



Development Tribunal – Decision Notice

Planning Act 2016 Section 255

Appeal number: 23-027

Appellants: Mr Everard Kloots and Ms Lynn Vlismas

Assessment manager: Michael Grummett

**Co-respondent
(concurrency agency):** Sunshine Coast Council

Site Address: 7 Townsend Road, Buderim and described as Lot 4 on
RP 70281 (**Land**)

Appeal

Appeal under section 229 and schedule 1, table 1, item 1 of the *Planning Act 2016* (Qld) (**PA**) against the decision by Michael Grummett as assessment manager to refuse a development application for building work for additions to a dwelling house (carport). The decision to refuse the application is on the basis of a concurrency agency referral response issued by Sunshine Coast Council.

Date and time of hearing: 17 August 2023 at 11am

Place of hearing: The Land

Tribunal: Amelia Prokuda — Chair
Catherine Brouwer — Member

Present: Everard Kloots and Lynn Vlismas — Appellants
Michael Grummett and Emily Oxenford, Suncoast Building Approvals — Respondent
Cameron Wilson-Yapp and Brooke Camarsh, Sunshine Coast Council — Co-Respondent

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(a) of the PA confirms the decision of the Assessment manager to refuse the development application for a development permit for building work – Additions to a Dwelling House (carport) on the Land.

Background

1. On or about 22 March 2023, the Assessment manager lodged a development application for a development permit for building work for additions to a dwelling house (carport) on the Land with the Co-Respondent for assessment as a referral agency. The development application was referred to the Co-Respondent for assessment because the front boundary setback of the proposed carport does not comply with the standard stipulated in the Sunshine Coast Planning Scheme 2014.
2. On 12 May 2023, the Co-Respondent issued a referral agency response directing the Assessment manager to refuse the development application. The referral agency response contained the following reasons for refusal:

Performance Outcome PO2 (d) of the Dwelling House Code:

PO2 (d) – Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.’

- *The proposed carport would not maintain the visual continuity and pattern of the buildings in the street. There do not appear to be any other carports along Townsend Street that are located within the front boundary setback. Whilst it is noted that there appear to be structures within the front setback at 11 & 15 Townsend Street (small 10m² patios 4 metres to the front boundary at both sites), both developments are for multiple dwelling units (not dwellings with carports) and were approved prior to the current planning scheme requirements (11 Townsend Street approved in 2000 and 15 Townsend Street approved in 1984).*
 - *It is also noted that a carport relaxation approval has been previously granted on the subject site for a single carport located 3 metres to the front boundary on the eastern side of the site (RAB15/0258). It was suggested to the applicant that Council may accept an amended design similar to that of RAB15/0258, but this option was rejected by the applicant.*
 - *The applicant also suggests that there are other carports located within the front setbacks in other streets in the area, however, these examples are irrelevant, as they are not within Townsend Street, and the Performance Outcome specifically refers to the visual continuity and pattern of buildings in the street.*
 - *For these reasons, the proposed carport would not comply with Performance Outcome PO2 of the code.*
3. On or about 24 May 2023, the Assessment manager issued a decision notice refusing the development application as required by section 62 of the PA.
 4. On or about 29 May 2023, the Appellants filed a Notice of Appeal against the refusal of the development application.

Jurisdiction

5. Under section 229(1)(a) of the PA, the matters that may be appealed to either a tribunal or the Planning and Environment Court, or only a tribunal, or only the Planning and Environment Court are set out in schedule 1.
6. Table 1 of schedule 1 sets out the matters that may be appealed to the Planning and Environment Court or the Tribunal. There are limitations as to when matters in table 1

may be appealed to the Tribunal. Under section 1(2) of schedule 1 of the PA, table 1 only applies to a tribunal only if one of the circumstances set out in paragraphs (a) to (l) apply.

