



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	19-036
Appellant:	Sam William Krushka
Respondent (Assessment Manager):	Michael Bowcock of Coastal Building Certifications
Co-respondent (Concurrence Agency):	Sunshine Coast Regional Council
Site Address:	158 Warran Road, Yaroomba and described as Lot 9 on RP136238 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, Item 1(a) of the *Planning Act 2016* ('the PA') against the assessment manager's refusal of the appellant's development application, made under section 51 of the PA ('the application'), for a development permit for building works being the erection of a new carport on the subject site.

Date and time of hearing:	Friday, 11 October 2019, at 11:00am
Place of hearing:	The subject site
Tribunal:	Neil de Bruyn – Chair Elisa Knowlman – Member
Present:	Sam Krushka – Appellant Michael Bowcock – Coastal Building Certifications Darcy Ringland – Appellant's neighbour Peter Chamberlain – Council representative

Decision:

1. The Development Tribunal ('tribunal'), in accordance with section 254(2)(c) of the PA, has decided this appeal by replacing the decision of the assessment manager to refuse the application, with a decision to approve the application subject to the following conditions:
 - (a) The proposed development is to be undertaken in accordance with the approved plans, being those prepared by Studio 4, numbered SV-01 to SV-05 (inclusive) and dated 17.07.19;
 - (b) The proposed carport is to remain open on all sides (other than bracing) and is not to be enclosed.

The assessment manager may impose any additional reasonable and appropriate conditions he sees fit that are not inconsistent with the above conditions.

Background:

2. The subject site is located within the local government area of the Sunshine Coast Council ('Council') and within the planning scheme area of the Sunshine Coast Planning Scheme 2014 ('the planning scheme'). Under the planning scheme, the subject site is included within the Low-Density Residential Zone and is also affected by various overlays under the planning scheme.
3. Under the applicable zone, the use of a premises for a dwelling house is accepted development subject to compliance with applicable requirements, or code assessable development where there is any non-compliance with an applicable requirement. The applicable requirements for accepted development are the acceptable outcomes set out under the Dwelling House Code. A dwelling house is defined under the planning scheme to include outbuildings and works normally associated with a dwelling house (such as a carport).
4. Under the applicable zone, building work (that is not minor building work, as is the case here) is accepted development subject to compliance with applicable requirements, or code assessable development where there is any non-compliance with an applicable requirement. The applicable requirements for accepted development are the acceptable outcomes set out under the Dwelling House Code and the Transport and Parking Code.
5. Of relevance to this appeal, Acceptable Outcome AO2.1 provides that a carport, located within a residential zone (as is the case here), must be set back at least 6m from any road frontage.
6. During April 2019, the application was made to the assessment manager for a building works development permit for a new, open-sided, single-vehicle carport within the subject site.
7. As the outermost projection of the proposed carport was to be located approximately 2.895m from the front boundary of the subject site, the application required referral to Council as a concurrence agency (Schedule 9, Part 3, Division 2, Table 3 of the Planning Regulation 2017). The application was referred to Council on 13 May 2019.
8. On 5 June 2019, Council issued an information request, noting that the proposed development did not satisfy the requirements of Performance Outcome PO2, Parts (b) and (d), of the Dwelling House Code, providing as follows:

"Garages, carports and sheds:
 - a) ...;
 - b) *do not dominate the streetscape;*
 - c) ...;
 - d) *maintain the visual continuity and pattern of buildings and landscape elements within the street."*
9. The information request stated further that, as the proposed carport would be sited forward of the general line of buildings in the street, it would *"not maintain the visual continuity and pattern of the buildings within the street."*
10. On 15 July 2019, the appellant provided a detailed response to the information request, including an amended set of architectural plans (dated 17 July 2019), ostensibly to correct errors in the plans submitted initially. Notably, the amended plans showed a front setback of 3.28m, rather than the previous 2.895m.

11. Pursuant to section 52(3) of the PA, a change to a development application that is a minor change (as defined) does not affect the development assessment process. Having regard to the definition of a minor change, including Schedule 1 of the Development Assessment Rules (Version 1.1), and as detailed later herein, the tribunal is satisfied the change was a minor change.
12. On 24 July 2019, Council issued its concurrence agency response, directing the assessment manager to refuse the application on the grounds that the proposed carport would not achieve Performance Outcome PO2(d) of the Dwelling House Code. The response stated further that:

