



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	21-022
Appellant:	Robyn Deane and Ray Marx
Respondent: (Assessment Manager)	Sunshine Coast Regional Council (Council)
Site Address:	12 – 14 Arista Court, Bli Bli and described as Lot 53 on RP 230917 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and Schedule 1, Section 1, Table 1, Item 1 of the Planning Act 2016 (PA), against the refusal of a development application for construction of a carport on residential premises

Date and time of hearing:	Friday 19 November 2021 at 11.30am
Place of hearing:	12 – 14 Arista Court, Bli Bli (the subject site)
Tribunal:	Kim Calio – Chair Mark Westaway – Member
Present:	Robyn Deane and Ray Marx – Land owners and appellants Mitchell Schwieso – Development Officer - Council representative Bryan Pickard – support to owners

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 (2)(c) of the *Planning Act 2016* (PA) replaces the assessment manager's decision with the following decision:

1. The carport is approved subject to the below requirement and such other reasonable and relevant condition or conditions as the assessment manager sees fit provided that such condition is (or such conditions are) not inconsistent with the below requirement:
 - a. Fast growing, low maintenance screening vegetation is established within the subject property generally between the driveway, western side boundary and the front property boundary.
 - b. The screening vegetation is maintained at all times with any vegetation that dies being replaced promptly.
2. The assessment manager is to notify the parties of such other reasonable and relevant condition or conditions as the assessment manager sees fit that is (or are) not inconsistent with the described modifications.

Background

1. The dwelling is a slab on ground construction of approximately 30 years old. The appellants have owned the property for approximately 13 years.
2. The appellants advise that since purchasing the property they have:
 - a. placed fill in the backyard
 - b. converted the double garage into 2 bedroom for their daughter and her children
 - c. built a kitchenette, carport and patios on the side and rear of the dwelling.
3. The appellants advised that the builder All Way Homes was responsible for obtaining all building approvals and that he employed the building certifier.
4. The carport the subject of this appeal was constructed 2 years ago.
5. When the appellants requested the final certificate of classification, they were referred to a building certifier however they were informed that the carport and patio were not legal.
6. JDBA Certifiers (JDBA) lodged an application for a development permit for Building Works Assessable against the Planning Scheme (carport) with the Sunshine Coast Regional Council on 10 January 2019. The application was deemed properly made by the Council on 11 January 2019.
7. After issuing 3 Requests for Information and receiving the applicant's responses, Council in its role as assessment manager refused the development application on 1 October 2019 due to non-compliance with Performance Outcome PO2 (b) and (d) of the Dwelling House Code of the Sunshine Coast Regional Council Planning Scheme.
8. JDBA issued a decision notice on 15 April 2021 for a Building Permit approving Additions and Alterations – Rumpus with kitchen to create a secondary dwelling, bathroom and WC extension, enclose existing garage to create bedroom 4 and 5 with condition and refusing the double carport and patio/BBQ Area as per Council's Concurrency Agency Referral refusal.
9. The land owners, Ray Marx and Robyn Deane, lodged a Notice of Appeal with the Development Tribunal on 5 May 2021.

Jurisdiction

1. Section 229(1) of the PA identifies that schedule 1 of the PA states the matters that may be appealed to the tribunal.
2. Table 1 of schedule 1 states the matters that may be appealed to the Planning and Environment Court or the tribunal (subject, in the case of the tribunal, to the pre-conditions stated in section 1(2) of Schedule 1).
3. The tribunal has jurisdiction under section 229 and schedule 1, section 1, table 1, item 1 of the PA.
4. The pre-condition in section 1 sub-section (2) of schedule 1 for the application of table 1 to the tribunal is satisfied in this instance because of paragraph (g) in that the development application is a matter under the PA that relates to the Building Act 1975 (BA). The appellants seek approval for certain building work that is assessable against the building assessment provisions in the BA.

Decision framework

The onus rests on the appellants to establish that the appeal should be upheld (s. 253(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 (s. 253(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 s.246 of the PA.

The tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

Material Considered

The material (*Material Item*) considered in arriving at this decision comprises:

1. Request for Concurrence Agency Response (Building Work) submitted by JDBA Certifiers to Sunshine Coast Regional Council on 10 January 2019.
2. Council's Information Request Concurrence Agency dated 23 January 2019.
3. Amended plans submitted by JDBA Certifiers to Council on 26 March 2019 in response to Council's Information Request dated 23 January 2019.
4. Council's 2nd Information Request Concurrence Agency dated 16 April 2019
5. Revised Concurrence Agency Referral Report prepared by JDBA Certifiers dated 24 April 2019 and submitted to Council on 14 May 2019 in response to Council's 2nd Information Request dated 16 April 2019
6. Council's 3rd Information Request Concurrence Agency dated 14 May 2019
7. Revised Plans and letters of support from 4 surrounding neighbours (excluding the adjoining neighbour to the west) were submitted to Council on 2 August 2019 in response to Council's 3rd Information request dated 14 May 2019
8. The Council's Assessment Report for the application CAR19/0013 where in the Council's Delegate approved the recommendation to refuse the carport due to non-compliance with Performance Outcome 2(b) and (d) dated 25 September 2019.
9. Council's Refusal Referral Agency Response dated 1 October 2019.
10. Decision Notice – Approval BA180589 in part and refusal of the double carport and patio/BBQ area issued by JDBA Certifiers 15 April 2021.
11. Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 5 May 2021.
12. Additional Information in the form of 9 photographs received by the Registrar from the owners Ray Marx and Robyn Deane on 15 November 2021 purporting to demonstrate other properties in the surrounding local streets which have car accommodation close to the street frontage.

13. Appellant's Submission provided to the tribunal attendees on 19 November 2021 and sent to the registrar 22 November 2021.
14. Council's response to the appellants' submission sent to the Registrar 17 November 2021.
15. Revised Plan from the appellants demonstrating the actual dimensions of the set back of the carport eaves and column to the front and western boundary of the site provided to the Registrar 29 November 2021.
16. Planning Act 2016 (PA).
17. Planning Regulation 2017.
18. Sunshine Coast Regional Council Planning Scheme 2014 Part 9 - 9.3.6 - Dwelling House Code.
19. Aerial photo and contours illustrating the subject site at 12-14 Arista Court, Bli Bli sourced from Sunshine Coast Regional Council online Development.i Maps.

Findings of Fact

The tribunal makes the following findings of fact:

Subject Site

1. The subject site is located at 12-14 Arista Court, Bli Bli and is generally a rhomboid in shape and generally level. The site is 800m² in area and is approximately 1 metre above the Arista Court road reserve from which vehicle access is obtained and is approximately 0.5m below the road level on the southern boundary. The site is a corner lot with approximately a 20m frontage to the Arista Court cul-de-sac (western boundary) and is accessed via a gently sloping driveway to a double carport. The site also has a 30m frontage to Arista Court along the southern boundary of the site.
2. The subject site contains a single level detached dwelling, a carport, shed, an inground pool with an adjoining deck and pergola. The dwelling is located towards the rear of the site with a varying setback from the Arista Court cul-de-sac frontage of 10 – 15m.
3. Within the cul-dec-sac surrounding the site all dwellings, except for the neighbouring property adjoining the western boundary of the site, are single storey slab on ground brick construction homes. The dwelling adjoining the western boundary of the site is a 2 storey brick home.
4. The carport has a skillion roof with the highest peak on the western boundary. It is a cream colour, fully lined structure with batten screening and bracing on part of the 2 sides and rear of the carport. No doors are provided to the front of the carport. The carport provides for 2 vehicles and is accessed via a curved concrete driveway. Landscaping and shrubbery is located along both the eastern and western sides of the site. A screen fence of approximately 1.8m is located along the majority of the site's frontage to Arista Court.

