



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	20-020
Appellant:	Austin John Cameron and Kirsti Ann Campbell
Respondent (Assessment Manager):	Rick Drew of Burnett Country Certifiers Pty Ltd
Co-Respondent (Concurrence Agency):	Bundaberg Regional Council (Council)
Site Address:	4 Ritchie Street Norville Qld 4670 and described as Lot 4, RP 68135 – the subject site

Appeal

Appeal under section 229 and item 1 of table 1 of section 1 of schedule 1 of the *Planning Act 2016* against a decision to refuse a Development permit for construction of an 'as built' Class 10a Carport on residential premises.

The Assessment Manager was directed by Bundaberg Regional Council as the Referral Agency, to refuse the application for building development approval.

The direction from the Council was given on the basis that proposed development did not meet and could not be conditioned to meet the performance outcomes of their Amenity & Aesthetics Policy or the performance criteria of the Queensland Development Code MP 1.2.

Date and time of hearing:	Wednesday 11 November 2020 at 1.00pm
Place of hearing:	The subject site
Tribunal:	Don Grehan – Chair Gregory Schonfelder – Member
Present:	Austin Cameron – Appellant Kirsti Cameron – Appellant Richard Jenner - Council representative Dean Catorall - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016* (PA) sets aside the decision of the Assessment Manager to refuse the application for an 'as built' Class 10a Carport and orders the Assessment Manager to remake the decision, via a new Decision Notice, by 5pm on 28 May 2021 on the following basis:

- (a) The proposed development is to be carried out in accordance with the following plans and specification as appended to this Decision and marked “Development Tribunal 20-020”, subject to minor amendments for compliance with the National Construction Code as determined by the Assessment Manager provided such amendments do not change the dimensions or location of the structure or contravene any of the associated Conditions.

Plans No.	Plan Name	Date
Dwg No.201158, Sheet 1, Rev 1.	Site Plan by Site Plans on Line	01/12/20
DWGQP1 Ref: 29040109114708	Architectural Drawing by McHugh Steel.	-

- (b) The Assessment Manager must impose the following Conditions as part of any Development Permit for Building Work:

- Any cladding, barge capping and or flashing installed on the southern wall of carport must be of light coloured prefinished steel. Zinalume or Galvanized finishes must not be used.
- The opening providing vehicular access to carport must not be fitted with a roller door, tilt door or the like.
- Stormwater off roofed areas (including rainwater tank overflows) is to be discharged to protect the neighbouring allotments from adverse effects.
- The carport and adjoining sheds may only be used, singularly or in combination, as Class 10a building or structure for the private garaging of 3 vehicles maximum.

Background

1. The Assessment Manager, at the direction of Council, refused a development permit for building work in relation to an ‘as built’ Class 10a Carport the siting of which was contrary to Acceptable Solution A2 (i) and (ii) of the Queensland Development Code Mandatory Part 1.2 (QDC MP 1.2) and the size of which was contrary to Acceptable Outcome AO1.3 of the Bundaberg Regional Councils Amenity and Aesthetics, and Building Work Involving Removal or Rebuilding Policy (November) 2017.
2. The Council, directing the refusal, considered that the proposed development failed satisfy the performance outcomes and criteria of the Amenity and Aesthetics Policy and the QDC MP 1.2 stating that:
 - (a) The proposed combined floor area of all domestic outbuildings, being 189.75m², significantly exceeds the maximum square metre floor area anticipated within the Council's Amenity and Aesthetics Policy. Although the existing shed and proposed carport do not have an excessive height, the significant proposed floor area is industrial in scale and appearance, due to its overall size over the 809m² subject site.
 - (b) The bulk of all existing and proposed domestic outbuildings on the premises are centralised towards the southern (side) property boundary, adjacent to the private open space area associated within the neighbouring Dwelling house. The excessive bulk of the outbuildings nearby to the side property boundary will have an adverse impact on the residents on the adjoining dwelling.
 - (c) The Applicant has outlined that the carport is for a working area for the maintenance and restoration of the Applicant's car collection and includes a hoist. The use of the carport for this purpose, including more prolonged and regular usage (comparatively to the parking/storage of vehicles) will have an adverse impact on the privacy of the residents of the adjoining dwelling.

