



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal number:</b>	24-014
<b>Appellant:</b>	Graham Perkins and Jenny Perkins
<b>Assessment manager:</b>	Veen Lyall-Wilson
<b>Co-respondent (concurrence agency):</b>	Sunshine Coast Regional Council
<b>Site address:</b>	11 Seagull Avenue, Coolum Beach Qld 4573 described as lot 119 on RP 89248

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### **Appeal**

This is an appeal made to the Development Tribunal under s.229 of the Planning Act 2016 (Qld) (**Planning Act**). This is an appeal against the decision of Builder Certifier, Veen Lyall-Wilson (**Mx Lyall-Wilson**) of 2 April 2024 (**Decision**) concerning a refusal of a Development Application for Building Works, being additions to a dwelling house for a carport and patio.<sup>1</sup>

The Decision followed a Concurrence Agency Referral Response<sup>2</sup> for Building Works (Carport and Patio) dated 11 March 2024 by Sunshine Coast Regional Council (**Concurrence Agency Response**). The Concurrence Agency Response recommended a part approval and refusal for the carport and patio, being the refusal of the carport construction.

Mx Lyall-Wilson adopted the recommendation in the Concurrence Agency Response and the construction of the carport was refused. Graham and Jenny Perkins (**Appellants**)<sup>3</sup> have appealed against the decision of the Mx Lyall-Wilson.

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<b>Date and time of hearing:</b>	18 July 2024 at 10:00 am
<b>Place of hearing:</b>	11 Seagull Avenue, Coolum Beach Qld 4573
<b>Tribunal:</b>	Gerard (Gerry) Elmore—Chair Catherine Baudet—Member Dr Chris Robertson—Member
<b>Present:</b>	Jenny Perkins —Appellant Graham Perkins—Respondent Mark Cornell—Council representative Zana Larrika—Council representative

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<sup>1</sup> *Planning Act 2016* (Qld) section 229 and schedule 1, section 1, table 1, item 1(a)

<sup>2</sup> *Planning Act 2016* (Qld) s.57

<sup>3</sup> *Planning Act 2016* (Qld) s.229(1)(b)(i)

## Jurisdiction

1. The Tribunal is satisfied it has jurisdiction to hear and decide the appeal made by the appellants.
2. S.229(1)(a)(i) and (ii) and Schedule 1 of the *Planning Act* provides for the matters that may be appealed to a tribunal. S.1(2) of Schedule 1 of the *Planning Act* states Table 1 applies to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l).
3. S.1(2)(g) relevantly makes Table 1 apply to the tribunal if the matter involves “a *matter under this Act, to the extent the matter relates to the Building Act, other than, a matter under the Act that may or must be decided by the Queensland Building and Construction Commission.*”
4. Schedule 9 of the *Planning Regulation 2017* (Qld) (***Planning Regulation***) establishes a statutory framework for building work under the Building Act. S.1, Part 1, of Schedule 9 of the *Planning Regulation* prescribes that “*building work under the Building Act is assessable development, unless it is accepted development under Schedule 7 of the Planning Act.*”
5. Schedule 7, Part 1 of the *Planning Regulation* provides that, “*building work declared under the Building Act, section 21 to be accepted development.*” The building of a carport and patio is not accepted development as declared under s.21 of the *Building Act 1975* (Qld) (***Building Act***) and set out in Schedule 1 of the *Building Regulation 2021* (Qld) (***Building Regulation***).
6. S.5(1) of the *Building Act* adopts a broad definition of what is building work. It includes, relevantly under s.5(1)(a), “*building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure.*”
7. The construction of a carport is assessable development for the purposes of s.43 of the *Planning Act*, as categorised by Schedule 9 of the *Planning Regulation*.
8. A decision to approve a carport is not a decision made by the Queensland Building and Construction Commission.
9. By reason of the foregoing analysis, the subject matter of the appeal is within the jurisdictional limits of the Tribunal.
10. By Notice of Appeal<sup>4</sup> dated 2 April 2024, the appellants filed that appeal with the Registry of the Development Tribunals. The Notice of Appeal was filed within the Appeal period of 20 days.<sup>5</sup>
11. Once a document has been filed starting an appeal of this kind, the Chief Executive<sup>6</sup> must establish an appeal under s.242 of the Act. A tribunal must be established for tribunal proceedings.<sup>7</sup> On 10 May 2024, Registrar Dena Diaz, notified the parties that a Development Tribunal comprising of the members listed above had been established .

