



## Development Tribunal – Decision Notice

---

### *Planning Act 2016*

<b>Appeal Number:</b>	<b>23-030</b>
<b>Appellant:</b>	Colleen Peny
<b>Respondent: (Assessment Manager):</b>	Veen Lyall-Wilson
<b>Co-respondent: (Concurrence Agency):</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	82 Queen Street, Caloundra described at Lot 14 on C276638 – the subject site

---

### **Appeal**

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the decision of the Assessment Manager, as directed by the Concurrence Agency for refusal of a Development Permit for Building Works for a Class 10a structure being a carport.

The decision followed a referral agency response by the Sunshine Coast Regional Council directing refusal of the application on the grounds that the proposed carport would not maintain the visual continuity and pattern of the buildings and the planned developments within the street in accordance with the Sunshine Coast Planning Scheme 2014 – Building House Code, Performance Outcome 2(d).

---

<b>Date and time of hearing:</b>	Tuesday, 1 August 2023 at 1.00pm
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Mark Chapple – Chair Elizabeth Anderson – Member
<b>Present:</b>	Colleen Penny – Appellant Paul Gleeson – Appellant supporter Mitch Schwieso – Council representative Aleida Maric – Council representative

---

### **Decision:**

The Development Tribunal (**Tribunal**), in accordance with section 254(d) of the *Planning Act 2016* (PA), sets aside the decision of the Assessment Manager to refuse the application and orders the Assessment Manager to re-make the decision within 25 business days of the date of this Decision Notice, as if the Concurrence Agency had no requirements and if the Assessment Manager approves the application with the following conditions along with any other conditions the Assessment Manager decides are reasonable and appropriate

–

1. That no side of the carport be enclosed.
2. That the existing fence or similar fence and gate be maintained.
3. That the tree at the subject site in the north-east corner be maintained.
4. That the Carport be Surf Mist in Colour or similar

5. That a Registered Professional Engineer of Queensland (RPEQ) certify to the Assessment Manager that the constructed carport meets the appropriate standards required by law with respect (i) the connection between the carport and the existing roof of the house (ii) the adequacy of the of the posts supporting the carport, (iii) the adequacy of the bracing of the carport (iv) fire safety including separation from adjoining buildings and (v) the disposal of storm water.

## Background

The subject site –

- Is located on the southern side of Queen Street, two houses to the east from where Queen Street intersects with Bower Street.
- Queen Street where the subject site is located comprises of a main traffic thoroughfare and a service road running parallel to the main thoroughfare to the south. The subject site addresses the service road.
- The land slopes generally downward from Queen Street toward the south.
- Improvements on the subject site include a timber dwelling house, a fence and gate along the boundary of the subject site on Queen Street and a swimming pool at the rear of the house. There is an established tree in the south-east corner of the subject site between the dwelling house and the boundary of Queen Street.
- The subject site is included in the medium density residential zone of the Sunshine Coast Planning Scheme 2014.
- There is a bus stop and shelter located in front of the subject site on land between the service road and the main traffic thoroughfare.

The Appellant made application to the Respondent, Veen Lyall-Wilson of Pronto Building Approvals for a Development Permit to allow the construction of a Class 10(a) building in the form of a carport. The proposed carport was to be located between the house and the front boundary on the western side of the subject site.

A request was made to the Co-respondent, Sunshine Coast Regional Council and a response dated 24 April 2023 was given directing the Respondent to refuse the application. The response included the following passage –

“For the reasons identified below:

The proposal does not meet Performance Outcome 2(d) of the Dwelling House Code:

*Planning Scheme, Dwelling House Code, Performance Outcome 2(e) – garages, carports and shed maintain the visual continuity and pattern of buildings and landscaped elements within the street.*

1. The visual continuity and the overall pattern of Queen Street comprises of dwellings approximately 4.5 metre to 6.0 metre from the road frontage with carports, garages and sheds predominantly set back 6.0 metre, and the continuity of the built form generally being maintained. It is noted that one garage structure was approved at 64 Queen Street in 2009 (built to boundary) under the provisions of the Caloundra Scheme Plan 2004, the structure being constructed nine years prior to approval (2000-2001). It is considered that one encroachment in this street of 15 dwellings does not constitute a pattern of buildings/structures in the street in accordance with the current Planning Scheme provisions. It is considered that the carport proposed 400mm from the front boundary is inconsistent with the set-back pattern of the street. The proposed carport would not maintain the visual continuity and pattern of buildings and landscape elements with the street in accordance with the Sunshine Coast Planning Scheme 2014 – Dwelling House Code, Performance Outcome 2(d).”