- (d) Due to the design and siting of the structure, in addition to the fact that the structure already exists on the premises, no conditions can be reasonably imposed to adequately reduce impacts on the character of the locality and impact on the privacy amenity of the adjoining premises.
3. The Appellant, dissatisfied with the refusal, lodged an appeal with the Development Tribunal Registry against the Decision of the Assessment Manager.

Jurisdiction

4. Appeal made under the *Planning Act 2016* (PA), section 229(1)(a)(i) and Schedule 1, sections 1(1) and 1(2)(g) and Table 1, item 1(a) being an appeal by the Appellant (the Appellant) against the refusal of all or part of the development application by the Assessment Manager (The Respondent).

Decision framework

5. Section 253 of the PA sets out matters relevant to the conduct of this appeal with subsections 253(2), 253(4) and 253(5) confirming specific aspects.
6. Section 253(2) of the PA confirms that generally, the appellant must establish the appeal should be upheld.
7. Section 253(4) of the PA confirms that the tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.
8. Section 253(5) of the PA however confirms that the tribunal may, but need not, consider:
 - (a) other evidence presented by a party to the appeal with leave of the tribunal; or
 - (b) any information provided under section 246.
9. Section 246 of the PA provides that the Registrar may, at any time, ask a person to give the registrar any information that the registrar reasonably requires for the proceedings; and
10. Section 254 of the PA deals with how this appeal may be decided and the first three subsections of that section are as follows:
 - (1) This section applies to an appeal to a tribunal against a decision.
 - (2) The tribunal must decide the appeal by -
 - (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
 - (e) for a deemed refusal of an application-
 - (i) ordering the entity responsible for deciding the application by a stated time and, if the entity does not comply with the order, deciding the application; or
 - (ii) deciding the application.
 - (3) However, the tribunal must not make a change, other than a minor change, to a development application.
11. Section 254(3) uses the expression 'minor change' and that expression is defined relevantly in Schedule 2 of the PA as follows:

minor change means a change that—

- (a) for a development application—
 - (i) does not result in substantially different development; and
 - (ii) if the application, including the change, were made when the change is made—would not cause—
 - (A) the inclusion of prohibited development in the application; or
 - (B) referral to a referral agency if there were no referral agencies for the development application; or
 - (C) referral to extra referral agencies; or
 - (D) a referral agency to assess the application against, or have regard to, matters prescribed by regulation under section 55(2), other than matters the referral agency must have assessed the application against, or have had regard to, when the application was made; or
 - (E) public notification if public notification was required for the development application;

12. Schedule 1 of the Development Assessment Rules specifically addresses the meaning of ‘substantially different development’ as follows:

- (a) An assessment manager or responsible entity may determine that the change is a minor change to a development application or development approval, where – amongst other criteria – a minor change is a change that would not result in ‘substantially different development’.
- (b) An Assessment Manager or responsible entity must determine if the proposed change would result in substantially different development for a change –
 - (a) made to a proposed development application the subject of a response given under section 57(3) of the Act and a properly made application;
 - (b) made to a development application in accordance with Part 6;
 - (c) made to a development approval after the appeal period.

13. In determining whether the proposed change would result in a substantially different development, the assessment manager or referral agency must consider the individual circumstances of the development, in the context of the change proposed.

14. A change may be considered to result in a substantially different development if any of the following apply to the proposed change:

- (a) involves a new use; or
- (b) results in the application applying to a new parcel of land; or
- (c) dramatically changes the built form in terms of scale, bulk and appearance; or
- (d) changes the ability of the proposed development to operate as intended; or
- (e) removes a component that is integral to the operation of the development; or
- (f) significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or
- (g) introduces new impacts or increase the severity of known impacts; or
- (h) removes an incentive or offset component that would have balanced a negative impact of the development; or
- (i) impacts on infrastructure provisions.

