



## Development Tribunal – Decision Notice

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### **Planning Act 2016 Section 255**

<b>Appeal number:</b>	23-004
<b>Appellant:</b>	Mr Mark Barlow and Mrs Debbie Barlow
<b>Respondent/ Assessment manager:</b>	Mr Joshua Legge
<b>Co-respondent/ Concurrence agency</b>	Sunshine Coast Regional Council
<b>Site address:</b>	1B Molakai Drive, Mountain Creek Qld 4557, and described as Lot 406 on RP 207234 – the subject site

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### **Appeal**

Appeal under the *Planning Act 2016*, section 229(1)(a)(i) and schedule 1, section 1, table 1, item (1)(a), against the refusal by the assessment manager, at the direction of the Concurrence Agency, the Sunshine Coast Council, of the part of a development application for building work for the construction of two Class 10a buildings, identified as a New Carport and a New Buggy Port.

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<b>Date and time of hearing:</b>	10.am Friday 3 March 2023.
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Dr Christopher Robertson – Chair Ms Catherine Brouwer – Member
<b>Present:</b>	Mr Mark Barlow – Co-appellant Mr Dax Anley – Representative – Just Patios Mr Cameron Wilson-Yapp – Council Representative, Sunshine Coast Regional Council Mrs Zana Larikka – Council Representative, Sunshine Coast Regional Council

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### **Decision**

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA), confirms the decision by the assessment manager, as directed by the concurrence agency, the Sunshine Coast Regional Council (Council), to part-refuse the development application for building work with respect to the construction of two Class 10a buildings, identified as a New Carport and a New Buggy Port.

## Background

1. The subject site is 1,087m<sup>2</sup> in land area and has an access easement to Molakai Drive, with no road frontage.
2. Two properly made applications (DBW22/0259 and CAR22/0787) were made on 11 October 2022, to Sunshine Coast Council as concurrence agency, by the assessment manager, Precision Building Certification, for a development permit on the subject site for three proposed patio structures and two proposed carport structures. The Council Assessment Report, and Referral Agency Response of 22 November 2022, identifies these structures on the annotated Site Plan (Plan no. A3108a) as: New Patio D; New Patio E; New Patio F; and, New Carport B; and New Buggy Port C.
3. An Information Request was made on 14 October 2022, by the Concurrence Agency regarding the proposed car carport 'New Carport B' and 'New Buggy Port C' seeking amended plans with removal of the carport, 'New carport B', or an increase in the side setbacks at the southern and western boundaries to at least 1.5 metres. With specific regard to the 'New Buggy Port C' it provided

*a) Reduce the length of the buggy carport to be 4.62 metres or less where within 500mm of the western side boundary. OR b) Increase the side setback distance between the proposed 'buggy' carport and the western side boundary to at least 1.5 metres.*

4. Objections to the development were lodged by residents of two of the adjacent properties concerning the proposal. Issues highlighted include: water runoff (storm water); proposed use; visual impact (including glare and heat reflections); adequate and appropriate vegetation screening; and suitability and compliance of size, lengths, and boundary setback of the proposed carports.
5. In its referral agency response issued 14 December 2022, Council directed:
  - (a) part-approval to allow New Patios 'D', 'E' and 'F' and
  - (b) part-refusal for 'New Carport B' and 'Buggy Port C' as follows:

*500mm setback from the outermost projection of the carports to the south-eastern and south-western side boundaries, in lieu of 1.5m (for a length exceeding 9m)*

*The proposal does not meet the performance criteria P2(c) of the Queensland Development Code (MP1.2):*

*P2(c) - Buildings and structures do not adversely impact on the amenity and privacy of residents on adjoining lots*

*The proposed carports located within 500mm of the side boundary for a length of 16.288m would likely impact the amenity of the adjoining premises. It is noted that the carports would adjoin the private open space areas of both adjoining dwellings to the south-east and south-west, with both a reduced setback and extended length. The neighbouring residents would have an expectation that a carport or shed may be built to a total of 9m in length along their boundary. The proposed built form exceeding 9m along the boundaries will have negative amenity impacts on the adjoining owners as demonstrated by their communication. The carport with a large expanse of roof is located in an area that will create heat and glare for the adjoining owners when*

*viewed from their upper story deck. For these reasons the proposed carport would not comply with performance criteria P2(c).*

6. The assessment manager issued the decision under appeal on 21 December 2022 and provided it to the appellants on the same date.
7. Pursuant to section 229(3)(g) of the Act, the appeal period for the assessment manager's decision notice ended on 23 January 2023. The appellants lodged the notice of appeal with the Registrar on 27 January 2023. The non-compliance associated with the late lodgment of the notice of appeal was subsequently excused by the delegate under section 243(3) of the Act.
8. The Appellants appealed this decision regarding the refusal of 'New Carport B' and 'New Buggy Port C' based upon the following grounds:
  - (a) While aware the proposed carports exceeded regulatory requirements, an approval was sought due to the owners' need, as a result of the number of cars.
  - (b) Precedent has been set in the area in that the adjacent property (110 Karawatha Drive) had approval for, and built, a structure in close proximity to the fence.
  - (c) Steps have been taken to mitigate glare from the structure, in particular landscape planting of bamboo alongside the south-eastern boundary to 110 Karawatha Drive.
  - (d) Space on site is limited for such a carport structure other than as proposed.
  - (e) Regarding new Buggy Port C, the existing shed will be removed and the proposed new structure will be lower than the existing shed's height. Current vegetation and hedging on the neighbour's land mitigates any impact of the proposed structure with those adjacent neighbours.