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<sup>4</sup> *Planning Act 2016* (Qld) s.230(1)

<sup>5</sup> *Planning Act 2016* (Qld) s.229(3)(h)

<sup>6</sup> *Acts Interpretation Act 1954* (Qld) s.33AB

<sup>7</sup> *Planning Act 2016* (Qld) s.235(1)

12. The Tribunal having been established under the authority of s.235 and 242 of the *Planning Act*, and the subject matter being of the kind within the ambit of s.229(1) and Schedule 1 of the *Planning Act*: the Tribunal has jurisdiction to hear and determine the present appeal.

### **Decision**

13. The Development Tribunal (Tribunal), pursuant to s.254(2)(b) and (c) changes the decision of Mx Lyall-Wilson dated 2 April 2024 and replaces the decision with the decision of the Tribunal that the proposed carport is approved but with the following conditions:
- (a) That the roof, or any part of the carport, must not protrude over the existing boundary fence line.
  - (b) That the carport must not be enclosed with walls on any side.

### **Material considered**

14. In coming to this decision the Tribunal has had regard to the following material:
- (a) Email/Submissions from Marc Cornell (26 July 2024), attaching:
    - i. Developmental Tribunal, Appeal no. 23-027 for 7 Townsend Road, Buderim Qld 4556, Final Decision, Signed (17 August 2023)
    - ii. Developmental Tribunal, Appeal no. 23-065 for 20 Mountain Ash Drive, Mountain Creek Qld 4557, Final Decision, Signed (27 February 2024)
    - iii. Developmental Tribunal, Appeal no. 23-068 for 67 Burnside Road, Burnside Qld 4564, Final Decision, Signed (9 February 2024)
  - (b) Developmental Tribunal, Appeal no. 23-068 for 67 Burnside Road, Burnside Qld 4564, Final Decision, Signed (9 February 2024)
  - (c) Form 10 (Notice of Appeal / Application for Declaration), signed by Graham Perkins and Jennifer Perkins (2 April 2024)
  - (d) Written grounds of appeal/declaration, signed by Graham Perkins and Jennifer Perkins
  - (e) Decision Notice (Part Approval and Part Refusal), Pronto Building Approvals (2 April 2024)
  - (f) General Conditions of Approval (Patio, for building work, residential)
  - (g) Site Plan and Scope of Works Quotation, 11 Seagull Avenue, Coolum Beach Qld 4573, Coastal Patios
  - (h) Engineering and Construction Manual, Ausdeck (April 2023)
  - (i) Form 15 (Compliance certificate for building design or specification), signed by David Lesmes Tirado (14 October 2021)
  - (j) Proposed Roof Rafter Brackets, Coastal Patios, signed by David Lesmes Tirado (3 April 2018)
  - (k) Letter from Sunshine Coast Council to Coastal Patios, Referral Agency Response (11 March 2024)
  - (l) Site Plan and Scope of Works Quotation, Coastal Patios, annotated by Sunshine Coast Council (6 March 2024)
  - (m) Report by Better Design Planning Consultancy

- (n) Letter from Sunshine Coast Council to Coastal Patios, Information Request Concurrence Agency (29 February 2024)
- (o) Sunshine Coast Council Development Services Request for Concurrence Agency Response (Building Work) Form, signed, dated 26 February 2023
- (p) DA Form 2 (Building Work Details)
- (q) Adjoining Owner's Consent, signed by Spears of 9 Seagull Avenue (30 January 2024)
- (r) Site Plan and Scope of Works Quotation, Coastal Patios (30 January 2024)
- (s) Adjoining Owner's Consent, signed by Scott Ashcroft and Deanna Ashcroft of 10 Seagull Avenue (29 January 2024)
- (t) Site Plan and Scope of Works Quotation, Coastal Patios (30 January 2024)
- (u) Adjoining Owner's Consent, signed by Susie Bettanin and Geoff Gates of 12 Seagull Avenue (29 January 2024)
- (v) Site Plan and Scope of Works Quotation, Coastal Patios (30 January 2024)
- (w) Adjoining Owner's Consent, signed by Hayden Rooney of 13 Seagull Avenue (2 February 2024)
- (x) Receipt no. 5859166 for Development Tribunal Application Fees (2 April 2024)

## Background

15. The appellants live at 11 Seagull Avenue, Coolum Beach Qld 457 (**subject address**). The appellants would like to build a carport over their existing driveway.



