



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-065
Appellant:	Dennis and Linley Alderton
Respondent (Assessment manager):	Trevor Gerhardt
Co-respondent (Concurrence agency):	Sunshine Coast Regional Council ('Council')
Site address:	20 Mountain Ash Drive, Mountain Creek Qld 4557, formally described as Lot 347 on RP909192 ('the subject site').

Appeal

Appeal under section 229(2) and schedule 1, sections 1(1)(b) and 1(2)(g), and table 1, item 1(a), of the *Planning Act 2016* ('the PA') against the assessment manager's decision to refuse the appellant's application for a building works development permit for additions and alterations to an existing Class 1a dwelling house, in the form of a new Class 10a carport, on the subject site ('the application').

Date and time of hearing and site inspection:	Tuesday, 27 February 2024 at 10:30am
Tribunal:	Neil de Bruyn – Chairperson Suzanne Bosanquet – Member
Present	Dennis Alderton – Appellant Trevor Gerhardt – Respondent/Assessment manager Angus McKinnon – Sunshine Coast Building Approvals Zana Larikka – Council representative Stephen Whitby – Council representative

Decision:

1. The Development Tribunal ('the tribunal'), in accordance with section 254(2)(a) of the PA, **confirms** the decision of the assessment manager to refuse the application.

Background:

2. The subject site is a rectangular residential site, formally described as lot 347 on RP909192, with an area of 651m². The subject site is located at 20 Mountain Ash Drive in Mountain Creek, within the Sunshine Coast Regional Council local government area. Mountain Ash Drive, in the vicinity of the subject site, is a collector street predominantly containing low-rise, low-density residential land uses.
3. The subject site is included within the Low Density Residential Zone under the Sunshine Coast Planning Scheme 2014, being the current planning scheme for the subject site ('the

planning scheme'). The subject site is also within the Buderim Local Plan Area and is subject to planning scheme overlays relating to acid sulphate soils, airport environs, flood hazards, building heights and regional infrastructure.

4. The subject site contains a substantial dwelling house, which addresses and gains access from Mountain Ash Drive, forming its eastern boundary.
5. The appellant proposes to undertake additions and alterations to the existing dwelling house in the form of a new, two-bay Class 10a carport that is the subject of this appeal, to be located within the existing driveway ('the proposed development'). The plans before the tribunal show the proposed development being set back from Mountain Ash Drive by a distance of 500mm (although verbal evidence provided on behalf of the appellant at the hearing, and subsequent written evidence (discussed below), corrected this dimension to 1,400mm or 1.4m).
6. The application was made to the assessment manager for a building works development permit for the proposed development. There is no evidence before the tribunal as to the date upon which the application was made; however, this omission is not considered to be significant in the circumstances of this appeal.
7. Pursuant to section 33 of the *Building Act 1975* ('the BA') and section 1.6 of the planning scheme, the Dwelling House Code ('the code') under the planning scheme specifies alternative siting provisions to those set out in the relevant part of the Queensland Development Code. Of relevance to this appeal, the code includes Acceptable Outcome 2.1 ('AO2.1'), which requires a carport to have a setback to a road frontage of at least 6m. Clearly, the proposed 1.4m frontage setback does not achieve AO2.1.
8. For section 54(2) of the PA, schedule 9, part 3, division 2, table 3 of the Planning Regulation 2017 specifies that a development application for building work that does not meet a quantifiable standard for an alternative provision under section 33 of the BA requires referral to the applicable local government as a concurrence agency. Accordingly, on or about 1 November 2023, the application was referred to Council for a design and siting assessment and response.
9. On 10 November 2023, Council completed its assessment of the application and issued its referral agency response dated 13 November 2023, directing refusal of the application on the grounds that the 500mm frontage setback (as shown on the submitted plans) would not achieve PO2(d) of the code.
10. PO2(d) of the code relevantly provides as follows:

Garages, carports and sheds:

- a) ...;
- b) ...;
- c) ...; and
- d) *maintain the visual continuity and pattern of buildings and landscape elements within the street.*

11. Council's grounds for directing refusal were stated as follows:

The visual continuity and overall pattern of Mountain Ash Drive comprises of dwellings approximately 4m – 6m from the road frontage with carports, garages and sheds predominantly setback 6m, and the continuity of the built form generally being maintained.

Located at 500mm from the front boundary, the proposed carport is inconsistent with the front setback pattern of the street and would not maintain the visual

continuity and pattern of buildings and landscape elements within the street.

12. The referral agency response also went on to note that:

The existing dwelling has 2 covered car parking spaces and sufficient room on the driveway for two additional vehicles which exceeds the requirements for parking in the Dwelling house code. As such Council sees insufficient grounds to depart from the planning scheme;

and that

The proposed carport could not be reduced in size to provide an appropriate setback to achieve compliance with the assessment benchmarks.