Amended Drawings

15. Following discussions at the hearing, leave was given for the Appellant to provide revised plans to better address concerns regarding site cover and other matters with the subject documentation being submitted to the Development Tribunal Registry for distribution to all parties.

Material Considered

The material considered in arriving at this decision comprises:

16. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on the 18th of August 2020.
17. Correspondence from Council to the Appellant identifying a potential Development Offence in relation to the unauthorised construction dated 31st of January 2020, Reference No. 549.2020.1134.1.
18. A Development Application for Building Works made to the Assessment Manager by the Appellant in relation to an 'as built' Class 10a Carport on the subject site dated the 5th of March 2020, Reference No. DP3458/20.
19. Plans and Specifications for the proposed carport as lodged with Council by the Assessment Manager on the 30th of April 2020 for Concurrence Agency Assessment, Amenity & Aesthetics and Design & Siting (Carport) Reference No. 532.2020.862.1.
20. Council's Referral Notice – Concurrence Agency Decision (Refusal) Notice dated the 17th of July 2020, Reference Number No. 532.2020.862.1.
21. The Assessment Managers Development Application Decision Notice (Refusal) dated the 23rd of July 2020, Reference Number DP3458/20.
22. The *Planning Act 2016* (PA).
23. The *Planning Regulation 2017* (PR).
24. The *Building Act 1975* (BA).
25. The *Building Regulation 2006* (BR).
26. The Development Assessment Rules, Ver 1.2 dated the 6 December 2019 (DA Rules).
27. The Bundaberg Regional Council Planning Scheme 2015.
28. The Dwelling House Code of the Bundaberg Regional Council Planning Scheme 2015.
29. The Bundaberg Regional Council Amenity and Aesthetics, and Building Work Involving Removal or Rebuilding Policy dated November 2017.
30. Queensland Development Code Mandatory Part 1.2 - Design and Siting Standard for Single Detached Housing – On Lots 450m² and over (QDC MP 1.2).
31. Verbal submissions from the Appellant at the hearing.
32. Verbal submissions from Council's representative at the hearing.
33. Email correspondence received from the Appellant on the 15th of December 2020 providing Amended Design and Specifications to the Tribunal via the Registry as distributed to the parties to the Appeal.

34. Email correspondence received from the Co-Respondent on the 23rd of December 2020 providing a response to Appellant's submission of Amended Design and Specifications to the Tribunal via the registry as distributed to the parties to the Appeal.
35. Revised plans and specifications submitted by the Appellant following discussions at the hearing.

Findings of Fact

The tribunal makes the following finding of fact:

36. The subject site is an 809m² uniformly rectangular shaped allotment situated on the north eastern side of Ritchie Street, Norville in an established residential area of Bundaberg. Topographically, the allotment is marginally higher than the crown of Ritchie Street and can best be described a flat with no significant longitudinal or transverse falls.
37. On or about July 2019, the Appellant, in the absence of a Development Permit for Building Work, constructed a 12m x 11m (132m²) steel framed skillion roofed carport with a maximum height of 4.463m and eaves height of 3.5m.
38. The carport is located approximately 22.3m from the road boundary and has been built to the south eastern property boundary adjoining the neighbouring property being 6 Ritchie Street. When considered in conjunction with other Class 10a building or structures on site, being existing awnings, garage and a covered area, the inclusion of the carport results in:
 - (a) A combined floor area of all domestic outbuildings of 189.75m²; and
 - (b) A building or structure within the prescribed side boundary clearance from the south eastern property boundary with a mean height of 3.981m; and
 - (c) The total length of all buildings or parts within the prescribed side boundary clearance from the south eastern property boundary of 16.5m.
39. On the 31st of January 2020, Council having become aware of the unapproved building work, gave correspondence to the Appellant identifying the potential Development Offence and requesting them to remedy matter by either seeking a retrospective development permit for building works for the carport or alternately removing the unapproved building work.
40. On the 5th of March 2020, the Appellant made a Development Application for a retrospective Development Permit for Building Works to Mr Rick Drew, Private Building Certifier from Burnett Country Certifiers Pty Ltd who accepted the engagement as the Assessment Manager.
41. The Assessment Manager, having reviewed the Bundaberg Regional Council Planning Scheme 2015, identified the Bundaberg Regional Council Amenity and Aesthetics, and Building Work Involving Removal or Rebuilding Policy (November) 2017 and the QDC MP 1.2 as predicated assessment benchmarks requiring the referral of the proposal to Council for advice prior to deciding the Development Application.
42. As an assessment benchmark, the Bundaberg Regional Council Amenity and Aesthetics, and Building Work Involving Removal or Rebuilding Policy seeks to ensure particular building work that Council has declared may have an extreme adverse effect on the local amenity, likely amenity, or to be in conflict with the character of the locality, protects and contributes to its surrounding built environment where people live and interact by satisfying Policy Performance Outcome PO1 which states:

PO1

Domestic outbuildings: -

- (1) do not appear to be industrial in scale and appearance;*
- (2) do not adversely impact on the solar access, privacy, outlook and amenity of adjoining premises;*
- (3) do not adversely impact on the prevailing or intended character of the locality;*
- (4) if located on a lot that does not have a dwelling, is sited and is of scale that is consistent with the surrounding built environment and will allow a suitably sized house to be located on the site; and*
- (5) if located on the same lot as a dwelling, is subservient in scale and bulk to the dwelling.*

43. As an assessment benchmark, QDC MP 1.2 seeks to provide good residential design that promotes the efficient use of a lot, an acceptable amenity to residents, and to facilitate off street parking by satisfying Policy Performance Outcome P2 which states:

P2

Buildings and structures:

- (a) provide adequate daylight and ventilation to habitable rooms; and*
- (b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots.*
- (c) do not adversely impact on the amenity and privacy of residents on adjoining lots.*

44. On the 30th of April 2020, the Assessment Manager lodged plans and specifications for the proposed carport with Council requesting their advice as a Referral Agency Reference No. 532.2020.862.1, in relation to the Amenity & Aesthetics and Design & Siting aspects of the relevant assessment benchmarks.

45. On the 17th of July 2020, Council issued a Referral Notice – Concurrence Agency Decision (Refusal), Reference Number No. 532.2020.862.1. to the Assessment Manager directing the development application be refused and stating the reasons for the direction as:

The proposal failed to meet with Council's Amenity & Aesthetics Policy and the Queensland Development Code MP1 .2, Performance Requirements on the following grounds –

The proposal will have an extremely adverse effect on the privacy and amenity of adjoining premises and will adversely impact on the prevailing or intended character of the locality as:

- (a) The proposed combined floor area of all domestic outbuildings being 189.75m² significantly exceeds the maximum m² floor area anticipated within the Council's Amenity and Aesthetics Policy. Although the existing shed and proposed carport do not have an excessive height, the significant proposed floor area is industrial in scale and appearance, due to its overall size over the 809m² subject site.*
- (b) The bulk of all existing and proposed domestic outbuildings on the premises are centralised towards the southern (side) property boundary, adjacent to the private open space area associated within the neighbouring Dwelling house. The excessive bulk of the outbuildings nearby to the side property boundary will have an adverse impact on the residents on the adjoining dwelling.*
- (c) The Applicant has outlined that the carport is for a working area for the maintenance and restoration of the Applicant's car collection and includes a hoist.*

The use of the carport for this purpose, including more prolonged and regular usage (comparatively to the parking/storage of vehicles) will have an adverse impact on the privacy of the residents of the adjoining dwelling.

(d) Due to the design and siting of the structure, in addition to the fact that the structure already exists on the premises, no conditions can be reasonably imposed to adequately reduce impacts on the character of the locality and impact on the privacy amenity of the adjoining premises.