7. Paragraph (g) of section 1(2) states: '*a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.*'
8. The types of matters that may or must be decided by the Queensland Building and Construction Commission are different from those that the Planning and Environment Court or tribunal would ordinarily decide. They go to matters such as licensing and the conduct of building certifiers (see section 133 of the *Building Act 1975* (Qld) (**Building Act**)).
9. The Tribunal has jurisdiction to hear the appeal as it is against the refusal of a development application (item 1 of table 1 in schedule 1 of the PA) and involves a matter under the PA relating to the Building Act.
10. At the time the development application for the Existing Approval was lodged, the Sunshine Coast Planning Scheme 2014 (**SC Planning Scheme**) (version 24 effective 16 May 2022) was in effect.
11. Under section 1.6 of both versions of the SC Planning Scheme, the Dwelling house code specifies alternative design solutions for boundary clearance and site cover provisions MP 1.1, 1.2 and 1.3 of the Queensland Development Code.
12. The Tribunal is satisfied that it has jurisdiction to hear and decide the appeal, as the appeal relates to a matter in table 1 of schedule 1 of the PA and relates to the Building Act.
13. An appellant must start an appeal within the appeal period, which in this case is 20 business days after the day the notice of the decision is given to the person (section 229(3)(g) of the PA). The Appellants filed the Notice of Appeal on or about 29 May 2023, only three business days after they received the decision notice so there is no dispute that the appeal was started in time.

Decision framework

14. The Appellants carry the onus to establish that the appeal should be upheld (section 253(2) of the PA).
15. 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 the subject of the appeal (section 253(4) of the PA).
16. 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.
17. The Tribunal gave leave pursuant to section 253(5)(a) of the PA to the Appellants to present the other evidence identified in the list of "material considered" below.
18. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

19. The material considered by the Tribunal pursuant to section 253(4) and (5) of the PA in arriving at this decision comprises:

- (a) Form 10 Notice of appeal, grounds for appeal and documents accompanying the appeal lodged with the Tribunals Registrar on or about 29 May 2023 including:
- (i) the decision notice issued by the Assessment manager dated 24 May 2023;
 - (j) the letter from the Assessment manager to the Co-Respondent dated 22 March 2023;
 - (k) the referral agency response issued by the Co-Respondent dated 12 May 2023;
 - (l) the development application DA Form 2- Building work details;
 - (m) document identified as 'Notes to Council re setback relaxation for carport to 7 Townsend Road, Buderim';
 - (n) contour and detail survey of the Land (drawing no. 10729-01, rev. O (undated));
 - (o) bundle of plans and perspectives of the proposed development; and
 - (p) street view photographs and a map identified as 'Precedents for reduced setback application_7 Townsend Road, Buderim'.
20. At the hearing, the Appellants also tabled a landscape concept plan and advised that there had been changes made to the proposed layout. On 18 August 2023, the Appellants provided a copy of a plan identified as "Pool Area Plan" dated 18 August 2023 to the Tribunal. The Tribunal has also considered this material.

Findings of fact

21. The Tribunal makes the findings of fact set out below.

The Land and immediate streetscape

22. The Land has an area of 971.25m² and a gentle fall towards the Townsend Road boundary. The Queenslander type dwelling house on the Land is a timber framed and weatherboard clad cottage set back 8.45 metres from the front boundary and three metres from the western boundary.
23. The range of Townsend Road buildings is best described as 'mixed'. It is comprised of retirement villages, multi-unit dwellings and some detached dwelling houses. These residential developments, as seen from the street, present a mix of building styles and materials, and some have front boundary fences and others not. There is also a child care centre located further west on Townsend Road, on the corner of Tulip Lane.
24. The streetscape is characterised by the road verges having a few modest sized street trees, and pathways generally through the fully grassed verges, however, at some frontages shrub plantings are in the verge space. In addition, the trees and shrubs within properties are prominent between and as backdrop to the residences, and this generally massed foliage contributes a garden character to the streetscape.

The application

25. The development application is for a proposed two car carport located in the front western corner of the Land, set back one metre from the front boundary, and behind a two metre high masonry fence and automatic sliding gates. The proposed carport is designed as a steel framed structure with a flat roof supported on steel posts. There is a storage unit at the southern end of the carport that is intended to store equipment associated with the pool, and solar panels and batteries.