The Hearing

The Appellants

1. The appellants advised during the hearing that the works undertaken 2 years ago by a builder they had engaged and that they were given the impression by the builder that everything was taken care of.
2. The appellants expressed their surprise to discover the carport didn't have building approval when they went to obtain the certificate of classification. In contacting the Builder they were advised he was no longer in business. The application to Council has resulted from the appellants' desire to rectify the situation and obtain the necessary approvals.
3. The appellants spoke to their details written submission during the hearing (*Material Item 13 refers*). The written submission was subsequently provided to the Registrar.
4. The appellants asserted that the setback dimension shown on the plans and report submitted to Council was incorrect and that it was in fact more than 2m rather than the 1.594m applied for.
5. The carport was inspected by the hearing attendees and it was determined that survey plan would need to be provided to demonstrate the correct setback distance. The appellants agreed to arrange for the survey and for a plan to be provided to the Registrar in due course. This plan was received by the Registrar on 29 November 2021 (*Material Item 15 refers*).
6. During the inspection of the carport the appellants noted the opportunity to provide additional screening landscaping on their property adjacent to the western boundary between the carport and the front boundary.
7. Options to mitigate the existing structure were canvassed with the appellants including landscaping on the property to enhance the streetscape in the vicinity of the carport at the point where it is closest to the road frontage. The appellants expressed willingness to undertake such landscaping.

The Council

8. Council in its role assessment manager refused the request for concurrence agency approval of the carport on 1 October 2019 due to non-compliance with the Dwelling House Code of the Sunshine Coast Regional Council Planning Scheme PO2 specifically the following outcomes with regard to garages, carports and sheds:
 - 2(b) *do not dominate the streetscape;*
 - 2(d) *maintain the visual continuity and pattern of buildings and landscape elements within the street;*
9. The application submitted to Council 10 January 2019 (*Material Item 1 refers*) was subject to 3 requests for further information which the applicant responded to. It is noted that the original application referred to a 1.594m setback and also referred in error to roads not associated with the site (Lilac Court and Parkway Drive). Council sought clarification of the conflicting information in their Information Request dated 16 April 2019 (*Material Item 4 refers*).

10. On 14 May 2019 JDBA submitted a revised Concurrence Agency Referral Report in response to Council 2nd Information request (*Material Item 7 refers*). This revised report, while correcting some errors, maintained that the setback was 1.594m.
11. The plans and report provided to Council referred to a 1.594m set back to the front boundary and this is the information upon which Council based its assessment and decision to refuse the applications. (*Material Items 8 & 19 refers*).
12. Council's Decision Notice was provided to the applicant on 1 October 2021 (*Material Item 9 refers*), however a decision on the building application for refusal in part for the double carport and patio/BBQ area was not issued by JDBA Certifiers until 15 April 2021 (*Material Item 10 refers*).
13. The Council Representative noted their concern with regard to non-compliance with PO2(a) and (b) of the Dwelling House Code (*Material Item 18 refers*) and indicated that visual continuity and consistency with other structure in the street together with the landscape elements were the key concerns. Council wanted to see a larger setback and noted their assessment was based on the information provided and the streetscape at the front of the dwelling. Council conceded an accurate site plan which demonstrate the appellants assertions regarding the actual setback may make a difference.

Post Hearing

1. A revised survey plan was provided by the appellants demonstrating their assertions at the hearing with regard to the actual dimensions of the set back of the carport eaves and column to the front and western boundary of the site. This plan was provided to the Registrar 29 November 2021 (*Material Item 15 refers*) and demonstrates at the closest point to the front boundary the eave line is no closer than 2.12m the single support columns encroaching into the 6m setback is no more than 2.71m from the front boundary.

Reasons for the Decision

1. The tribunal considers that the present form and location of carport with:
 - a. The eave line being no more than 2.12m from the front boundary;
 - b. Only one of the support columns encroaching into the 6m setback and that column being no more than 2.71m from the front boundary;
 - c. Less than 50% of the entire structure encroaching into the 6m setback;
 - d. An open design with no garage doors or solid walls; and
 - e. A complementary design and colour to the dwelling.does not dominate the streetscape or disrupt the visual continuity and pattern of buildings and landscape elements in Arista Court.
2. The tribunal also considers that the streetscape and continuity of landscape elements in Arista Court could be enhanced with additional landscaping within the site between the carport and the front boundary.
3. Therefore the tribunal has determined that:

- a. The carport should be approved in the current form and location;
- b. Fast growing, low maintenance screening vegetation should be established within the subject property generally between the driveway, western side boundary and the front property boundary; and
- c. The screening vegetation should be maintained at all times with any vegetation that dies being replaced promptly.

Kim Calio

Development Tribunal Chair

Date: 19 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:

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