



## Development Tribunal – Decision Notice

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### Planning Act 2016, section 255

<b>Appeal Number:</b>	<b>21-052</b>
<b>Appellants:</b>	Michael Dean and Catherine Jayne Maree Dean
<b>Respondent: (Assessment Manager)</b>	Pronto Building Approval Redland City Council
<b>Co-Respondent: (Referral Agency)</b>	Redland City Council
<b>Site Address:</b>	2 Constance Court, Victoria Point Qld 4165

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### Appeal

Appeal under section 229 and item 1 (a) of table 1 of section 1 of schedule 1 of the *Planning Act 2016* by a property owner against a decision notice issued by Certifier as assessment manager (Respondent) refusing a concurrence agency referral (design & siting) for a carport in front setback.

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<b>Date and time of hearing:</b>	10.30am- 7 December 2021
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Victor Feros OAM – Chairman Kym Barry – Referee
<b>Present:</b>	Catherine Jayne Maree Dean – Appellant Michael Dean- Appellant Brett Dibden – Planning Officer (Redland City Council) and Carol Vito Sula - Planning Officer (Redland City Council) – Co-Respondent

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(b) of the *Planning Act 2016* (PA) **replaces** the decision of the Assessment Manager dated 12 August 2021 with another decision, namely to approve the carport, the subject of the Appeal, subject to the development being generally in accordance with the plans submitted to the Development Tribunal, 3 March 2022 (**Exhibit D**), provided

- (a) that the facing brick pillars be reduced to a maximum height of 1600mm, topped by steel posting above
- (b) that the total overall end-elevation wall height be not more than 2100mm
- (c) that the roof achieves a 15° pitching

## Background

1. The subject site is 2 Constance Court, Victoria Point, a 761m<sup>2</sup> corner allotment with the carport proposed along the Adrian Street frontage. The site contains a dwelling house with attached garage.
2. The owners currently park a vehicle in the garage however have found the garage to have insufficient height clearance for their second vehicle. In order to construct further covered car accommodation, the owners' Certifier, Pronto Building Approvals, submitted a Concurrence Agency Referral for Design and Siting to Redland City Council on 12 May 2021 for a reduced road boundary setback for a carport.
3. On 17 May 2021, in response, Redland City Council, as Referral Agency, directed refusal. The Certifier issued a Decision Notice on 12/08/2021, refusing the Application and citing the direction of the Referral Agency, as follows
  - *The proposal is not consistent with performance criteria P1 in that the proposed location and bulk/design of the carport does not facilitate an acceptable streetscape. In addition to this, the carport will impede upon the outlook of neighbouring residents.*
4. The following submissions were made by the Appellants:
  - the property was purchased in 2016 and during this time, they have increased the aesthetics of the property;
  - the Appellants chose the design and location of the carport to match with the existing patio area (gable roof);
  - the Appellants have provided further drawings of the proposed carport and photos of similar carports in the area (**Exhibit A**);
  - the Appellants have provided written consent from adjoining neighbours (**Exhibit B**); and
  - the Appellants confirmed their willingness to establish a "compromise" with reference to the overall height and other design matters.
5. The following submissions were made by the Co-Respondents:
  - they Appellants preferred the most recent plans supplied at the Tribunal Hearing (**Exhibit A**) which included a reduction in the height of the column with a post above connecting to the roof. They found that this reduced the bulk. The Co-Respondent had viewed these plans onsite the week prior to the tribunal hearing, during a meeting between Council and the Appellants;
  - the Co-Respondent advised that although there were several carports constructed in the area, they only look at the streetscape when viewing up and down the street from the subject site;
  - the Co-Respondent advised that for compliance with P1 of QDC MP1.2, Council needed to take into account the sites fronting the same side as the carport;
  - the Co-Respondent advised that although the Appellants had suggested adding vegetation to lessen the impact, it would not take this into account as they cannot control the protection of vegetation unless it's on Council's property;
  - the Co-Respondent advised that they would prefer a light green colour of the carport, matching the new fence slats; and
  - the Co-Respondent advised that the plans submitted, showing the previous fence, had created an appearance of the carport being greater open bulk structure than how it is now perceived onsite. The previous low timber fence has been replaced with a new slat fence with more

openings than did the previous fence.

6. The following observations were made at the hearing:

- the site is indicated to be approximately 761m<sup>2</sup> and is a corner allotment. The entry to the dwelling is located along Constance Court, however the vehicular and entertaining area is located along Adrian Street;
- the carport columns had been installed prior to the Tribunal Hearing;
- an inspection of surrounding properties appears to have a number of structures built within the building line. Structures such as sheds, carports and other dwellings are observed within the 6m setback of that property boundary; and
- while there were carports located within the front setback in adjoining streets, there were no carports within the 6m front setback located within Adrian Street.

### **Jurisdiction**

7. The tribunal is satisfied that it has jurisdiction to hear this appeal having regard to the PA section 229 and relevant subsections. In this instance, the matter involves building work namely erection of a carport that may have required assessment against the 'planning assessment provisions' under the *Planning Act*.

### **Decision framework**

8. It is noted that:

- The onus rests with the Appellants to establish that the Appeal should be upheld (s253(2) 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 person who made the decision appealed against (s253(4) of the PA);
- The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under s246 of the PA (pursuant to which the registrar may require information for tribunal proceedings; and
- The Tribunal is required to decide the appeal in one of the ways mentioned in s254 (2) of the PA.

### **Materials Considered**

The following materials have been considered:

- 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 2 September 2021, comprising the following documents:
- Form 10 – Notice of Appeal signed by Appellants on 1 September 2021
- Development Application Decision Notice - Refusal (Amended) from Pronto Building Approvals dated 12 August 2021
- Referral Agency Response from Redland City Council dated 18 May 2021.
- Redland City Plan 2018
- The Planning Act 2016 (PA)

- The Development Assessment Rules (s68 of the Planning Act 2016)
- The Building Act 1975 (BA)
- The Building Regulation 2021 (BR)
- The Queensland Development Code (QDC) Part MP1.2
- The verbal submissions made by the parties at the hearing, during the site inspection and correspondence with the Tribunal as referred to in the body of the decision.
- Exhibit A – Plans & Photos Supplied by Owner
- Exhibit B – Neighbours Consent
- Exhibit C – Council's email to Appellants with reference to Council's decision
- Exhibit D – Plans supplied by owner on 3 March 2022

### **Findings of Fact**

9. The Tribunal makes the following findings of fact:
  - The subject site at 2 Constance Court Victoria Point is a residential property with an existing house and pool. The house is owned and occupied by the Appellants since 2016.
  - The Notice of Appeal is based on the proposed installation of a carport within the 6m setback of the building line.
  - Following the Notice of Refusal, the Appellants sought to gain a compromise with the Co-Respondent to add vegetation and reduce the height of the carport. A suitable compromise was not able to be reached by the parties.
  - On observation of the local area, there were no surrounding carport structures within the streetscape.

### **Reasons for the Decision**

10. Based on all the evidence and submissions, the Tribunal is satisfied that with the plans received 3 March 2022 (**Exhibit D**), along with the conditions noted in the Tribunal's Decision on page 1 would both achieve compliance with P1 of QDC MP1.2 and also allow the Appellants to have additional covered car accommodation.

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**Victor Feros OAM**  
**Development Tribunal Chair**

**Date: 20 April 2022**

## **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)**