



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-008
Appellant:	Shane Melville and Melissa Acreman
Assessment manager:	Cathy Jensen
Co-respondent (concurrence agency) :	Sunshine Coast Regional Council
Site address:	18 Royal Close, Wurtulla Qld 4575 described as Lot 266 on Crown Plan CG6312 – the subject site

Appeal

Appeal under Appeal under section 229 and schedule 1, section 2, table 1, item 1(a) of the *Planning Act 2016* against the decision of the assessment manager, as directed by the Concurrence Agency refusing a development application for a development permit for the construction of a carport.

Date and time of hearing:	Tuesday, 23 July 2024 at 10.00am
Place of hearing:	The subject site
Tribunal:	Mark Chapple—Chair Amy Degenhart—Member Sean Cullen—Member
Present:	Shane Melville—Appellant Cathy Jensen—Respondent Richard Jones—JDBA Certifiers, assisting the Respondent Zana Larikka, Daniel Rundle—Council representatives

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 and orders that the Assessment Manager 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, including the following conditions along with any other conditions the Assessment Manager decides are reasonable and appropriate –

1. That no side of the carport, including the entrance, be enclosed or fitted with a screen, wall, door or gate.
2. That the area between the proposed carport and eastern boundary and between the driveway leading to the proposed carport and the eastern boundary remain available for landscaping.

Background

1. The Appellants are the registered owners of the subject site.
2. The subject site is in Royal Close, Wurtulla within the area of the Sunshine Coast Regional Council.
3. Royal Close is configured in a 'T' shape and is accessed by Regatta Boulevard and terminates at *cul de sacs* – one at its northwestern end and one at its southeastern end. The frontage of the subject site is to the southern side of Royal Close and the rear of the subject site addresses the Tokara Canal waterway. The subject site has been developed with a dwelling house and swimming pool and shade-sail style carport. The Tribunal makes no finding about the lawfulness or otherwise of the shade sail-like carport.
4. Application was made to the Respondent for a development permit for the construction of a carport.
5. The Respondent Assessment Manager applied to the co-respondent – Sunshine Coast Regional Council – for a Referral Agency response and received a response directing that the Respondent Assessment Manager refuse the application.
6. On 12 February 2024, the Respondent Assessment Manager decided as required by the Referral Agency Response to refuse the application.
7. In parallel to making the request for the Referral Agency Response, an application was made to the Sunshine Coast Regional Council for a Development Permit with respect to the same proposed carport. On 29 January 2024, the Sunshine Coast Regional Council refused that application.
8. At the hearing, the Tribunal was informed by Zana Larikka of the Co-respondent Council that the application to the Council was believed to be necessary in addition to the request for the Referral Agency Response as the height of the proposed carport exceeded 3.6 metres and as such required a separate assessment by the council with respect to that item.
9. The location of the proposed carport is shown on the site plan from Building Designs by Skye (item 11 of the material considered). The proposed carport is intended to be placed in front of the existing house, 1,719 mm from the eastern boundary. The front of the proposed carport is 237mm from the boundary on the carport's western side and 4,507mm from the carport's eastern side.
10. The Sunshine Coast Planning Scheme 2014, Dwelling House Code, includes the following performance outcomes and acceptable outcomes with respect to garages, carports and sheds -

Garages, Carports and Sheds			
PO2	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	AO2.1	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) has a total floor area that does not exceed 56m ² .

	(d) maintain the visual continuity and pattern of buildings and landscape elements within the street.	AO2.2	<p>Note – AO2.1(b) and (c) do not apply to a garage under the main roof of a <i>dwelling house</i>.</p> <p>Note – AO2.1(a) alternative provision to QDC.</p> <p>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.</p>
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Jurisdiction

