the performance outcomes for garages, carports and sheds. The performance outcomes must be demonstrated when the corresponding acceptable outcome is not met. In this instance where the appellant seeks to erect a carport within the 6m setback area they do not meet the acceptable measure set out under A02.1.
38. Therefore, it must be demonstrated that the proposed development does meet the performance criteria under PO2 which is listed below:
- (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.*
39. Council's referral agency response directed the assessment manager to refuse the building application based on their assessment against the Sunshine Coast Planning Scheme 2014 – Dwelling House Code.
40. Council referenced:
- PO2(b) *Garages, carports and sheds do not dominate the streetscape;*
- and
- PO2(d) *Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.*
41. Therefore, it is the responsibility of the Tribunal to determine if the proposed carport would likely dominate the streetscape and maintain the visual continuity and pattern of buildings and landscape elements within the street. While the appellant has provided

supporting documentation already outlined in this decision, the only matters that the Tribunal may lawfully take into consideration are those that address the criteria listed at PO2(b) and PO2(d).

42. Cooroora Street is a long straight run that starts at the ocean, that is at Moffat Beach near the mouth of Tooway Creek, around one kilometre east of the subject site. At the other end Cooroora Street effectively terminates at Nicklin Way, about 500m west of the appellants' site. It is a wide straight road to the beach that services only the immediate local residential traffic. The main access is via Beerburum Street, which is a divided, dual lane connection road, 300m north of and parallel to Cooroora Street.
43. Opposite the subject site is the Caloundra Golf Club. The golf club occupies a large area bordered by Nicklin Way to the west, along Cooroora Street to the North, past the subject site and just past the intersection of Coonowrin Street. This stretch of Cooroora Street feels very wide and open. The nature strip along the golf course has a generous concrete pedestrian path and the golf course property is bordered by a thick band of trees beyond that path. On the appellant's side, there is minimal landscaping on the nature strip, further enhancing that sense of open space.
44. There are only six properties along Cooroora Street, between Teranna Street and Coonowrin Street, with the subject site almost in the middle of this group. The road rises substantially from the west so that each of the six homes is set 1-2m higher than their neighbour.
45. At the eastern end of this group of homes, number 84 Coonowrin Street is on the corner of Cooroora Street. It is a single storey red brick and tile home featuring archways. The garden is mature, native and informal, providing heavy screening to the property. There is no evidence of fencing to the street and the cars are parking in tandem along the western side boundary as the single bay shed at the end of the driveway appears to be used for storage rather than garaging.
46. The single storey neutral coloured rendered brick and tile home at 91 Cooroora Street is next door to the corner property. It is very neatly landscaped and fenced with rendered masonry pillars and horizontal aluminium slat infill panels. This home features a single open carport set back 6m from the street boundary. The nature strip is enhanced with three native street trees.
47. The next home along this stretch is at 93 Cooroora Street, and their property is enclosed with an almost identical fence to their neighbours at 91 Cooroora Street. This dwelling is also rendered in neutral colours and features a sheet metal roof, unlike the others. The home has an elevated floor as the building straddles the crossfall of the slope. The height under the floor varies due to this slope, but this space is completely enclosed making the single storey home appear large and bulky. There is a single car garage built to boundary along the side shared with the appellant's home. Half of the front yard is concreted to allow for two cars to park side by side within the 6m setback area.
48. The next house is that of the appellants and has already been described. The neighbour below and west of the subject site is at 97 Cooroora Street. It is the only two storey home in this row. Also featuring a tiled roof, it has a small narrow veranda at the upper level. This site has effectively been levelled so that there is a significant retaining wall required between it and the appellants' property. This property boasts an open yard, and there is no fencing to the street. The double width concrete driveway that leads to two single garage doors on the lower level of the home, dominate the front yard.
49. The last home at the western end of this row is fairly well concealed behind an 1.8m high metal sheet panel fence. It is also a corner site identified as 99 Cooroora Street, at the intersection of Teranna Street. This dwelling is a single storey blond brick with a tiled roof. It has been set back 6m from the street frontage to Cooroora Street but appears to be much closer to the Teranna Street boundary where the driveway access is located. There is a small steel framed double garage facing Teranna Street and it is quite

separate from the house. The garden and nature strip are very tidy and the footpath features several street trees.

50. The appellants submitted revised building design drawings post-hearing. These drawings were distributed to all parties and are identified as Job No 2307-2042 Sheets A1- A19 dated 4 October 2024. These detailed drawings show the proposed carport roof with a hip profile rather than a gable. The hip roof would reduce the extent that the structure would exceed the 3.6m height.
51. Council were invited to submit further written comments to the Tribunal, given revised plans had been submitted. Council stated:

Despite achieving a reduction in height, it is Council's assessment that the proposed carport would still be unable to satisfy the Performance Outcome PO2 (b) and (d) of the Dwelling house code for the same reasoning that was specified in the original assessment report. It is anticipated that the proposed carport would dominate this part of the street given the elevation and bulk of the structure within the frontage of the site, and because there are no other comparable structures with a similar reduced setback from the front boundary that are viewable from the site. Further, with the setback proposed, the carport would not be maintaining the pattern of buildings and landscape elements in the street, which include buildings predominantly setback a minimum of 4.5m with few exceptions, including only 1 example with a carport in the western end of the street that has a setback of 1.5m with a lower building height and less bulk.

52. The form of the proposal modified by the condition requiring a hip roofline (as reflected in the revised plans submitted by the appellants), and by the condition requiring slender columns, would constitute a minor change to the application

Reasons for the decision

53. The Tribunal finds that the predominant streetscape consists generally of established dwellings of quite varying styles. Although there are limited examples of existing carport structures within the 6m street setback area in the vicinity of the subject site, there are several visually dominant structures being fences along the front boundaries and side boundaries.
54. The street has a wide tidy grass verge along the appellants' side while on the opposite side, there is a golf course bounded by trees. The street has an open feel and is not cluttered.
55. Based on the same findings, the tribunal considers, as amended in accordance with the conditions, the carport would not impact on the visual continuity and pattern of buildings and landscape elements along Cooroora Street.
56. The Tribunal also finds that the proposed carport given the same location and footprint, in the modified form featuring a hip roofline and slender columns, will not dominate the streetscape.

Debra Johnson
Development Tribunal Chair
Date: 18 November 2024

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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