46. On the 23rd of July 2020, the Assessment Manager issue a Development Application Decision Notice (Refusal), Reference Number DP3458/20 to the Appellant in which it is confirmed that the refusal was solely at the direction of the Referral Agency.
47. While Schedule 9 of the PR identifies Amenity & Aesthetics and Design & Siting as separate aspects, Council as the common Referral Agency accepted and processed both aspects as one application.
48. Section 9.2 of the DA Rules clarifies that Referral Agency must give a referral agency response before the end of the referral agency assessment period being 10 business days.
49. While both Amenity & Aesthetics and Design & Siting referral aspects share a common referral agency assessment period, where the referral to Council as the Referral Agency arises from a development application for building work under the BA, Section 58 of the PA and Section 24 of the PR prescribe differing outcomes where the referral agency response is not given before the end of the referral agency assessment period, namely:
- (a) If the referral aspect relates to the amenity and aesthetic impact of a building or structure, and the Council and does not give a referral agency response before the end of the referral agency assessment period the Council is taken to have given a response that they have no requirements for, or advice about, the application; conversely:
- (b) If the referral aspect relates to matters other than the amenity and aesthetic impact of a building or structure, and the Council and does not give a referral agency response before the end of the referral agency assessment period the Council is taken to have directed the Assessment Manager to refuse the development application.
50. According to Council's PD Online tracking system, the chronological details of Council referral agency assessment are as follows:

EVENT	DATE
Application Lodged	01/05/2020
Action Notice Issued	04/05/2020
Information Request Issued	07/05/2020
Response to Information Request Received	18/06/2020
Concurrence Agency Advice/Decision Issued	16/07/2020

51. A review of the chronological details of Council referral agency assessment indicates that their 10-business day referral agency assessment period ended on the 3rd of July 2020.
52. Despite Council issuing a Concurrence Agency Advice/Decision to the Assessment Manager of the 16th of July 2020, pursuant to Section 58 of the PA and Section 24 of

the PR the referral aspects were automatically decided on the 3rd of July 2020 to the following extent:

- (a) The referral aspect relating to the amenity and aesthetic impact of a building or structure, being the relevant provisions of the Bundaberg Regional Council Amenity and Aesthetics, and Building Work Involving Removal or Rebuilding Policy (November) 2017, is taken as Council having no requirements for, or advice about, the application, and
- (b) The referral aspect relating to Design & Siting, being the relevant provisions of QDC MP 1.2, is taken as Council having directed the Assessment Manager to refuse the development application.

- 53. Given that section 58 of the PA imposes the default determination that Council, as a Referral Agency, has no requirements for, or advice about, the application as of the 3rd of July 2020, items (a), (b) and (c) of Council's Referral Notice – Concurrence Agency Decision (Refusal), Reference Number No. 532.2020.862 dated the 17th of July 2020 - are no longer applicable.
- 54. Given that section 24 of the PR imposes the default determination that Council, as a Referral Agency, has directed the Assessment Manager to refuse the development application as of the 3rd of July 2020, item (d) Council's Referral Notice – Concurrence Agency Decision (Refusal), Reference Number No. 532.2020.862 dated the 17th of July 2020 - is no longer relevant.
- 55. The relevant predicated assessment benchmark pertaining to this Appeal arising from the default determination imposed by Section 24 of the PR is Performance Outcome P2 of QDC MP 1.2.
- 56. Verbal submissions put forward by the Appellant at the hearing centred upon the use of the carport in conjunction with restoration of classic motor vehicles as a private hobby, the need to facilitate a hoist to undertake such restoration, the need to manoeuvre vehicles as well as maintaining access to the remainder of the premises.
- 57. Verbal submissions put forward by the Council at the hearing centred upon the size, bulk and location of the carport and other adjoining buildings, their proximity to the southern property boundary and effect on the amenity of the neighbouring property.
- 58. In response to the discussions at the hearing, the Appellant expressed a willingness to explore altering other building and structures on site with a view to addressing concerns regarding site cover and other matters.