“The visual continuity and pattern of buildings in the street comprises predominantly of dwellings approximately 6m from the road frontage with the continuity of the built form generally being maintained. As the shed is (to be) set forward of the general line of the buildings in the street, Council considers that the shed will not maintain the visual continuity and pattern of the buildings within the street.”
13. The assessment manager duly issued a decision notice dated 30 July 2019, stating that the application had been refused based upon the direction of the Council as a concurrence agency.
14. On 9 August 2019, the appellant lodged this appeal against the assessment manager’s decision to refuse the application.
15. A site inspection and hearing was held on 11 October 2019, commencing at 11am.
16. At the site inspection, the tribunal noted that the front setbacks to the existing houses within the relevant part of the street (being that part extending between the intersection of Warran Road and Jenyor Street/Sunstone Court, in the north, and where Warren Road curves sharply to the east, a short distance to the south of the subject site) displayed a reasonable degree of consistency, and accepts both parties’ evidence to the effect that these setbacks are generally in the range of 6m to 7.5m.
17. It was further noted that there are no dwellings on the western side of Warran Road, which appears to contain only part of the Coolum Beach Resort and Golf Course site and a small plant nursery.
18. It was further noted that the relevant part of the street does not display any visual continuity of landscape elements, or building styles, with a wide variance displayed in terms of these attributes. In particular, it was noted that a number of properties had substantial (1800mm) fences on their frontages, or extending along their side boundaries to their frontages, and most had significant vegetation and other landscaping elements within their front yards.
19. It was also noted that the subject site is extensively landscaped, with small side setbacks and no practical vehicular access to the sides of the house or the rear yard.

Jurisdiction:

20. This is an appeal under section 229 and schedule 1, section 1, table 1, Item 1(a) of the PA, against the refusal of a development application for a building works development permit for the proposed carport. Section 1(2)(g) of schedule 1 applies in this instance and accordingly table 1 applies for a development tribunal.

Decision Framework:

21. Pursuant to section 253(2) of the PA, the onus in this matter rests on the appellant to establish that the appeal should be upheld.
22. Pursuant to section 253(4) 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 assessment manager in this case.
23. 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 the PA (pursuant to which the registrar may require information for tribunal proceedings).
24. The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material Considered:

25. The material considered in arriving at this decision comprises of the following:
 - i. 'Form 10 – Application for Appeal/Declaration, attached grounds for appeal and associated correspondence and plans lodged with the registrar on 9 August 2019, including:
 - a) Sunshine Coast Council form "Request for Concurrence Agency Response (Building Work);
 - b) letter dated 29 April 2019 from the appellant to the co-respondent requesting a siting variation for the proposed carport, including supporting material, plans and letters of support, both dated 23 April 2019, from the occupants of both adjacent dwellings, Ian Kelly and Darcy Ringland;
 - c) concurrence agency information request dated 5 June 2019;
 - d) applicant's response, dated 15 July 2019, to the concurrence agency information request, including amended design plans (dated 17 July 2019);
 - e) referral agency response dated 24 July 2019.
 - ii. Planning Act 2016.
 - iii. Planning Regulation 2017.
 - iv. Sunshine Coast Planning Scheme 2014.
 - v. Development Assessment Rules (Version 1.1, effective 11 August 2017).

Findings of Fact:

26. The tribunal makes the following findings:

1. Material Change of Use

The tribunal finds that the proposed carport development would constitute building works only and that it would not constitute a material change of use.

Under the Low-Density Residential Zone, the use of a premises for a dwelling house is accepted development subject to compliance with applicable requirements, or code assessable development where there is any non-compliance with an applicable

requirement. The applicable requirements are those set out under the Dwelling House Code.

A dwelling house is defined under the planning scheme to include outbuildings and works normally associated with a dwelling house (such as a carport).

Acceptable Outcome AO2.1 of the Dwelling House Code is an applicable requirement in this case and requires (among other things) that a carport on a lot within a residential zone (the case here) be set back at least 6 metres from any road frontage. As the proposed carport will not comply with this requirement, it follows that a code assessable material change of use application could potentially be triggered.

In this regard, the tribunal finds that, having regard to the definition under the PA of a material change of use, the proposed carport would not constitute a material change of use. This conclusion is reached on the basis that the proposed carport would not involve or constitute:

- the start of a new use of the subject site,
- the re-establishment on the subject site of a use that has been abandoned, or
- a material increase in the intensity or scale of the existing use of the subject site for a dwelling house.

In relation to the third dot-point above, the tribunal finds in particular that the area of the proposed carport (less than 18m²) is a minor (and therefore not material) addition to the scale of the existing dwelling house use, in the context of the floor area of the existing house and associated roofed areas. In this regard, it is also noted that the floor area of the carport does not, in any event, constitute “gross floor area” as defined under the planning scheme.