11. Section 229(1) of the *Planning Act* provides that Schedule 1 of the Act (the Schedule), states that the matters where there may be an appeal to the Tribunal.
12. 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).
13. 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.
14. Considering the provisions mentioned, the Tribunal is satisfied that it has jurisdiction with respect to the decision to refuse the application made by Cathy Jensen of JDBA Certifiers.
15. With the appeal documents there is a Decision Notice from the Sunshine Coast Regional Council refusing an application for '*Development Permit for Carport Work Assessable against the Planning Scheme (carport)*'. As noted already, at the hearing, Zana Larikka of the Co-respondent Council informed the Tribunal that a separate application to the Council for assessment against the Planning Scheme was required in addition to the application to the Respondent as the proposed carport exceeded 3.6 metres in height as provided in Acceptable Outcome 2.1(b) of the Council's *Dwelling House Code* which triggered assessment against the Planning Scheme.
16. At the Tribunal, all parties stated they believed the Tribunal had jurisdiction to hear the matter however, the Tribunal must satisfy itself this is the case.
17. While the Tribunal is not bound by earlier decisions of other tribunals, the Tribunal has obtained benefit from considering the decision in Appeal 19-003, which also involved the Co-respondent Council and a proposed carport and where a similar issue was raised.
18. A helpful summary of the relevant legislation and regulation from Decision 19-003 is set out below –
 45. *Building height is a Building Assessment Provision regulated by Performance Criteria P4 of QDC MP1.2 via either compliance with the Acceptable Solution A4 or by the formulation of an alternate solution that addresses the relevant criteria.*

46. *Road Boundary Setbacks are a Building Assessment Provision regulated by Performance Criteria P1 of QDC MP1.2 via either compliance with the Acceptable Solution A1 or by the formulation of an alternate solution that addresses the relevant criteria.*
47. *Section 32(b) of the BA confirms that a local government may make or amend a provision of a planning scheme about an aspect of, or matter related or incidental to, building work prescribed under a regulation.*
48. *Section 10 of the BR confirms that, for a single detached class 1 building or a Class 10 building or structure located on the same allotment as a single detached Class 1 building a local government planning scheme may provide that all or some of performance criteria 4 (building height) of QDC Part 1.2 and the relevant acceptable solutions under the part for the performance criteria apply, or may, provide for qualitative statements for matters provided for under all or some of the performance criteria if the scheme also provides for quantifiable standards for the statements.*
49. *Section 32(c) of the BA confirms that a local government may make or amend alternative provisions under section 33 of the BA.*
50. *Section 33 of the BA confirms that a Planning Scheme may include provisions (alternative provisions) that are alternative or different to the QDC boundary clearance subject to those alternative provisions being a qualitative statement or quantifiable standard.*
51. *Part 3, Division 2, Table 3 (Design & Siting), Column 2 Section (b) of Schedule 9 of the PR confirms that where, under the Building Act, section 33, an alternative provision applies for the building work and, under the provision, the proposed building or structure is not of the quantifiable standard for a relevant qualitative statement under the provision, the Local Government is the referral agency for the assessment of whether the proposed building or structure complies with the qualitative statement stated in the paragraph.*
52. *Part 3, Division 2, Table 3 (Design & Siting), Column 2 Section (c) of Schedule 9 of the PR confirms that:*
 - (i) *where, under the Building Regulation, section 10, the planning scheme includes a provision about a matter provided for under performance criteria P4, P5, P7, P8 or P9 of the Queensland Development Code, part 1.1 or 1.2; and*
 - (ii) *the provision applies for building work; and*
 - (iii) *under the provision, the proposed building or structure is not of the quantifiable standard for a relevant qualitative statement under the provision.*

The Local Government is the referral agency for the assessment of whether the proposed building or structure complies with the qualitative statement stated in the paragraph.