26. The carport forms part of proposed additions and alterations to the existing Queenslander style dwelling house on the Land. It is proposed to add a new dining room off the kitchen at the rear of the dwelling, widen the existing living area, add a new covered deck to the north at the front of the dwelling house, some minor alterations to the existing ensuite and the addition of a covered external deck at the rear of the dwelling house. It is proposed to relocate the entry to the house to the eastern façade to provide potential disabled access in the future. It is also proposed to construct a swimming pool adjacent to the living area at the street side of the house. If the development application is approved, the existing driveway in the front east corner of the Land will be removed.
27. The proposed carport plan area is seven metres deep and six metres wide. The roof is to cover the western of the two car park spaces at approximately 3.6 metres wide (refer to Plan B01 dated 18 August 2023). The structure will be steel framed with open walls and a colorbond skillion roof.
28. The carport is set back 2.6 metres from the western boundary. The building to the west of the Land located at 9 Townsend Road is set back 4.4 metres from the same boundary and 7.7 metres from the Townsend Road boundary.
29. There is provision for a two metre wide area of garden space along the Townsend Road frontage behind the front boundary wall at the pool (and a proposed landscaping concept has been prepared).
30. The supporting material that was lodged with the development application made the following submissions in support of it:
 - (a) the living area windows face north and the decks at front of the dwelling house face the Townsend Road;
 - (b) the existing front and side boundary setbacks are restricted;
 - (c) AO8 of the Dwelling house code requires on-site car parking to comprise, for a lot exceeding 300m², at least two car parking spaces with at least one space capable of being covered, and there is no alternative option but to locate a carport within the six metre setback area;
 - (d) the 3D images that accompanied the development application show the minimal visual impact that the proposal will have on the streetscape;
 - (e) the design and finishes of the proposed carport structure are minimal and its bulk does not impinge on the neighbouring dwelling (at 9 Townsend Road); and
 - (f) the carport structure will be insignificant to the overall streetscape having regard to the proposed two metre masonry fence along the street boundary.
31. The application referred to a number of examples of properties containing car parking solutions within six metres of the road boundary.

Assessment against the assessment benchmarks

32. The assessment benchmark referred to in Council's referral agency response is extracted below.

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 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.	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 . 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.
		AO2.2	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 any 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 facade.

33. If a proposed development does not meet the acceptable outcomes (i.e. AO2.1 and AO2.2), it must be demonstrated that the proposed development meets the performance outcome.
34. The parties agree that the proposed development does not meet AO2.1, so it is necessary to determine whether it meets PO2.

Reasons for the decision

35. The requirements of PO2 are cumulative, in that it is necessary for the proposed development to satisfy all four of the requirements.
36. Having considered the parties' submissions and undertaking a site inspection, the Tribunal concluded that the decision of the Assessment manager should be confirmed because the proposed carport does not meet PO2(d) for the reasons discussed below.
37. In determining whether the proposed carport maintains the visual continuity and pattern of buildings and landscape elements within the street, regard must be had to the existing pattern in Townsend Road and not surrounding streets.
38. Even though the streetscape of Townsend Road has variations amongst properties in the pattern of buildings and vegetation seen from the street and in the verges in the foreground of the streetscape, the streetscape has an overall continuity of a street of residential buildings in prominently foliated surrounds and with no carports within six metres of the road boundary.
39. The proposed carport roof and part of the structure below, would be seen from the street and the verges above the new front boundary fence.
40. The proposed carport seen above the masonry fence and gate, located one metre from the road boundary, will be a discordant element in the visual continuity and pattern of buildings and landscape elements in the street. It will also not maintain the existing pattern of buildings and landscape elements along the street, as the reduced setback area of the proposed development limits the opportunity for landscape elements within

that setback area which are otherwise in the street generally seen, in part, from the street.

41. With respect to the submission that the Dwelling house code requires on-site car parking to comprise, for a lot exceeding 300m², at least two car parking spaces with at least one space capable of being covered, it is important to note that the requirement is only an acceptable outcome. If the proposed development cannot meet the acceptable outcome, it must meet the corresponding performance outcome. In this case, the performance outcome (PO8) is that '*Sufficient parking spaces are provided on the site to cater for residents and visitors.*'
42. The Council referral agency response notes that Council may have accepted a single carport within three metres of the road boundary on the eastern side of the Land. The Tribunal considers that depending on the design, a carport located within three metres of the road boundary may be capable of meeting PO2(d).

Amelia Prokuda
Development Tribunal Chair

Date: 26 September 2023

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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