



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-010
Appellants:	Aaron Pryor and Natalie Pryor
Respondent: (Assessment manager):	Trevor Gerhardt
Co-respondent: (Concurrence agency):	Sunshine Coast Regional Council
Site address:	10 Booker Parade, Golden Beach Qld 4551 described as Lot 51 on RP126653

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the decision manager, as directed by the Concurrence Agency for the refusal of a preliminary approval for design and siting of a carport, a Class 10A structure pursuant to the *Building Act*.

The decision followed an amended referral agency response of 22 December 2023 directing the Assessment Manager to refuse the proposed carport as shown on plans referenced in the amended response.

Date and time of hearing:	Friday, 21 June 2024 at 10.00am
Place of hearing:	12 Booker Street, Golden Beach (premises adjacent to the subject site)
Tribunal:	Mark Chapple – Chair Lisa Lambie – Member Sera Rohan – Member
Present:	Aaron Pryor and Natalie Pryor – Appellants Marcus Brennan – Appellant’s Agent Alice Hanigan and Zana Larikka – representatives of the Co-respondent Council.

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the *Planning Act 2016*, 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, the following conditions along with any other conditions the Assessment Manager decides are reasonable and appropriate –

- That no side of the carport including the entrance be enclosed or fitted with a screen, wall, door or gate.

Background

1. The subject site –
 - a. Is located on the southern side Booker Parade, six houses to the west of where Booker Parade intersects with The Esplanade at Golden Beach.
 - b. A pedestrian walkway linking Booker Parade and The Esplanade runs along the western boundary of the subject site.
 - c. The subject site is generally rectangular in shape except that the northwestern corner where the pedestrian walkway and Booker Parade intersect has been truncated.
 - d. The subject site is generally flat.
 - e. Improvements to the site include a dwelling house undergoing renovation at the time of the hearing of the appeal and a swimming pool.
 - f. The subject site is included in the low-density zone of the *Sunshine Coast Planning Scheme 2014*.
2. The Appellants made application to the Respondent, Trevor Gerhardt of Sunshine Coast Building Approvals for preliminary approval Class 10a building, a carport by way of a DA Form 2 on 27 February 2024.
3. On 27 February 2024 the Assessment Manager made a decision refusing the application stating that the reason for refusal was that it was directed to do so by the Sunshine Coast Regional
4. Council acting as Concurrence Agency in its amended referral agency response of 22 December 2023.
5. The appeal documents lodged with the Tribunal included an amended Referral Agency response from the Sunshine Coast Regional Council of 22 December 2023. The amended Referral Agency response cites that approval was being sought for additions to a dwelling house and a carport. The amended Referral Agency response recommended part approval with respect to proposed setbacks for the dwelling house and directed the Assessment Manager to refuse the proposed carport as shown on reference plans.
6. The amended Referral Agency response did not provide any reasons for the recommendations and directions it included.
7. At the time of the hearing, building work was proceeding on the additions to the dwelling house and a complete or substantially complete fenced swimming pool was located between the rear of the dwelling and the rear boundary.

Material considered

8. The material considered in arriving at this decision comprises:
 - a. Form 10 – Notice of Appeal
 - b. Sunshine Coast Regional Council building approvals Decision Notice – 27 February 2024.
 - c. DA Form 2 – 27 February 2024.
 - d. Drawing – Phoenix Building Design for Amendment No. 9 – six sheets
 - e. Sunshine Coast Regional Council – Amended Referral Agency response – 22 December 2023.