### **Jurisdiction**

9. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
10. 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.
11. 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**

12. The Appellants as the recipients of the decision notice must establish that the appeal should be upheld (under section 253(2) of the PA).
13. 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).

14. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and the Tribunal may seek the views of any person.
15. 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; or*

### **Material considered**

16. The material considered in arriving at this decision was:
  - (a) Form 10 – Appeal Notice, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 27 January 2023
  - (b) *Sunshine Coast Planning Scheme 2014*
  - (c) Council's email to the Registrar dated 24 February 2023 attaching 'Council Assessment Report', Council's information request dated 14 October 2022, and Precision Building Certification's email to Sunshine Coast Regional Council dated 9 November 2022 attaching Response to Information Request dated 8 November 2022, appellant's submission to council and revised plans
  - (d) Council's email to the Registrar dated 1 March 2023 attaching objection documents
  - (e) 9.3.6 Dwelling House Code, *Sunshine Coast Planning Scheme 2014*
  - (f) 7.2.14 Kawana Waters Local Plan Code, *Sunshine Coast Planning Scheme 2014*
  - (g) MP 1.2 Design and Siting Standard for Single Detached Housing – On Lots 450M<sup>2</sup> and Over, *Queensland Development Code*. March 2010
  - (h) *Planning Act 2016*.

### **Findings of fact**

17. The Tribunal makes the following findings of fact:
  - (a) The proposed 'New Carport B', with the GFA of 80.5m<sup>2</sup> exceeds the Performance Acceptable Outcome A02.1(c) 9.3.6 Dwelling House Code, *Sunshine Coast Planning Scheme 2014*), 'Where located on a lot in a residential zone, a garage, carport or shed...(c) has a total floor area that does not exceed 56m<sup>2</sup>.' The GFA of the proposed carport exceeds the noted limit by just under 44%.

- (b) Both the 'New Carport B' and the proposed 'New Buggy Port C', at a combined total length of 16.488m of all building or parts, exceed the maximum total of 9m in length, and the setbacks from the boundaries of these structures are proposed at 500mm. Under 'MP 1.2 Design and Siting Standard for Single Detached Housing – On Lots 450M<sup>2</sup> and Over,' *Queensland Development Code*, specifically Acceptable Solution A2(d) states:

*Subject to 2(c), class 10a buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where - ... (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; ...*

- (c) The total length and the boundary setbacks of both the proposed 'New Carport B' and 'New Buggy Port C' bring into consideration any potential impact on the amenity of residents on adjoining lots. The *Sunshine Coast Planning Scheme 2014*, specifically 9.3.6 Dwelling House Code, Performance Criteria P02, states: 'Garages, carports and sheds:- (a) preserve the amenity of adjacent land and dwelling houses'. Also, the *Queensland Development Code*, specifically Performance Criteria P2 (c), states: 'Buildings and structures – (c) do not adversely impact on the amenity and privacy of residents on adjoining lots.'

- (d) In consideration of:

- i. the Tribunal's findings in 17(a), 17(b) and 17(c) above about the proposed structures exceeding permissible quantitative requirements ('MP 1.2 Design and Siting Standard for Single Detached Housing – On Lots 450M<sup>2</sup> and Over,' *Queensland Development Code*), and,
- ii. the size and location proposals potentially having an adverse impact on the amenity of residents of adjacent lots,

the proposal does not adequately satisfy or offer an alternative to the Acceptable Outcomes/solutions of the Performance Criteria.

- (e) The stated requirement for the proposed total area for the Carport/Buggy Port was advised by the appellants during the hearing to arise from their vehicle parking and storage needs. During the hearing alternative parking and /or storage provisions, which would have allowed for whole or part compliance with the acceptable outcomes/solutions, were not presented, and nor were other alternatives to the proposal which were discussed at the hearing, acceptable to the appellants.

### **Reasons for the decision**

18. The proposal as presented substantially exceeds the Acceptable Outcomes/Solutions without affording alternative options that would comply with or more closely comply with the Acceptable Outcomes/Solutions, and thus contribute to mitigation of the impact of the proposed structures on adjacent properties.
19. The proposal appears not to have considered design and siting options, including structures' size including length, and boundary setback adjustments, for their vehicle parking and storage, which would contribute to mitigation of the impacts of the proposal on adjacent properties.

20. Despite the recent plantings of bamboo along the south-eastern boundary, the proposal has not presented other siting and landscape proposals which may further mitigate the impact of the proposal upon adjacent properties.

**Dr Christopher Robertson**  
**Development Tribunal Chair**  
**Date: 31 March 2023**

### **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](mailto:registrar@epw.qld.gov.au)**