The tribunal also finds that the proposed carport would not constitute or involve any increase in the intensity of the existing dwelling house use, as its addition would not in any way increase the number of vehicles that could normally be accommodated within the site, or the number of vehicle movements that would normally be generated by the use of the premises.

2. Matters in Dispute

The tribunal finds that the only matter in dispute in this appeal is the front setback of the proposed carport and its achievement or otherwise of PO2(d) of the Dwelling House Code.

At the hearing, confirmation was provided by Mr Chamberlain, representing Council, that the only focus of the appeal was the siting of the carport relative to the frontage of the subject site, and the achievement or otherwise of PO2(d) of the Dwelling House Code, and that there were no other aspects of the proposed carport design or siting that were in dispute.

3. Visual Continuity and Pattern of Buildings and Landscape Elements Within the Street

Based upon the site inspection conducted on 11 October 2019, the tribunal finds that Warran Road displays a substantially varied streetscape with no consistent or continuous style of buildings or of landscape elements.

Indeed, the streetscape was found to be characterised by a variety of building forms, scales and styles, as well a wide variety of landscape elements, such as fencing and soft landscaping treatments, in terms of their heights, types, materials and locations.

It was, however, noted that the streetscape featured a fairly consistent pattern of front setbacks to existing buildings.

4. Streetscape Impact

The tribunal noted, during the site inspection, that the location within the subject site of the proposed carport is flanked by existing landscaping of some considerable scale and density, and that a carport in this location, especially a small, open-sided carport such as that proposed, would be all but concealed from general view by this landscaping.

The tribunal therefore finds that the proposed carport would not have a significant impact on the visual values of the streetscape and that it would correspondingly maintain the visual continuity and pattern of buildings and landscape elements (taken together) within the street.

5. Neighbour Support

The tribunal notes that both neighbours, who would be the parties most affected by the proposed carport, have signified their support for the proposal.

The material submitted by the appellant in support of his building application included signed letters from the residents of both adjacent dwellings, both confirming that they had no objection to the proposed carport development.

6. Alternative Siting Options

Based on observations at the site inspection, it was confirmed that the subject site does not contain either a carport or a garage for the protection and storage of vehicles.

It was also noted that there are no practical options available for a carport on the site that would achieve the required 6m front setback, having regard to the extensive landscaping within the front yard of the subject site, and the siting of the existing house relative to the side boundaries of the subject site.

7. Minor Change

The tribunal finds that the changed siting of the proposed carport, as shown in the original DA plans and those later submitted in response to the Council's information request, constitutes a minor change to the application, as defined under the PA.

A minor change to a development application is one that does not result in a substantially different development, and would not cause:

- the inclusion of prohibited development,
- referral to a referral agency, or any extra referral agencies,
- a referral agency to assess the application against, or have regard to, prescribed matters other than those the referral agency must have assessed the original application against, or had regard to when assessing the original application, or
- public notification to be required.

The tribunal finds that the change to the application would not cause any of the above criteria to apply.

Having regard to the characteristics of a substantially different development, as set out in Schedule 1 of the Development Assessment Rules (effective 11 August 2017), the tribunal finds that the change to the application would not result in a substantially different development, because it would not:

- Involve a new use of the site,
- involve a new parcel of land,
- dramatically change the built form in terms of its scale, bulk or appearance,
- change the ability of the proposed development to operate as intended,
- remove any component integral to the operation of the proposed development,
- impact on traffic flow or the transport network,
- introduce any new impacts, or increase the severity of known impacts,
- remove any incentive or offset component that would balance a negative impact, or
- impact on infrastructure provision.

Reasons for the Decision:

27. The tribunal, in accordance with section 254(2)(c) of the PA, has decided this appeal by replacing the decision of the assessment manager to refuse the application, with a new decision to conditionally approve the application, as per the formal decision set out under the heading 'Decision' at the start of this decision notice.
28. This decision is based upon the findings of fact outlined above and, in particular, upon the following:
 1. There is no existing carport or garage on the subject site, and no practical alternative locations that would achieve a front setback of 6m are available.
 2. The location of the proposed carport is heavily screened by substantial landscaping and the proposed, open-sided carport will be all but concealed from general view, will have little to no visual impact on the site or the streetscape and will maintain the visual continuity and pattern of buildings and landscape elements within the street.
 3. As such, the proposed carport is a necessary and reasonable addition to the existing house and will achieve PO2(d) of the Dwelling House Code.

Neil de Bruyn
Development Tribunal Chair
Date: 31 October 2019

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:

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