Reasons for the Decision

- 59. The Tribunal is of the view that under section 58(1) of the PA, Council is deemed to have no requirements for, or advice about, the amenity and aesthetics aspect of the application and accordingly the appeal should only proceed on the design and siting aspects of Performance Outcome P2 of QDC MP 1.2.
- 60. The tribunal, having considered the extent and nature of the revised design illustrated in the amended drawings appended to this Decision and marked "Development Tribunal 20-020", is satisfied that they reflected only a 'minor change' to the original proposal (in terms of section 254(3) of the PA) for the following reasons:

The amended proposal will not result in a substantially different development as it will not:

- (a) involve a new use - as the use remains the same;
- (b) result in the application applying to a new parcel of land;
- (c) dramatically change the built form in terms of scale, bulk or appearance;
- (d) change the ability of the proposed development to operate as intended;
- (e) remove a component that is integral to the operation of the development;

61. Noting that inconsistencies with Acceptable Outcome A2 of QDC MP 1.2 relate to an 'as built' carport having a mean height of 3.981m and a total length of all buildings or parts of 16.5m within the prescribed side boundary clearance from the south eastern property boundary, the Tribunal is satisfied that:

- (a) In relation to Element (a) of Performance Outcome P2 of QDC MP 1.2, the carport and adjoining buildings are sufficiently separated from the associated Class 1a Dwelling so as to have no detrimental effect on the provision of adequate daylight or ventilation to habitable rooms on the subject site;
- (b) In relation to Element (b) of Performance Outcome P2 of QDC MP 1.2, the carport and adjoining buildings, being located approximately 3.0m to the north of the Dwelling on the adjoining premises has no detrimental effects on the provision of adequate daylight or ventilation to habitable rooms of buildings on adjoining lots; and
- (c) In relation to Element (c) of Performance Outcome P2 of QDC MP 1.2, subject to the Conditions imposed by this Decision, the design and siting of the carport and adjoining buildings as detailed in the amended drawings appended to this Decision and marked "Development Tribunal 20-020", will not adversely impact on the amenity or privacy of residents on adjoining lots.

Don Grehan

Development Tribunal Chair
Date: 23 April 2021

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>

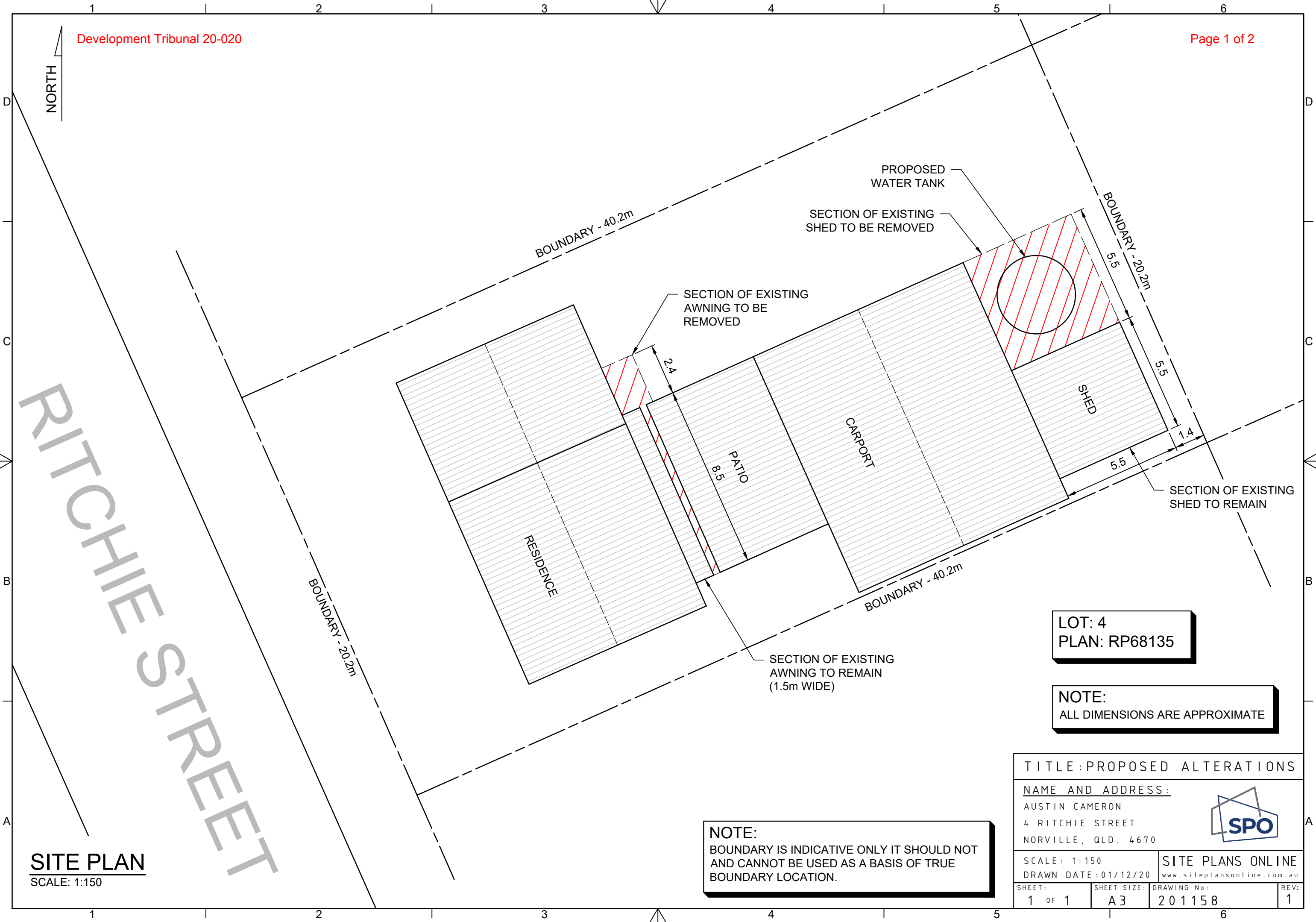
Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833