16. The orange outline above, perhaps basically, is illustrative of where the proposed carport is to be erected. The Tribunal has proceeded on the basis that it is not proposed for the carport to have any walls nor go beyond the fence line into the nature strip.
17. The appellants would like to have a carport at their residences to ensure, amongst other things, the protection of their motor vehicles from the weather.

## The Hearing

18. At the hearing, the central issue was whether the proposed carport, if constructed, would comply with the Performance Outcome 2(d). Specifically, if it would "*maintain the visual continuity and pattern of buildings and landscape elements within the street.*"
19. Performance Outcome 2(d) is listed in the 9.3.6 Dwelling house Code (**Dwelling Code**). The Dwelling Code is established under the Sunshine Coast Planning Scheme 2014

(**Sunshine Coast Scheme**) which was gazetted in the QUEENSLAND GOVERNMENT GAZETTE on 2 May 2014, and commenced on 21 May 2014.

20. The Appellants, by their written submission document that they provided by attaching it to their notice of appeal argue:
- (a) *We have consulted a professional carport manufacturer and installer who has built numerous carports around the immediate area.*
  - (b) *This is to ensure that the addition will be fully integrated with the original dwelling, aesthetically pleasing with premium materials, colour and style to match the existing dwelling.*
  - (c) *The street consists of both new and old homes and by erecting this carport not only would it protect our vehicles, but it will not affect the aesthetics of the street, only enhance it.*
21. Mr Cornell<sup>8</sup>, for the Concurrence Agency, correctly and succinctly outlined the importance of the Performance Outcome 2(d). The Tribunal is in no doubt of the importance of the policy consideration that must inexorably inform the enforcement and promotion of the Performance Outcome 2(d). Those policy considerations should inform what is meant by the phrase, “*maintain the visual continuity and pattern of buildings and landscape elements within the street.*”
22. For this reason, at the conclusion of the hearing, the Tribunal invited the Respondent Concurrence Agency to provide further supporting material regarding how the Tribunal should interpret Performance Outcome 2(d) of the Dwelling Code.
23. On 26 July 2024, Mr Marc Cornell, Team Leader, Planning Assessments, Development Services for the Respondent Concurrence Agency wrote an email of further submissions to the Registry. The following submissions were made in that email:
- *Council assesses every development application on its own merits, gauging this on a case-by-case basis and dependant on certain aspects and elements of the street (e.g. length of the street, curves in the street, cul-de-sacs etc.). However, Council’s assessment is generally limited to being only within the specific street in question (Seagull Street in this instance), and within close proximity to the subject site (the length of Seagull Avenue between the Cinnamon Ave and Sunrise Ave intersections).*
  - *In considering the ‘visual continuity and pattern of buildings in the street’, Council reviews whether there is a consistent and established dominant pattern of buildings within the frontage setback in the street. The word ‘pattern’ by definition is synonymous with ‘repetition’, so if there are numerous examples of structures within the front setback in the street, Council has argued that a repetitive pattern has been established. However, where there are very few or no other examples in the street, Council’s position is that there is not a consistent or repeated pattern, and are unable to support a proposed structure within the front setback, as it conflicts with the relevant assessment benchmark.*
24. Mr Cornell then referred the Tribunal to other decisions of the Tribunal, being:
- (a) Development Tribunals Appeal No 23-027 – 7 Townsend Road, Buderim (**Buderim Appeal**).

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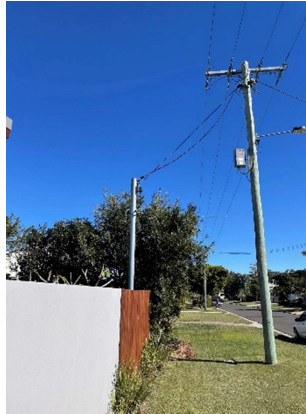
<sup>8</sup> Team Leader, Planning Assessments, Development Services for the Respondent Concurrence Agency

- (b) Development Tribunals Appeal No 23-065 – 20 Mountain Ash Drive, Mountain Creek (**Mount Creek Appeal**).
- (c) Development Tribunals Appeal No 23-068 – 67 Burnside Road, Burnside (**Burnside Appeal**).

