



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number: 24-018

Appellant: Patricia Scorset

Assessment manager: Harald Weber

**Co-respondent
(Concurrence agency):** Cairns Regional Council

Site address: 3 Melaleuca Street, Manunda Qld 4870 and described as Lot 22 on RP 727323 – 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 decision of the Assessment Manager, as directed by the Concurrence Agency, the Cairns Regional Council (CRC), for refusal of a Development Permit for Building Works for enclosing a carport. The decision followed the Concurrence Agency's assessment that the proposal does not comply with Performance Criterion P1(a) of MP1.2 of the Queensland Development Code (QDC).

Date and time of hearing: 26 August 2024 at 9.30am

Place of hearing: The subject site

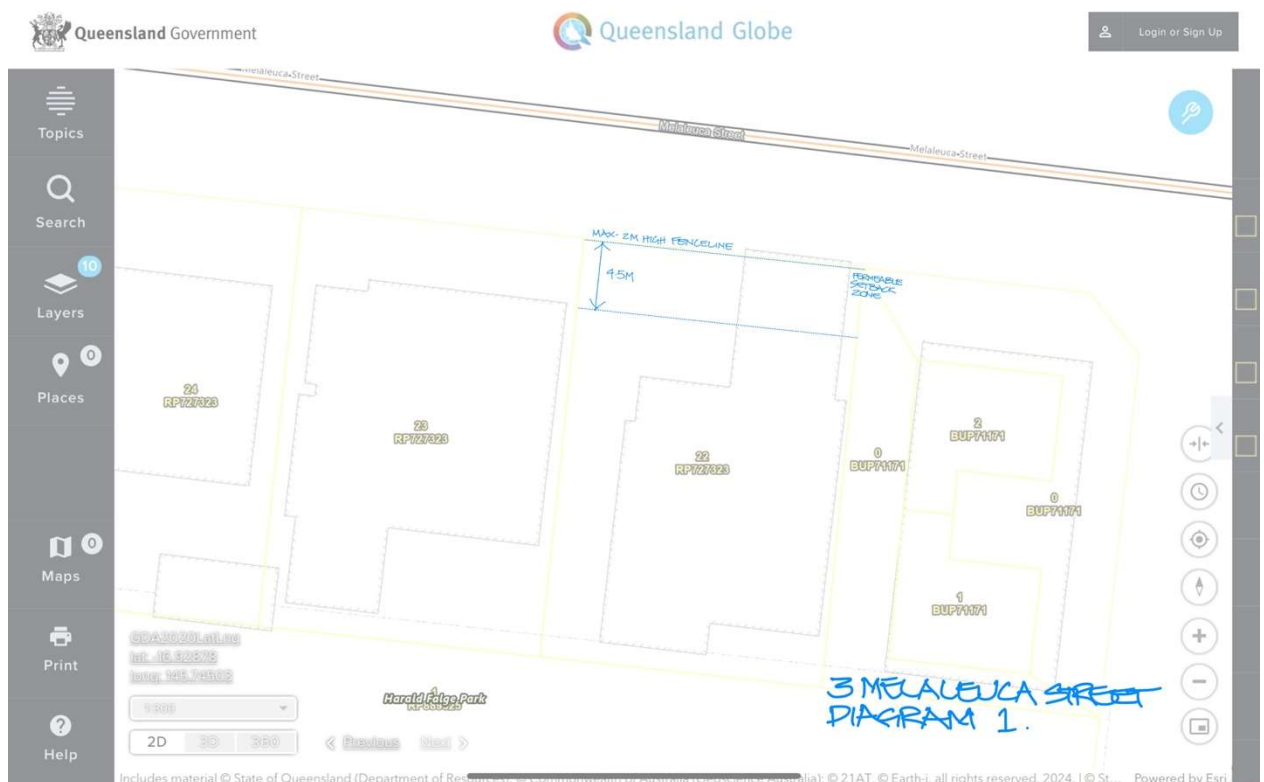
Tribunal: Dr Christopher Robertson—Chair
Ms Tania Denis —Member
Mr Heath Bussell—Member

Present: Mrs Patricia Scorset —Appellant
Mr Rino Gava — with the Appellant
Mr Harald Weber —Respondent
Ms Hannah Dayes—Council representative
Mrs Jayne Proberts—Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section s254(2)(d) of the PA, sets aside the decision of the Assessment Manager to refuse the application and orders the Assessment Manager to re-make the decision within 25 business days of the date of this Decision Notice, as if the Concurrence Agency had no requirements and if the Assessment Manager decides to approve the application, then with the following conditions –

1. Reduction of the visual bulk of the structure in the streetscape must be undertaken utilising well-proportioned permeable voids fitted with infill using louvres, screens or battens, as if one has been approved under a planning scheme or planning permit and or specified in an agreement (refer to Diagram 1 below and to <https://www.cairns.qld.gov.au/property-and-business/tropical-building>). The areas of visual reduction of the structure must include:
 - a. the gable infill above the roller door replaces at least 25% of the current paneled area.
 - b. wall cladding to a height of 2.0m above natural ground level to remain in-situ.
 - c. on both sides of the carport, from the street frontage to a distance of 4.5m towards the rear, above 2.0m (referred to in condition 1b above) to the roofline, to be replaced with infill using louvres, screens or battens.
2. Permanent provision is to be made at ground level on both sides of the garage for appropriate landscaping to further soften the impact of the carport e.g. trellises (refer to <https://www.cairns.qld.gov.au/community-environment/trees> for further detail).



Background

1. The subject site is 610sqm in size and is situated in a short section of Melaleuca Street, comprising of a cluster of approximately 11 dwellings, which are mostly fenced and which run in an east-west direction. The street then turns in a northerly direction. The dwelling is

single-storey and has fenced frontage with a double roller doored garage which fronts the Melaleuca Street boundary.