Email: registrar@hpw.qld.gov.au



RITCHIE STREET

SITE PLAN
SCALE: 1:150

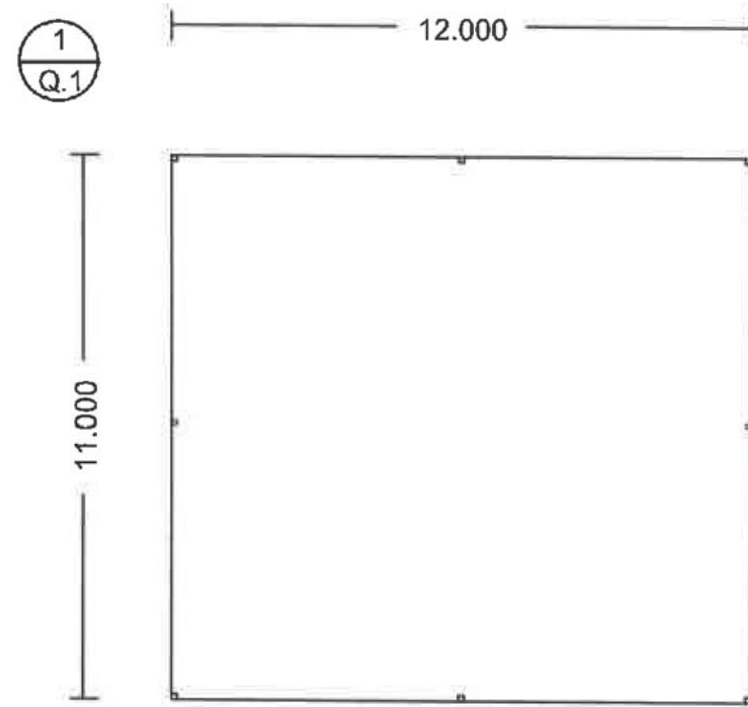
LOT: 4
PLAN: RP68135

NOTE:
ALL DIMENSIONS ARE APPROXIMATE

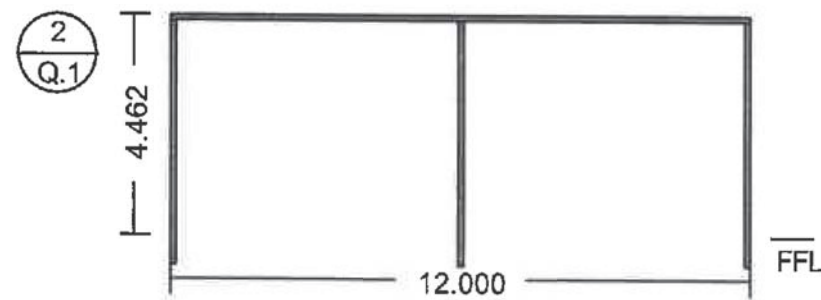
NOTE:
BOUNDARY IS INDICATIVE ONLY IT SHOULD NOT
AND CANNOT BE USED AS A BASIS OF TRUE
BOUNDARY LOCATION.

TITLE: PROPOSED ALTERATIONS			
NAME AND ADDRESS:			
AUSTIN CAMERON			
4 RITCHIE STREET			
NORVILLE, QLD. 4670			
SCALE: 1:150		SITE PLANS ONLINE	