### Consideration

25. At the hearing on location, the Tribunal made the following observations of the property:
  - (a) It runs in an east-west direction.
  - (b) It has wide footpaths of approximately 5 metres in width.
  - (c) Footpaths mostly grassed, with mostly concrete crossovers transversing the footpaths to the street edges.
  - (d) The footpaths have power poles and various trees and other types of vegetation unevenly/inconsistently disbursed along them.
  - (e) The built element consists of mixed residential housing, dating from 1970s/80s and with a number of recent residential constructions from the 21st century. A number of the residences have solid fencing along their street frontage boundaries under 2 metres but over 1.5 metres in height.
  - (f) The area/street is clearly undergoing a regenerative urban phase with recent dwelling construction and additions randomly occurring along the streetscape.
  - (g) The most consistent element in the streetscape is the wide footpaths.
  - (h) The site in question has a timber boundary fence on the eastern side which is quite visually dominant.
  - (i) The proposed carport would seem to complete the eastern boundary fence area of this property.
26. A related issue in this proceeding is whether the “*visual continuity and pattern of buildings*” of contiguous streets is relevant to determining whether the proposed carport would maintain such in the subject address. The Tribunal considers the “*visual continuity and pattern of buildings*” in streets other than the subject street is of limited relevance, if any, to the determination of the appeal. The Performance Outcome is directed to “*the street*” not, as it were, “*the suburb*.”
27. There may be other Performance Outcomes for the suburb generally, but the Tribunal concludes that it is correct, as was done here, to assess “*visual continuity and pattern of buildings*” by limiting such assessment to, “*the specific street in question*.”
28. The factors that are relevant to whether a proposed building work will maintain, “*visual continuity and pattern of buildings*” is to be largely informed by what is the limit of the continuity and pattern in the relevant street in the first place. In some streets, there may be several markers of both building patterns and streetscape that inform what would ensure continuity and patterning; in other streets, however, especially those undergoing regeneration, determining the markers of continuity will be more challenging. It follows, again, as was correctly made clear in submissions by the Council, each assessment must be determined on a case-by-case basis.

29. Three photographs taken at the on-site hearing illustrate that there are few markers of continuity in the subject street. These are extracted below:



30. Those photographs reveal:
- (a) Differences in vegetation and growth.
  - (b) Differences in fence line, including height, construction materials and length.
  - (c) Consistency in wide footpaths.
  - (d) Consistency in concrete driveways.
  - (e) General consistency in the fence lines of the properties (except for vegetation grown in front of the fences).
  - (f) No consistency or “repetition” in colours or design of houses.
31. In the relation to the other appeal decisions referred to by the Concurrence Agency, their guidance is limited for the reasons identified. The Tribunal considers that Performance Outcome 2(d) is to be interpreted by the relevant context in which it is being applied, on the specific street in question. Those decisions reinforce the full ambit of factors that fall to be considered when determining whether something is, or is not, consistent with the pattern of the street.
32. The Tribunal concludes that the proposed carport will maintain the visual continuity and building pattern in the subject street. Specifically, the Tribunal notes:
- (a) The proposal will not impact the neighbours and will not visually clutter the streetscape.
  - (b) There is a visual pattern to the street regarding the layout of street, footpaths, land use and other publicly accessible sites along the street only.
  - (c) Many of the built forms in the street (where fencing does not disrupt the view) are only evident when directly standing in front of the places.
  - (d) The built form of the street is, and has undergone, a regenerative process as new dwellings and construction replaces old or adds to residences in the street.

### **Orders of the Tribunal**

33. Pursuant to s.254(2)(b) and (c) of the *Planning Act 2016* (Qld) the decision of Mx Lyall-Wilson dated 2 April 2024 is replaced by this decision of the Tribunal.
34. The Tribunal decides to approve the proposed carport on the following condition:
- (a) That the roof, or any part of the carport, must not protrude over the existing boundary fence line.

(b) That the carport must not be enclosed with walls on any side.

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**Mr Gerard (Gerry) Elmore**  
**Development Tribunal Chair**

**Date: 10 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:

The Registrar of Development Tribunals  
Department of Housing, Local Government, Planning 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)