19. *Considering the relevant provisions, the Tribunal finds that the Performance Outcomes in PO2 and the acceptable outcomes AO 2.1 of the *Dwelling House Code* of the Sunshine Coast Planning Scheme, are qualitative and quantifiable statements and are alternative provisions to the QDC MP 1.2 for design and siting purposes as provided in the *Building Act*, s.32(b) and s.33.*
20. *The Tribunal finds that, regarding the height of the carport, in accordance with Part 3, Division 2, Table (Design and Siting), column 2, section (c), schedule 9 of the *Planning Regulation*, the Council was a Referral Agency rather than Assessment Manager.*

21. In the circumstances, the Tribunal is satisfied that it has jurisdiction.

Decision framework

22. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
23. 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 (section 253(4) of the PA).
24. 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).
25. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

26. The material considered in arriving at this decision was:
- (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 3 March 2024.
 - (b) Decision Notice refusal – Cathy Jensen – 12 February 2024
 - (c) Letter – Sunshine Coast Regional Council – 2 February 2024 with Decision Notice refusal and Referral Agency Response
 - (d) Tax Invoice – Sunshine Coast Regional Council – 9 January 2024.
 - (e) DA Form 2 Building Work Details 9 January 2024.
 - (f) Referral Checklist for building work.
 - (g) Planning Report – JDBA Certifiers.
 - (h) Drawing – proposed carport coversheet by Building Designs by Skye.
 - (i) Drawing – Contour and feature survey – Axis Surveys.
 - (j) Drawing – proposed carport – Building Designs by Skye site plan.
 - (k) Drawing – proposed carport – Building Designs by Skye – ground floor working drawings.
 - (l) Drawing – proposed carport – Building Designs by Skye – Elevations Working drawings.
 - (m) Drawing – proposed carport – Building Designs by Skye – roof plan working drawings.
 - (n) Drawing – proposed carport – Building Designs by Skye – sections AA and BB.
 - (o) Drawing – proposed carport – Building Designs by Skye – set out plan working drawing.
 - (p) Drawing – proposed carport – Building Designs by Skye- electrical plan.
 - (q) Three sheets with perspective drawings of proposed carport.
 - (r) Seven sheets with photographs of Royal Close.
27. Tribunal members and the parties together as a group conducted an inspection of Royal Close.

Findings of fact

28. The Tribunal makes the following findings of fact:

- (a) The Appellants are the owners of the subject site.
- (b) Apart from the access road off Regatta Boulevard, Royal Close is on essentially flat land that runs between the northwest and southeast and terminates in *cul de sacs* at each end.
- (c) The land at 18 Royal Close is 710 m² with an irregular front boundary.
- (d) The site is on the southern side of Royal Close, along the western stretch of the road, where the road pavement begins to flare to form the *cul de sac*.
- (e) Due to the circumstance of the *cul de sac*, the verge at 18 Royal Close increases from the 4m average by more than 2m to approximately 6.1m at the point of the minimum proposed setback of 237mm.
- (f) If an equivalent of a 4m verge was applied to 18 Royal Close and the setback measured from that hypothetical equivalent boundary line, the minimum setback to the corner of the carport would increase significantly from the proposed 237mm.
- (g) All lots on Royal Close have been developed with residential houses with a mixture of high and low set dwellings and a mixture of styles, with some original houses being of the style of around the 1980s.
- (h) There is a shade sail over a double driveway substantially less than 6m from the front boundary at 4 Royal Close.
- (i) There is a shade sail over the driveway at the subject site with a column in the approximate location of one of the columns of the proposed carport.
- (j) The height of the existing shade sail varies and is similar to the soffit of the proposed carport at its lowest point closest to the front boundary but is generally higher than the soffit near the house.
- (k) There is a carport built in front of the house at 11 Royal Close substantially less than 6m from the front boundary, as well as an associated shed, which is also built to the side boundary.
- (l) There is a gate house at number 14 Royal Close built at or effectively to the front boundary.
- (m) None of the structures on Royal Close that could be easily determined during the walking inspection as being located within the 6m setback matched the style, construction, or roof pitch of their associated dwelling houses.
- (n) There is a mixture of fenced and unfenced front yards and a variety of fencing styles.
- (o) Established street trees feature heavily on both sides of Royal Close.
- (p) Determined by way of a walking tour of the street by all attendees of the hearing, the pedestrian experience on Royal Close is a mixture of:
 - walking on the street, as a desirable option due to a combination of the low traffic volumes and the smooth character of the street paving; and,
 - walking on the turfed verge, just inside the line of the street trees and generally following the alignment of the kerb, as visually determined by noting the wear caused by pedestrian traffic to the turf on the verge.