- f. Drawings – Phoenix Building Design for proposed alterations and additions at 10 Booker Parade, golden Beach, Amendment No. 9 with Sunshine Coast Regional Council endorsements – 21 December 2023 – six sheets
- g. Request for Referral Agency response – 17 November 2023.
- h. Sunshine Coast Building approvals – Concurrent Agency report – November 2023.
- i. Letter – Steven Whitehead and Karen Whitehead – 1 November 2023.
- j. Letter – Bartosz Olszanowski and Anna Olszanowski – 1 November 2023.
- k. Letter - Aaron Pryor and Natalie Pryor – 1 November 2023.
- l. Letter – Peter Gulley and Vanessa Winchester – 1 November 2023.
- m. Letter – Alessha Cantelo – 1 November 2023.
- n. Development Tribunal Decision, Appeal No. 23-065.
- o. Development Tribunal Decision, Appeal No. 23-042.
- p. Development Tribunal Decision, Appeal No. 23-068.
- q. Development Tribunal Decision, Appeal No. 23-066
- r. Development Tribunal Decision, Appeal No. 19-003
- s. Development Tribunal Decision, Appeal No. 21-017
- t. Sunshine Coast Council Amended Referral Agency Response – 23 April 2024.
- u. Request for the Concurrence Agency Response (Building Work) – 8 March 2024
- v. Drawings – Phoenix Building Design – Drawing No. 23023 – Amendment 13
- w. Email – Trevor Gerhard – 18 June 2024
- x. Appellants further submissions – 2 July 2024
- y. Email, Zana Larikka – 2 July 2024
- z. Email Trevor Gerhardt 5 July 2024
- aa. Sunshine Coast Council Assessment Report – 16 April 2024
- bb. Sunshine Coast Council Assessment Report – 21 December 2023.
- cc. Sunshine Coast Council Assessment Report – 13 November 2023.
- dd. Sunshine Coast Council Referral Agency Response – 7 December 2023.
- ee. Sunshine Coast Council Action Notice – 22 November 2023.
- ff. Email – Trevor Gerhardt to Benjamin Davis – 24 November 2023.
- gg. Sunshine Coast Council Referral Agency Response – 7 December 2023.
- hh. Email – Trevor Gerhardt to Sunshine Coast Council – 8 December 2023.
- ii. Email – Stephanie – Sunshine Coast Building Approvals Inspection Services to Sunshine Coast Council – 13 December 2023.
- jj. Email – Stephanie – Sunshine Coast Building Approvals to Sunshine Coast Council – 8 March 2024.
- kk. Drawings – Phoenix Building Design No. 23023 – Amendment No. 9.
- ll. Drawings – Phoenix Building Design No. 23023 - Amendment No. 9 with Sunshine Coast Regional Council endorsement of 30 November 2023.
- mm. Extract from Sunshine Coast Council Planning Scheme 2014 Part 1.
- nn. Extract from Sunshine Coast Council Planning Scheme 2014 – Dwelling House Code.

Jurisdiction

- 9. 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.
- 10. 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).
- 11. 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.

12. In the circumstances, Table 1 applies to the Tribunal in this appeal as far as the decision of 27 February 2024 of Trevor Gerhardt is concerned.
13. At the hearing the Tribunal was informed by Zana Larikka and Alice Hanigan of the Co-respondent Council that the application to the Council for assessment against the planning scheme 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 Co-respondent council with respect to that item.
14. 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 (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) had 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 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.

15. The premise of the Council submission was that AO 2.1(b) is not an alternative provision to the Queensland Development Code (QDC) and therefore the proposed height of the carport required a development application accessible under the Planning Scheme. Council advised that the requirement for the further application of assessment was notified to the appellant in the Action Notice.
16. With respect to the Council's submission that the carport required a further Development Application to the Council assessable under the Planning Scheme, the Appellant argued in

their first submission of 2 July 2024, that the proposed carport height involved building work as defined under the Planning Act and was a building assessment provision (BAP) under s.30 of the Building Act 1975 and that accordingly the matter should be the subject of a referral agency response in accordance with Schedule 9 of the Planning Regulation 2017. In support of their argument the Appellant referred the Tribunal to the Tribunal's decision in **Appeal No. 21-017**.

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** (referred to in the Tribunal decision in **Appeal No. 21-017** referred to by the Appellant) 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. The Tribunal also notes that as noted by Council, Table 1.6.1 of the Planning Scheme sets out the building assessment provisions that are contained in the planning scheme and relevantly, identifies Section 9.3.6 of the Dwelling house code as containing 'alternative provision about performance criteria 4 and 8 under parts 1.1 and 1.2 of the QDC for a dwelling house or a class 10 building or structure located on the same lot as a dwelling house'.
20. The Dwelling house code only identifies (i.e. varies) a height provision as part of AO2.1 in relation to a carport and does not do the same for any other building or structure, which, in the opinion of the Tribunal appears to reinforce that it is in fact an alternative building assessment provision regardless of the absence of a note specifying the same.
21. 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.
22. The Tribunal finds that the height of the carport is in accordance with Part 3, Division 2, Table 3 (Design and Siting), column 2, section (c), schedule 9 of the *Planning Regulation*, a decision about the height of the carport with respect to AO2.1 is one for the certifier and that any decision by the council with respect to that matter would be given as a referral agency.
23. Accordingly, the Tribunal is satisfied that it has jurisdiction to hear and decide the appeal.

