



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-042
Appellants:	Tony Barton and Rita Everitt
Respondent: (Assessment manager)	Gary Loader
Co-respondent: (Concurrence agency)	Sunshine Coast Regional Council
Site address:	5 Morobe Crescent, Bli Bli Qld 4560 described as lot 85 on RP 143823 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal, at the direction of the concurrence agency, of a development application for a development permit for building work for the construction of a carport.

Date and time of hearing:	Wednesday 8 November 2023 at 10.00am
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Catherine Brouwer – Member
Present:	Tony Barton (Appellant, property owner) Rita Everitt (Appellant, property owner) Callan Lowrie (Sunshine Coast Regional Council, Co-respondent) Zana Larikka (Sunshine Coast Regional Council, Co-respondent)

Decision

The Development Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016* **confirms** the decision of the Assessment Manager to refuse the application.

Background

The subject site

1. The subject site is a trapezoid shaped block that slopes down away from Morobe Crescent to a levelled area developed with a single storey dwelling.

2. The site has 25.9m frontage to Morobe Crescent, a depth of 29.23m and 30m along its side boundaries to a rear boundary of 13.62m.

The proposal

3. The proposal is for the construction of a double carport that would be 5.3m wide, 5.5m deep, at 2.7m to 2.8m height to the underside of the roof and have a setback of 100mm to 250mm from the front property boundary.

Assessment of the application

4. On 17 August 2023, the Sunshine Coast Regional Council advised the proposal is not supported by Council and directed that the application be refused.
5. Council's stated reasons for refusal were:
 - i. Non-compliance with the Sunshine Coast Regional Council Planning Scheme Dwelling House Code Performance Outcome PO2 (b) – Garages, carports and sheds do not dominate the streetscape.
 - ii. Non-compliance with the Sunshine Coast Regional Council Planning Scheme Dwelling House Code Performance Outcome PO2 (d) – Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.
6. Council's refusal was issued on the basis that the proposed building works for the carport are considered:
 - To be highly visible from the street and will dominate the streetscape.
 - Not to maintain the visual continuity and pattern of buildings and landscape elements within the street.
7. The assessment manager issued an undated decision notice to the effect that the development application was refused (the Notice of Appeal states this was written and received by the appellant on 19 September 2023).
8. The appellants' grounds of appeal included that: the property has no undercover car accommodation; the location proposed is the only place available due to the location of the house and the property characteristics; gardens would be placed "around the structure" such that it "will not be visible from the street within a few years".
9. At the hearing the Tribunal noted that a retaining wall had been constructed parallel to the house, and fill installed behind it, thus forming a generally level area for a carport. Also that a carport frame structure (unroofed) has been constructed there.
10. At the hearing the appellants provided the following further information and points for their appeal: i) in the location of the now-built carport frame the original ground level behind a retaining wall was about 400 to 500mm below the current finished grade they have formed; ii) off street carparking was important for them for the safety of their children, as well as being a Planning Scheme requirement, and an amenity; iii) they would accept a further setback of the carport roofing from the front boundary of about 500 to 600mm; iv) the height as proposed was to allow for the possibility of parking a caravan in the future, however the height was a dimension that was negotiable for them.

Findings of fact

11. The Tribunal inspected Morobe Crescent for its streetscape, the visual continuity and pattern of buildings and landscape elements within the street. Morobe Crescent has particularly wide verges, 6.5m wide between the road kerb and the front property boundaries. The verges are generally grassed with some street trees, though there is no regular planting of trees such as would form an avenue. The open space of the curving street and its verges, together with the front gardens including trees in the street and on the property frontages, has a continuity of character, and presents as a spacious and moderately attractive streetscape.
12. The Morobe Crescent streetscape pattern includes a continuity of generally similar setbacks to houses, and where carports are present within the front part of a property, the setbacks are at a minimum of 2.5m with the majority at more than 3m setback.
13. The subject property is situated on the lower side of the inner curve of Morobe Crescent.
14. The proposed carport would be partly built on fill up to approximately 500mm behind a sleeper retaining wall which levels the site which otherwise slopes down away from Morobe Crescent to the dwelling built parallel to the front property boundary at the level below this retained fill.
15. This has the effect of elevating the proposed carport roof over 1.3ms above the eve at the front of the dwelling on the subject site.
16. The subject property and many other properties within the subject property's streetscape have significant setback of their dwellings of 4.5m to 6m from their front property boundaries.
17. The adjacent single storey dwelling to the north, at 3 Morobe Crescent has a sharply angled front property boundary with landscape structures and landscaping elements within the front property boundary set back furthest away, across that property's driveway, from the subject property. This property has a single carport located at least 2.5m back from the closest front property boundary. This structure does not dominate or significantly intrude into the existing streetscape.
18. The adjacent property to the south, at 7 Morobe Crescent, slopes down to a detached dwelling, built on a pad below a retaining wall that is built 3m from the front property boundary. There is a 1.6m high *Colourbond* fence between the side boundary of this property and its driveway and the subject property.
19. The property further south, at 9 Morobe Crescent, has a driveway with a sail cloth cover anchored to two slim posts located approximately 500mm from the front property boundary.
20. The property at 11 Morobe Crescent has a 1.6m high *Colourbond* fence on its property boundary built up to a driveway with a garage set back 2.5metres from the front property boundary. This property lies around the corner from the subject property and does not form part of the visible streetscapes to or from the subject property.
21. The property on the other side of the road from the subject property, at 22 Morobe Crescent, has 1.6m high metal screens with landscaping breaks between them running for approximately 5m along the front property boundary.
22. This property has a double driveway with a sail cloth approximately 8m wide supported by slim posts located on the front property boundary to the north, and approximately 500mm in from the front property boundary to the south.

23. Two other properties have structures within their front property setbacks located at Girua St. that runs at right angles from the end of Morobe Crescent. These are located at 11 Girua Street where a single carport has been built up to the property boundary and 13 Girua Street with a double driveway and a double carport built between 4.25m and 4.5m from the front property boundary. Neither of these structures form part of the streetscape visible from the subject site.

Material considered

24. The material considered in arriving at this decision comprises:
- a. 'Form 10 – Notice of Appeal/ Application for Declaration', accompanied by: the grounds for appeal.
 - b. A copy of the application and the accompanying plans
 - c. The Concurrence Advice Response from the Sunshine Coast Regional Council
 - d. The decision notice of refusal

Jurisdiction

25. Section 229(1) of the PA provides that schedule 1 ('the schedule') of the PA states the matters that may be appealed to a tribunal.
26. Section 1(1)(b) of the schedule provides that the matters stated in Table 1 of the schedule ('Table 1') are the matters that may be appealed to a tribunal. However, subsection 1(2) of the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
27. 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 1975, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
28. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

Decision framework

29. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
30. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA); however, 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 PA.
31. The tribunal is required to decide an 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)).
32. The tribunal must not make a change, other than a minor change, to a development application (section 254(3))

Reasons for the decision

33. Based on the tribunal's findings above concerning the surrounding streetscape, the Tribunal is of the view that the proposal would dominate the streetscape and disturb the visual continuity and pattern of buildings and landscape elements within the street.
34. Consequently, the Tribunal finds the proposed carport is inconsistent with the Sunshine Coast Regional Council Planning Scheme 'Dwelling House Code' Performance Outcomes PO2(b) and PO2(d).

Derek Craven Kemp
Development Tribunal Chair

Date: 20 November 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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