



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-031
Appellant:	Jodi McNeilly
Respondent: (Assessment manager)	Tim Coates (Foundation Building Approvals)
Co-respondent: (Concurrence agency)	Sunshine Coast Regional Council
Site address:	1 Lawman Street, Caloundra West Qld 4551, described as Lot 1 on RP 857197 – 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 Foundation Building Approvals Decision Notice 24-0651, Sunshine Coast Regional Council CAR24/0094).

Date and time of hearing:	Thursday 3 October 2024 at 1.00 pm.
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Catherine Brouwer – Member
Present:	Jodi McNeilly (Appellant and property owner) Shane McNeilly (Property owner) Marcus Brennan (Town Planner, agent for the appellant) Cameron Wilson-Yapp (Sunshine Coast Regional Council, Co-respondent) Jeff Dodd (Sunshine Coast Regional Council, Co-respondent)

Decision:

The Development Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016* **confirms** the decision of the Assessment Manager to 'refuse' the Building Development Application (Foundation Building Approvals Decision Notice 24-0651).

Background

The subject site

1. The subject site is a rectilinear corner block of 560 square metres developed with a single storey residence fronting Lawman Street, with an enclosed undercroft and driveway fronting Lawman Street. The subject site is located on the high, south east side of the intersection of Lawman Street and Sugar Bag Road with a frontage of 29.6 metres to Sugar Bag Road and 17.5 metres to Lawman Street.

The proposal

2. The proposal is for the construction of a light weight construction, open double carport attached to the front of the undercroft and garage of the existing dwelling fronting Lawman Street. This carport would be accessed from the existing driveway and be located on the existing driveway between the front property boundary and the existing dwelling.
3. The proposed carport would be approximately 6690 mm in width fronting Lawman Street and between 4800mm and 5550mm approximately in depth. The proposed carport, (excluding the front gutter) would be set back 100mm from the front property boundary to Lawman Street. The proposed carport would align with the existing side deck of the existing dwelling and be set back approximately 2100mm from the south side property boundary.

Assessment of the application

4. In early 2024 (date not confirmed by the agent for appellant to the Tribunal) the Respondent requested the Referral Agency, Sunshine Coast Regional Council, response to the proposed building works.
5. On 28 February 2024 the Referral Agency, Sunshine Coast Regional Council, issued an information request to the respondent (Reference 'Information Request Concurrence Agency' Sunshine Coast Regional Council CAR24/0094).

This 'Information Request' *inter alia* stated the key issue arising from the application is the front boundary setback, and requested amended

"... plans to better meet compliance with Performance Outcome PO2 of the Dwelling House Code.

This should include the following:

a) Relocating the proposed carport to the northern side of the dwelling and provide a 6 metre front setback to the Lawman Street frontage boundary;

OR

b) Greatly increasing the front setback distance between the carport and the Lawman Street frontage boundary (eg. 5.5m front setback)".

6. The Tribunal was informed that on 15 March 2024, the respondent requested that Council proceed to provide its 'referral agency response' based on the original proposal (Clause 7, Appendix to the 'Grounds for Appeal', confirmed during the Hearing).
7. On 24 March, the Referral Agency, Sunshine Coast Regional Council, directed the Assessment Manager that the application be refused.

8. Council's stated reasons for refusal were:

1. *The proposal does not meet Performance Outcome PO2 (b) of the Dwelling house Code:*

*PO2 - Garages, carports and sheds:
(b) do not dominate the streetscape.*

Council's grounds for refusal were stated as:

Whilst the proposed carport would accommodate a compliant floor area and height, it's location at the entry to the street, and in front of the existing line of buildings within the street would dominate the streetscape. The carport would be highly visible from the entry to Lawman Street, from Sugar Bag Road and from the intersection with Hans Street as the site is more elevated than the road and there are no other carports located within the front setback that are of a similar scale and are located so close to the road.

2. *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 Lawman Street, within close proximity to the subject site, that are as close as 100mm to the front boundary. Whilst examples of structures within the required front setback at 9 & 11 Lawman Street have been noted, only one has had a lawful relaxation/building approval (1.75m to 2.75m front setback), and neither are 100mm to the front boundary. Regardless, two examples in a street of 19 properties does not comprise the dominant visual pattern in the street.

3. *There are alternative locations for a carport to be accommodated within the site that would better meet the Performance Outcomes.*

9. On 13 May 2024 the respondent issued his Decision Notice to refuse the Development Permit (Development Application Decision Notice 24-0651).

Jurisdiction

10. 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.

11. 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).

12. 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.