Decision framework

24. For this appeal, the onus generally rests with the Appellant to establish that the appeal should be upheld (section 253(2) of the *Planning Act 2016*).
25. 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 *Planning Act 2016*). 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 *Planning Act 2016*.
26. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the *Planning Act 2016* and the Tribunal's decision takes the place of the decision appealed against (section 254(4)).

Submissions of the parties

27. The Council's submissions included that the proposed carport should not be approved due to conflict with the *Dwelling Code* PO2(b) '*do not dominate the streetscape*' and PO2(d) '*Maintain the visual continuity and pattern of building and landscape elements within the street*'.
28. Alice Hanigan of the council submitted that for the purpose of applying the provisions of the *Dwelling Code* PO2 (b) and PO2(d) it was the elements within Booker Street which were relevant.
29. In support of the Council's position Alice Hanigan submitted that:
- a. the height of the proposed carport with its pitched roof was 4.2 metres and that other carports in Booker Street within the 6 metre from setback were lower in height.
 - b. The number of other carports in Booker Street with approvals was limited to three.
 - c. That the predominant pattern in the street in the street was a 4.5 metre to 6.0 metre setback
 - d. Structures that are within the 6.0 metre setback were low in height compared to the proposed carport.
 - e. The intention of the planning scheme was to maintain open streetscape and preserve view lines.
30. In their further submission of 2 July 2024, the Appellant submitted the following with respect to the proposed carport and PO2 of the *Dwelling Code*—

(a) 'Preserve the amenity of the adjacent land and dwelling.'

- a. The Appellant submitted that:
- i. a pedestrian path to the west of the subject site and a vacant lot to the east of the site owned by the applicant were, '*Insulating characteristics* '
 - ii. the proposed carport '*will also preserve the amenity of adjacent land and dwelling houses in that:*'
 - + *The proposed carport is light and open structure without doors that is compatible with the form of the existing dwelling'*
 - + *The carport maintains a 1.55 metre setback from the closest boundary (west,) being well beyond the zero setback permitted by the QDC:*
 - + *The carport will not cause overshadowing or visual impacts to adjoining residents because of the excessive setback provisions proposed.'*

(b) Do not dominate the 'streetscape'.

- b. The Appellant argued that 'streetscape was a defined term under Schedule 1 (definitions) (Table SC1.2 Administrative definitions) of the Sunshine Coast Council Planning Scheme in the following terms –

“*The collective combination of urban form elements that constitute the view of the street and its public and private domains. These elements include buildings, roads, footpaths, vegetation, open spaces and street furniture*”

The Appellant argued that streetscape was not a defined term included in the Planning Act Schedule and as a result could be varied by a local government to satisfy its requirements.

The Appellant argued that as the authors of the Planning Scheme had not specified that compliance issues be considered when establishing the streetscape and any buildings, structures including shades sails, whether or not they had any required approvals, should be considered in establishing what constitutes the streetscape.

The Appellant stated –

- a. *The land is located on Booker Parade which extends from the intersection with Cahill Street to the west to its intersection with Golden Beach Esplanade to the east and has a length of approximately 440m;*
- b. *There are several different character elements in the streetscape which include:*
 - i. *Generous verge width of 6m;*
 - ii. *Scattered street tree planting, including larger mature species not representing any particular planting pattern;*
 - iii. *A mix of single a (sic) double storey houses;*
 - iv. *The dwellings are a mix of ages with the original houses remaining being from the 70s - 80s*
 - v. *Predominantly open yard or low fencing;*
 - vi. *Various building alignment to the road frontage with there being a number of structures with the road setback including carports, shade sails, garage and built form including 3, 12, 21, 22, 35, Booker Parade and 177 Esplanade (corner Booker Parade).*