2. On 25 June 2021, as Concurrence Agency, the CRC approved a proposed carport sited 'up to the Melaleuca Street Road frontage...for a distance of 7.2 metres with a height of 3.2 metres.' Attached to the approval was the condition that the 'Carport must remain open for the life of the development.' The carport was assessed against MP.1.2 of the QDC.
3. Evidence has been supplied by the appellant showing that the original approved carport structure has been altered in 2021 with the addition of a double roller door.
4. On 8 March 2024, a Show Cause Notice from the CRC was issued under section 164 of the PA for contravening the development approval, in that after inspection, it was found that 'Condition 4 The carport must remain open for the life of the development', had not been complied with. Further, the notice advised the owner could remedy the breach if the owner would, '(R)remove the front and side walls and the roller door, and return the carport to the plan approved 6 beams open gable carport, as signed off on 15 December 2021 by Baker Building Certification'.
5. On 5 April 2024, CRC directed refusal of an application for enclosing the carport in a Concurrence Agency response, as assessed against MP.1.2 of the QDC. This assessment determined that the enclosed carport compromises the achievement with Performance Criteria P1(a) of the QDC, citing, 'The proposed Enclosed Carport does not comply with A1(a)(i) regarding the minimum front boundary setbacks, being 6 metres to road frontage. The proposed road setback for the Garage is approximately 0 metres from the outermost projection to the primary road frontage' and noting:
'Due to the proposed siting of the Enclosed Carport on the site relative to the neighbouring properties and the streetscape, the proposed development would present an inappropriate bulk to the streetscape that is not consistent with the character of the streetscape.'
6. In support of the appeal, the Appellant has lodged both directly and through professional submissions the following:
 - a) The 'New Construction of enclosed Carport' has not changed the size, shape or height of the approved carport. The owner was under the understanding that an approval for the changes had been obtained
 - b) The changes are substantially required in response to crime occurring, both directly and to the surrounding environs, to improve the safety of the dwelling's inhabitants: The Appellant stated 'The advice from key bodies such as Qld Police, Neighbourhood Watch and leading insurance companies is overwhelming that securing the vehicle in a locked garage is recommended to prevent theft.
 - c) The proposed changes to the structure have the support of many local residents including signatures on a support petition for the appellant, which included a sentence that the signatory expressly agrees, '[t]he structure does not propose significant bulk to the streetscape or cause nuisance and safety to the public.'
 - d) There are many other similar such structures of the same bulk or larger with the same frontage position in surrounding streets.
 - e) The demands in the CRC's Show Cause Notice are excessive.
 - f) The structure is engineeringly sound.
 - g) Compliant setbacks are maintained for side and rear boundaries of the site.
 - h) 'The bulk of the structure including the enclosed Carport are considered to be appropriate for the site.'

- i) The streetscape of the area where the Carport has been constructed is characterised by single-detached dwelling houses with a variation of open carports and dwellings set back from the road. The as-constructed enclosed carport is considered to facilitate an appropriate streetscape that is in keeping with Melaleuca Street and the general Manunda area.
- j) The as-constructed enclosed carport, encroaching on the main road frontage, does not impact on the outlook and views from neighbouring properties.

Jurisdiction

- 7. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
- 8. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the preconditions stated in section 1(2) of schedule 1.
- 9. The Tribunal has jurisdiction to determine this appeal under section 229(1)(a)(i), schedule 1, section 1, table 1, item 1(a), and schedule 1, section 1(2)(g) of the Act.

Decision framework

- 10. The Appellant as the recipient of the decision notice must establish that the appeal should be upheld (under section 253(2) of the PA).
- 11. 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 the subject of this appeal (under section 253(4) of the PA).
- 12. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when hearing a tribunal proceeding and the Tribunal may seek the views of any person.
- 13. The Tribunal is required to decide the appeal in one of the following relevant ways set Out in section 254(2) of the PA:
 - (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...*

Material considered

- 14. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 22 April 2024.
 - (b) Planning Act 2016 (QLD)
 - (c) Cairns Plan 2016. Cairns Regional Council.
 - (d) MP 1.2 Design and Sitting Standards for Single Detached Housing on Lots 450M2 and over.' Queensland Development Code.
 - (e) Appellant's submissions, dated 27 August, 30 August, and 3 September 2024.
 - (f) Communications between parties to the Appeal, dated 27 and 29 August 2024.

Findings of fact

- 15. The Tribunal makes the following findings of fact:
 - (a) The enclosed carport is completed without approval.

- (b) The enclosed carport as presented, is in conflict with the QDC, in particular with P1(a) of the Performance Criteria and the A1(a) Acceptable Solutions offered.
- (c) The location of the structure adjacent to the Melaleuca Street frontage boundary in conjunction with the length of each of the sides of the structure and lack of effective screening vegetation further highlight the bulky presentation of the structure.

Reasons for the decision

- 16. The Tribunal recognises that the CRC as Concurrence Agency from the initial approval of the carport in June 2021 did not intend that the carport, as constructed, be enclosed and that the Performance Criteria P1(a) of MP.1.2 of the QDC provides for a building or structure to have an acceptable or appropriate bulk in the context of the particular streetscape where it is sited.
- 17. The existing carport, converted into an enclosed garage, dominates the majority of the frontage of the subject site's street address and the conditions seek to achieve retention of the structure, maintain its function of security, while reducing the bulk and dominance of the structure. The Tribunal considers the conditioned changes to the enclosed carport will reduce the bulk of the structure and comply with the Performance Criterion of the QDC, MP1.2 P1(a).

Dr Christopher Robertson
Development Tribunal Chair

Date: 19 September 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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