## Jurisdiction:

Section 229(1) of the PA provides that Schedule 1 of the PA, “the Schedule”, states that the matters where there may be an appeal to the Tribunal.

Section 1(1)(b) of the Schedule provides that the matters stated in Table 1 of the Schedule, "Table 1" are matters that may be appealed to the Tribunal. However, section 1(2) of the Schedule provides that Table 1 only applies to the Tribunal if the matter involves one of a list of matters set out in section 1(2).

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 (Qld) 1975 other than a matter that must be decided by the Queensland Building and Construction Commission.

In the circumstances, Table 1 applies to the Tribunal in this appeal. Accordingly, the Tribunal is satisfied that it has jurisdiction to hear and decide the appeal.

### **Decision Framework:**

For this appeal, the onus generally rests with the Appellant to establish that the appeal should be upheld (section 253(2) of PA).

The Tribunal is required to hear and decide the appeal by way of consideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA). However, the Tribunal may nevertheless, but need not consider other evidence presented by a party with the leave of the Tribunal and any information provided under section 246 of the PA.

The Tribunal is required to decide the 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)).

### **Material Considered**

The material considered in arriving at this decision comprises:

1. Form 10 – Notice of Appeal.
2. Referral Agency Response – 24 April 2023.
3. Decision Notice – Pronto Building Approvals – 25 May 2023.
4. Letter of Consent – Lochlan Johnson – 6 February 2023.
5. Planning Assessment Report – May 2023.
6. Plan of proposed carport with a width dimension of 7,000mm.
7. Plan of proposed carport with a width dimension of 7,300mm.
8. Elevation drawing of proposed carport.
9. Specification for proposed carport.
10. Email and attachments from Mitch Schwieso of the Sunshine Coast Regional Council to Development Tribunals of 8 August 2023.
11. Email and attachments from Colleen Penny to Development Tribunals of 9 August 2023 forwarding emails from Carlee of Coast Patios of 9 August 2023 and Monica Billing of Pronto Building Approvals of 9 August 2022.
12. Email from Colleen Penny to Development Tribunals of 10 August 2023.
13. Email and attachments from Colleen Penny to Development Tribunals of 11 August 2023
14. Email and attachments from Colleen Penny to Development Tribunals of 14 August 2023 forwarding email and attachments of 14 August 2023 from Monica Billing of Pronto Building Approvals of 14 August 2023.

15. Council provided a submission advising that apart from the carport at 64 Queens Road which was built to the boundary and was approved under a previous planning scheme, there were no other carports or other buildings which intruded into the 6.0 metre setback from the Queens Road boundary among the 15 dwelling houses between Bower Street to the west and Ulma Street to the east, in the circumstances the Council argues that the proposed carport would not maintain visual continuity and pattern of buildings and landscaping elements within the street.

16. Matters put forward by the Appellant in support of the appeal included the following –

- The land drops away from the Queen Street boundary towards the rear by a height of about 2.0 metres and that to create a safe space for carparking 6.0 metres back from the boundary would involve the raising of ground levels in that location.
- Historically, motor vehicles have always been parked in the location of the proposed carport.
- The subject site is located on the service road section of Queen Street with a bus stop shelter located in front of the subject site between it and the main traffic thoroughfare on Queen Street.
- The medium density zoning of the land is facilitating a transition from single detached houses to medium density style housing.
- That the proposed carport would be surf mist or similar in colour.