Findings of fact

31. The Tribunal makes the following findings of fact: –
 - a. Booker Parade traverses generally flat terrain for a distance of about 400 metres running in an approximate east west direction between the Esplanade to the east and Carmel Street to the West. Booker Parade is generally straight except for veering a little to the south before it intersects with the Esplanade.
 - b. Except for a section which addresses Jensen Park on the southern side at the western end, Booker Parade is almost entirely developed with detached dwellings of various styles both high- and low-set, predominantly of the style from the around the 1980s.
 - c. The Booker Parade Road reserve is approximately 20 metres wide with a sealed roadway section about 8 metres wide with mainly grassed verges either side about 6 metres wide.
 - d. Street trees are located in many locations along the street on the grass verges but not in front of the subject site.
 - e. 10 Booker Parade is located on the southern side of roadway and there has been a dwelling house on the subject site for many years prior to the Appellants acquiring the subject site and making the application the subject of this appeal.
 - f. The subject site is rectangular in shape except for a truncation of approximately 4 metres in the northwest corner with the narrower truncated side addressing Booker Parade. The site dimensions excluding the truncation are approximately 38 metres x 15 metres.
 - g. There is a pedestrian walkway allowing access between Booker Parade and the Esplanade which runs along the western boundary of the site.
 - h. At the time of the hearing, development on the subject site comprised a fenced swimming pool and an outbuilding within the pool enclosure and a dwelling house undergoing substantial renovation.
 - i. Development, including the installation of shades sales, has occurred at various locations along Booker Parade, which is less than 6 metres from the road frontage boundary.

Reasons for decision

32. The tribunal finds that for the purposes of applying Dwelling Code PO2 it is the elements of Booker Street between Carmal Street and the Esplanade and Anning Street between Booker Street which are relevant.
33. Applying the provisions of the *Dwelling House Code* AO (a), (b), (c) and (d) that ‘Garages Carports and sheds’

(a) *preserve the amenity of adjacent land and dwelling houses.*

The Tribunal finds that the pedestrian walkway to the west of the subject site, the width of the Booker Street Road reserve and the frontage of the subject site relative to the width of the proposed carport will prevent any loss of amenity of adjacent land and dwelling houses.

(b) *do not dominate the streetscape*

The Tribunal finds that the proposed carport will not dominate the streetscape as defined by the planning scheme when considering all elements such as buildings, roads, footpaths, vegetation, open space. That is, Booker Parade has a generous verge width of 6 metres, a mix of building types (regardless of their lawfulness), predominantly open front yards and low fencing, varied building types, forms, styles and ages with setbacks being inconsistent (i.e. no established or predominant pattern) throughout and existence of reduced setbacks for carports, landscaping items (shade sails), patios and so forth (i.e. well within 4.5 metres/6 metres). The lot types are generally regular in shape with 15 metre frontages, where the proposed carport would occupy less than 50% of the frontage so as not to dominate the lot or dwelling.

(c) *maintain an adequate area suitable for landscapes adjacent to the road frontage;*

The Tribunal finds that considering frontage of the site and adjoining sites, the width of the proposed carport allows for an adequate area suitable for landscaping adjacent to the road frontage.

(d) *maintain the visual continuity and pattern of buildings and landscape elements within the street*

The Tribunal finds that the existing ‘building and landscape elements’ established in the sections of Booker Street and Anning Street identified by the Tribunal as relevant, reinforce the varied nature of the setbacks, and ensure that the visual continuity is provided for by limiting the width of the carport, ensuring no door is provided (in accordance with the condition set out in the Tribunal decision) and that, architecturally the carport remains compatible with the proposed built form and is lightweight.

34. With respect to the format of the Tribunal’s decision, the Tribunal has considered the decision of the court in *Capuano v Q-Comp* [2004] QSC 333 which considered provision of the *Workers Compensation and Rehabilitation Act* similar to 254(2)(d) of the *Planning Act 2016* and found that the reviewer of a decision had taken the wrong approach in deciding to refer a matter back to the original decision maker and should have sought information so the reviewer could make the decision about the matter before the original decision maker.
35. Considering the special qualifications and professional skills of and position held pursuant to the *Building Act (Qld) 1975* and the *Planning Act (Qld) 2016* by the Respondent as a building certifier, not all of which are held by the Tribunal, the Tribunal decides that the

circumstances in this case are different to that in *Capuano v Q-Comp* and that the appropriate course of action is to ask the Respondent to redecide that matter within the parameters set by the Tribunal in its decision.

Mark Chapple
Development Tribunal Chair

Date: 22 August 2024

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 Housing, Local Government, Planning and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au