29. Noting the exceptions above, the Royal Close streetscape is otherwise characterised by houses and associated carport structures that are generally consistently set back from the front boundary.

Reasons for the decision

Would the carport dominate the streetscape?

30. The widening of the verge at the front of the subject site, due to the part of a *cul de sac* on which it is located, has the consequence of reducing the impact of the proposed reduced setback. If the *setback* were measured from the hypothetical 'equivalent boundary' consistent with a continuation of the front boundary line of the bulk of the allotments in Royal Close, the unique configurational circumstance means that the impact of the proposed carport to the streetscape is effectively as though the minimum setback was over 2,200mm from the front boundary, resulting from the widened verge.
31. The carport has been designed to visually integrate with the associated dwelling house, using similar material and roof form, and in some respects resembles an extension of the main roof line of the dwelling. The Tribunal finds that this visual integration reduces the impact of the carport on the streetscape.
32. The proposed carport is not enclosed; it effectively is a roof structure on poles allowing visual continuity through the carport.
33. The location of the site near a *cul de sac* head lessens the visual prominence of the site in the context of the overall streetscape of Royal Close.
34. Under the Sunshine Coast Planning Scheme 2014, streetscape means 'the collective combination of urban form elements that constitute the view of a street and its public and private domains. These elements include buildings, roads, footpaths, vegetation, open spaces and street furniture'.
35. The truncated nature of the property, by virtue of the *cul de sac*, is relevant to the consideration of the streetscape. The site is in a less visible part of the street.
36. There are other structures within the streetscape within 6m of the property boundary. There is opportunity for any property to build a fence up to 2m high. The 'precedent' examples highlighted by the Appellant are relevant to the extent of considering the nature and character of the streetscape and the Tribunal has taken these matters into consideration.
37. Considered as a whole, the streetscape is characterised by dwellings and associated structures set back from the street, and landscaping between dwelling houses and the street. The existing street trees form a part of the character of the streetscape, although the Tribunal notes the potentially non-permanent nature of the street trees.
38. The Appellant has highlighted that its location near a *cul de sac* means it will not be seen by many people and the Tribunal gives weight to that consideration.
39. Dominate is not defined by the planning scheme. The Macquarie dictionary includes the meanings '*to tower above; overshadow... to occupy a commanding position*'.
40. Considered in its context, despite its proposed height, bulk and scale, the proposed carport would not 'dominate' the streetscape.
41. For the above reasons, the proposal complies with PO2(b).

Would the carport maintain the visual continuity and pattern of buildings and landscape elements within the street?

42. As indicated above, the streetscape is characterised by dwellings and associated structures set back from the street, and landscaping between dwelling houses and the street.
43. The pattern of buildings generally reflects substantive structures generally being well set back from the street. There are fences and 'gatehouses', and a few examples of

'lightweight' shade sail or carport structures, sheds between the dwelling house and the street.

44. Considered as a whole, there is a 'sense of openness' along the street, with substantive landscaping between dwelling house and the street.
45. The proposal would change the pattern of buildings by introducing a roof structure of substantive height and scale, close to the front boundary, between the street and the dwelling house.
46. Considering the location of the subject site at the flare of the *cul de sac* and the consequential widening of the verge, and the visual integration of the design of the carport with the style and form of the roof of the existing dwelling house, the Tribunal finds that the proposed carport will result in minimal disruption of the *visual* continuity and pattern of buildings and landscape elements within the street.
47. The Tribunal is aware of and has taken into consideration the decision of the Committee in Appeal 42-14 considering a proposed carport in a similar location at the subject site where the committee upheld the certifier's decision to refuse the application. The Tribunal finds that changes to the streetscape and integration in design, particularly the continuity of the proposal with the style and form of the roof of the existing dwelling house, in this case distinguish the proposal considered in Appeal 42-14.
48. For the above reasons, the proposal complies with PO2(d).

Mark Chapple
Development Tribunal Chair
Date: 8 October 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:

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