13. 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

14. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
15. 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.
16. 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)).
17. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

18. 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. 'Referral Agency Information Request' issued by Sunshine Coast Regional Council, dated 28 February 2024.
 - c. 'Referral Agency Response Directing Refusal' issued by Sunshine Coast Regional Council, dated 24 March 2024.
 - d. 'Development Application – Refusal' issued by the Assessment Manager (Tim Coates of Foundation Building Approvals) dated 13 May 2024.
 - e. Sunshine Coast Regional Council 'Dwelling House Code: PO2 - Garages, carports and sheds: 23 January 2024.

Findings of fact

19. The tribunal makes the following findings of fact:

Findings concerning the proposed development

20. The view of the proposed carport from both sides of Lawman Street is enhanced by the subject property and the proposed carport and the driveway being on the high side of Lawman Street and on the corner, at the entrance to Sugar Bag Road.
21. The view of the proposed carport, from the intersection with Sugar Bag Road, is restricted by the 'entrance statement' wall and landscaping provided on the verge at the entrance to Lawman Street outside the subject property.
22. The proposed carport will be visible for its full depth from the street and verge and from the three properties between the subject site and 7 Lawman Street (including from the entrance to Hans Street).

23. The proposed carport will be visible for its full frontage and depth from the street and verge and the properties on the lower, western side of Lawman Street from the undeveloped open space between 8 and 10 Lawman Street to the subject site.
24. The Tribunal finds the streetscape of concern to the proposal on the subject property extends on both sides of street for the full length of Lawman Street.

Findings concerning the properties fronting the eastern side of Lawman Street

25. On the east side of Lawman Street, the adjacent property to the south of the subject site (1 Hans Street) is a high set dwelling, with a low, open palisade style metal fence. There is grassed open landscaping between the building and the front property boundary.
26. The next property to the south (identified as 9 Hans Street) is a two storey dwelling fronting Hans Street, with a single storey double garage with its side elevation set well back, approximately 3 metres from Lawman Street, with no fence to Lawman Street. There is grassed open landscaping and dense mature trees on the verge and between the building and the property boundary to Lawman Street.
27. The next property to the south is 7 Lawman Street, a single storey dwelling with a double garage set well back from Lawman Street, with no fence to the first part of Lawman Street and a two metre high *colorbond* fence above a 600mm brick retaining wall. There is grassed open landscaping and dense mature trees on the verge and dense landscaping to the property boundary to Lawman Street.
28. 9 Lawman Street is a single storey dwelling with a carport with minimum setback of approximately 1.75 metres, set 'side on' to Lawman Street located above an approximately 1 metre high stone retaining wall. There is dense landscaping and palm trees fronting Lawman Street.
29. 11 Lawman Street is a high set, single storey dwelling with a carport set back approximately 2.75 metres, set side on to Lawman Street, located above an approximately 1.5 metre high retaining wall behind a 1.5 metre high open timber fence with horizontal slats and landscaping so that there is minimum visibility of this carport from the street.
30. 13 Lawman Street is a single storey dwelling with a double garage set well back from Lawman Street behind a 1.8 metre high *colorbond* fence and gates.
31. Further south at the head of the *cul de sac* is a large lot open space leading into the open space Town Reserve.

Findings concerning the properties fronting the western side of Lawman Street

32. Opposite the subject site on the west side of Lawman Street (2 Lawman Street) is a single storey dwelling with a single garage well set back from the front property boundary. There is a 1.8 metre high *colorbond* fence with horizontal wooden slats above facing Lawman Street.
33. To the south, 4 Lawman Street is a well set back single storey dwelling, with an attached garage set back behind the building line with no front fence. The front setback is heavily landscaped with shrubs and young trees. There are three large, mature native eucalyptus trees on the verge.