DRAWN DATE: 01/12/20		www.siteplansonline.com.au	
SHEET:	SHEET SIZE:	DRAWING No:	REV:
1 OF 1	A3	201158	1

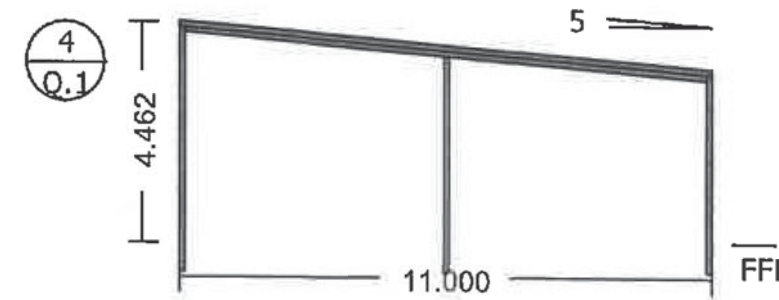




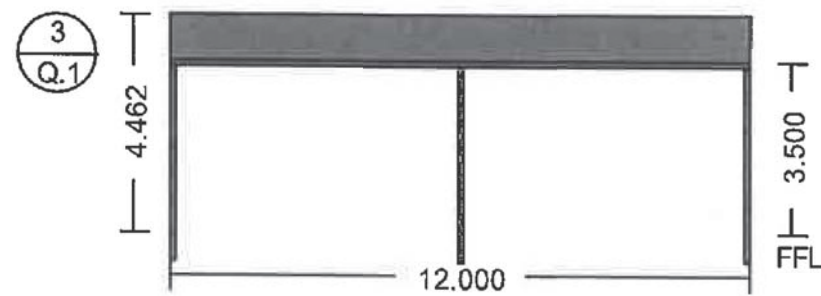
PLAN



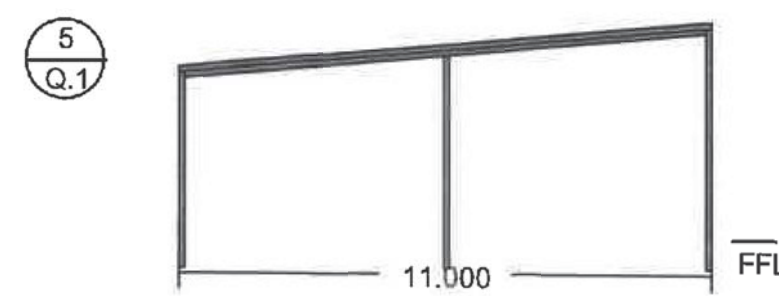
Left Elevation



Front Elevation



Right Elevation



Rear Elevation



CLIENT	
Proposed Carport 11.000x12.000x3.500 Vdes=59m/s (Reg-C)	
At 4 Ritchie St, Norville 4670	
For Kirsti Carron	

DRAWING		
DWGCP1	Ref. 29040109114708	Scale 1:200
ARCHITECTURAL DRAWINGS		