### **Findings of Fact**

The Tribunal makes the following findings of fact –

- (a) The subject site slopes away from the boundary with the Queen Street towards the southern or rear boundary of the property which would require elevation of the ground level if vehicle accommodation was constructed 6.0 metres back from the front boundary adjacent to the dwelling.
- (b) The subject site is located in the medium density residential zone of the Sunshine Coast Planning Scheme 2014.
- (c) The streetscape between Bower Street and Ulma Street is located on a service road away from the main traffic thoroughfare and is partially obscured by vegetation between the service road and the main traffic thoroughfare. There is a bus shelter between the subject site and the main traffic thoroughfare which further obscures vision of the subject site from main traffic thoroughfare of Queen Street.
- (d) There is a fence and gate along the Queen Street frontage of the subject site which materially obscures vision of the subject site from Queen Street.
- (e) Lochlan Johnson of 84 Queen Street has provided permission for the proposed carport.
- (f) The pattern of buildings and landscape elements between Bower Street and Ulma Street is varied and includes recently constructed medium density housing.
- (g) Among the Appeal documents there were different versions of the plan view of the carport one showing a width of 7000 mm and one a width of 7300 mm. The Tribunal finds that is the version of depicting a proposed carport width of 7000mm attached to the email of Mitch Schwieso to the Development Tribunals in item 10 of the Material Considered that was the version that was subject to the Assessment Manager's decision and that is the version the subject of this decision and consequent orders.

**Reasons for Decision:**

The Sunshine Coast Planning Scheme 2014, Dwelling House Code includes the following performance outcomes and acceptable outcomes with respect to garages, carports and sheds –

<b>Garages, Carports and Sheds</b>			
<b>PO2</b>	Garages, carports and sheds: (a) preserve the amenity of adjacent land and dwelling houses; (b) do not dominate the <i>streetscape</i> ; (c) maintain an adequate area suitable for landscapes adjacent to the road <i>frontage</i> ; and (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.	<b>AO2.1</b>	Where located on a lot in a <i>residential zone</i> , a garage, carport or shed:- (a) is <i>setback</i> at least 6 metres from any road <i>frontage</i> ; (b) does not exceed a height of 3.6 metres; and (c) had a total floor area that does not exceed 56m <sup>2</sup> .  Note – AO2.1(b) and (c) do not apply to a garage under the main roof of a <i>dwelling house</i> .  Note – AO2.1(a) alternative provision to QDC.
		<b>AO2.2</b>	Where located on a lot in a residential zone, the total width of a garage door facing a street (and that is visible from the road <i>frontage</i> ) does not exceed 6 metres within one plane, with any additional garage door being set back a further 1 metre from the street <i>frontage</i> to break up the apparent width of the garage façade.

The position of the Co-respondent Council was that the proposed carport did not meet the Performance Outcome PO2(d) “*Maintain the visual continuity and pattern of buildings and landscape elements within the street.*”

The main consideration was for the Tribunal to determine whether the proposed carport maintains the “visual continuity and pattern of buildings and landscape elements within the street.”

The Tribunal notes that among the 15 dwellings on the southern side of Queen Street between Bower Street to the west and Ulma Street to the east, there is only one other dwelling which is a carport within the 6.0 metre setback from Queen Street. However, the Tribunal finds that the proposed carport will maintain visual continuity and pattern of buildings and landscape elements within the street for the following reasons –

- (a) The pattern of buildings and landscape elements between Bower Street and Ulma Street is varied and diverse including a three storey recently constructed medium density residential building.
- (b) The existing fence and gate along the Queen Street boundary of the subject site largely obscure the proposed carport from the street. It is for this reason the Tribunal has conditioned its approval requiring that the fence and gate be maintained.
- (c) The bus shelter in front of the subject site on land between the service road and the main traffic thoroughfare is a dominant visual aspect of the streetscape in that location which allows the proposed carport to maintain visual continuity.
- (d) The proposed colour of the proposed carport (surf mist) tones with the colour of the dwelling house at the subject site allowing the proposed carport to maintain visual continuity.

(e) The proposed carport maintains the established tree near the north-east corner of the subject site which is an important landscape element of the streetscape.

---

**Mark Chapple**  
**Development Tribunal Chair**

**Date: 24 October 2023**

## **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 Energy and Public Works  
GPO Box 2457  
Brisbane QLD 4001

**Telephone (07) 1800 804 833**

**Email: [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)**