34. The adjacent lot is vacant land with large mature trees that has the appearance of 'overland flow' parkland providing access to the Town Reserve or 'Heritage Park'. There are five angled car parking bays in front of this lot.
35. 8 Lawman Street is a single storey dwelling, high set where the land drops at the rear. It is well set back with no front fence. There are mature palm trees on the street verge.
36. 10 Lawman is a well set back single storey dwelling with a carport extending from the front of the house over the driveway to within 500mm of the front property boundary. The rest of the frontage is mainly grass areas with occasional young palm trees. A low picket fence extends from each side of the dwelling to each side property boundary.
37. 12 Lawman Street is a well set back single storey dwelling with a single car garage. The frontage is well landscaped mainly grass areas. There are two mature palm trees and a mature, large paperbark tree on the street verge. There is a low, open metal palisade style fence set back behind the building line extending from the house to the northern side property boundary.
38. The next two properties (14 and 16 Lawman Street) provide driveways to dwellings on rear 'battle-axe' blocks. They have well-kept grass verges. The southern driveway has a low timber picket fence at each side extending from the front property boundary to the rear dwelling.
39. 18 Lawman Street is a high set single storey dwelling set well back with a garage, with a second garage below set back from the building line. There is minimal grass areas and landscaping and no fence at the front of this property.
40. 20 Lawman Street is a high set single storey dwelling with a double garage below. The frontage is grassed with no fences; with a low hedge alongside the driveway from the frontage to the building and along the southern side property boundary.
41. 22 Lawman Street is a high set single storey dwelling with a grassed frontage and no front fence. There is high dense landscaping including palm trees extending from the front property boundary at each side of the driveway to the rear of the house. There is a 1.8 metre high timber fence running along the southern side property boundary.
42. 24 Lawman Street is a high set single storey dwelling with a grassed frontage and no front fence. There are shrubs, palm trees and native vegetation planted close to the front of the dwelling. There is a 1.8 metre high timber fence extending from each side of the dwelling to the side property boundary.
43. The end of the *cul de sac* is well treed and grassed open space giving access to the Town Reserve.

Findings concerning the 'general streetscape'

44. Lawman Street was set out with respect to the existing hillside. Its curves follow the terrain and the width was kept relatively narrow. This meant there is a limit of spaces for kerbside and visitor parking, and at the northern part of the street concreted parking spaces have been formed on the verge. Thus, when these spaces are filled with cars, this northern part of the street has a more closed-in character than the remainder to the south, which has more open, grassed verges merging with the grassed and garden bed frontages of the set-back houses.
45. The houses present to Lawman Street as apparently single storey, modestly scaled residences set back from the frontage boundary. On the western side of Lawman Street, the land falls away, generally from a couple of metres from the verge, unless built up for the

house level. This has allowed some houses to have a lower level and to have the garage or under house car parking there.

46. There are only five fences of the 18 lots, and two of these are open metal palisade style, so the frontage garden areas and the open space lots are seen as part of the streetscape.
47. The majority of the front garden areas along both sides of the street are of open grass which merges with the verge grass. Where there are planted gardens along the lot frontages, they are attractively planted with palm trees and shrubs.
48. There are street trees along the length of Lawman Street, and it appears that the original street trees are the paperbark trees (*Melaleuca*). There are also a few original Eucalyptus trees. Palms have been planted in front of two houses. A large Ficus tree is on the verge of the open space opposite the junction with Hans Street. On one lot the verge has been nearly fully planted with native shrubs.

Reasons for the decision

49. The key aspects of concern are:
 - a. The visual impact of the proposed carport at the entrance to Lawman Street when viewed from Sugar Bag Road.
 - b. The visual impact of the proposed carport when viewed from the entrance from Hans Street to Lawman Street.
 - c. Whether the proposed carport would dominate the streetscape of Lawman Street.
 - d. Maintenance of the visual continuity and pattern of buildings and landscape elements within Lawman Street.
50. With regard to visual impact of the carport from the entrance to Lawman Street and from Sugar Bag Road, the Tribunal formed the opinion that the proposed carport would not be significantly visible to pedestrians and vehicles turning left into Lawman Street because of the 'entrance statement' wall and landscaping provided on the verge at the entrance to Lawman Street.
51. The Tribunal formed the opinion that the proposed carport would be highly visible to pedestrians and vehicles turning right into Lawman Street from Sugar Bag Road because of its minimum setback and inability to provide significant landscaping on-site.
52. With regard to the visual impact of the proposed carport when viewed from the entrance to Lawman Street from Sugar Bag Road, the Tribunal formed the opinion that the proposed carport *would not dominate the streetscape*.
53. With regard to the visual impact of the proposed carport when viewed from the entrance to Hans Street, the Tribunal formed the opinion that the proposed carport would be partially visible but *would not dominate the streetscape*.
54. With regard to the Sunshine Coast Regional Council *Dwelling House Code* and Performance Outcome PO2 (b), the Tribunal formed the opinion that the proposed carport *would not* dominate the streetscape.
55. 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* significantly contrast, interrupt and disrupt the visual continuity and pattern of buildings and landscape elements within the street.
56. The Tribunal gave no weight to Council's view that there were other locations for the proposed carport and considered the application only on its own merits.

57. The Tribunal gave no weight to Council's Information Request and the appellant's failure to provide the requested information.

Derek Craven Kemp
Development Tribunal Chair
Date: 15 October 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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