13. The assessment manager duly issued a decision notice refusing the application and reflecting a decision date of 28 November 2023. The only stated reason for this decision was the direction of refusal by the referral agency response. No other reasons for the refusal were given.
14. The appellant duly lodged this appeal with the tribunal registrar on 29 November 2023. The appellant's grounds of appeal are summarised as follows:
- a) The appellants require the carport to provide covered parking and security for their vehicles;
 - b) There is no alternative and suitable location available for a carport within the subject site;
 - c) The colours and materials to be used in the construction of the carport will blend in with those of neighbouring properties; and
 - d) The proposed carport will enhance the look of the street and will not dominate the streetscape.
15. A site inspection and hearing were held on the subject site on Tuesday, 27 February 2024 at 10:30am.
16. At the inspection and hearing, it was noted that rendered pillars had been erected on either side of the driveway of the subject site, which were identified by the appellant and the respondent as being the pillars intended to form part of the proposed carport. In the presence of the appellant, the tribunal and Council representatives, the respondent measured the setback to the outer (street-facing) face of the pillars, identifying the relevant setback dimension to be 1.4m. This evidence is accepted by the tribunal, given that the submitted plans show the setback to the outer face of these pillars as coinciding with the setback to the outermost projection.
17. At the hearing, Council was asked whether it would consider a revised setback of 1.4m. In this regard, the tribunal was advised that Council would not be prepared to consider, nor support, such a setback.
18. At the hearing, the appellant requested the tribunal to review the tribunal decisions made in Appeals 19-003 and 21-066, involving sites in Mooloolaba and Maroochydore and involving similar issues. Council, for its part, requested the tribunal to consider the decision in Appeal 23-042, involving a site in Bli Bli.

Material considered

19. The following material has been considered by the tribunal in this appeal:

- a) 'Form 10 – Notice of Appeal' lodged with the tribunal's registrar on 29 November 2023, including Document A citing the appellant's grounds for the appeal.
- b) The assessment manager's undated decision notice (Ref. 231028).
- c) Partly completed DA Form 2, accepted by the assessment manager pursuant to Section 51(4)(c) of the PA.
- d) Council's referral agency response dated 13 November 2023.
- e) Referral documents, including completed Council form 'Request for Concurrence Agency Response (Building Work)' dated 1 November 2023 and Sunshine Coast Building Approvals' concurrence agency report dated October 2023.
- f) Design plans (no details provided regarding the plans' author(s), date(s) of preparation or plan numbers).
- g) Undated and unsigned letter reportedly distributed by the appellants to neighbours, signifying no objections from eight neighbours.
- h) Decision notices for Tribunal Appeals 19-003 and 21-066, cited by the appellant at the hearing and inspection.
- i) Decision notice for Tribunal Appeal 23-042, cited by the council representatives at the hearing and inspection.
- j) The *Planning Act 2016* and the *Planning Regulation 2017*.
- k) The *Building Act 1975*.
- l) The Sunshine Coast Planning Scheme 2014.

Jurisdiction

- 20. 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.
- 21. 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, section 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).
- 22. 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 BA, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
- 23. 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

- 24. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
- 25. 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.

26. 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)).
27. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Findings

28. The Council's grounds for directing refusal of the proposed carport were solely that the proposed frontage setback to Mountain Ash Drive fails to achieve PO2(d) of the code, as reproduced in paragraph 10 above. This ground was verbally confirmed by Council at the hearing to also apply to the corrected setback of 1.4m.
29. PO2(d) provides that a carport is to maintain the visual continuity and pattern of buildings and landscape elements within the street.
30. At the site inspection, the tribunal walked or drove along the full length of Mountain Ash Drive in order to gain a clear understanding of the character of its streetscape, and the pattern of buildings and landscape elements within the street, with particular reference to the immediate vicinity of the subject site. The tribunal's particular focus was on the section of Mountain Ash Drive between numbers 10/11 to the north, and the intersection with Berrigan Place to the south, being the part of the Mountain Ash Drive streetscape within sight of the subject site, and therefore the part of the overall streetscape most relevant to this appeal.
31. It was found that the relevant part of the streetscape is generally consistent in character, and predominantly characterised by buildings and landscape elements that are well set back from their respective frontages, imparting a definite sense of openness with significant landscaping present within these front setback areas. Two notable exceptions to this finding were noted, being:
 - a) a carport and a substantial front boundary wall and gate at 17 Mountain Ash Drive, with the carport extending almost to the frontage of that site and thus well within the 6m front setback sought by the code; and
 - b) a pergola structure at 2 Toscana Place (located at the intersection with Mountain Ash Drive, a short distance to the north of the subject site), also clearly located well within the 6m front setback to Mountain Ash Drive.
32. Following the hearing and inspection, the tribunal issued the following directions to the parties:
 1. **The appellant** is to provide a copy of the signed letters obtained from local residents, as mentioned at the hearing.
 2. **Council** is to provide written advice regarding whether or not buildings or structures noted at the following addresses and observed to be located within 6m of their respective lot frontages, constitute approved development. Where necessary development approvals for these buildings or structures are found exist, Council is requested to provide full details of such approvals. The relevant addresses are:
 - 2 Toscana Place - pergola,
 - 41A Mountain Ash Drive - dwelling,
 - 43 Mountain Ash Drive – dwelling,
 - 17 Mountain Ash Drive – carport.

The above-mentioned information is to be provided by email to the Registrar, with a copy to the other party, by no later than 4pm on Friday, 15 March 2024.

33. The appellant and Council responded to the directions, by emails on 5 March 2024, providing the requested material, which has been reviewed by the tribunal.
34. Notably, the material provided by Council identifies:
- a) that Council, as a design and siting concurrence agency for the application involving a 'patio' at 2 Toscana Place (apparently, the pergola observed by the tribunal at that address), directed refusal of that part of that application (and directing approval of other proposed development not relevant to this appeal); and
 - b) no record of any approval of the clearly non-compliant carport at 17 Mountain Ash Drive.
35. Based upon the tribunal's observations of the character of the local streetscape (as described in paragraph 31 above) and given that, within this area, the only buildings that are not compliant with the frontage setback sought under the code are apparently unapproved, the tribunal finds that the proposed carport would be inconsistent with the visual continuity and pattern of buildings and landscape elements within the relevant Mountain Ash Drive streetscape. The tribunal also finds that the various other examples of buildings and structures alleged by the appellant to be non-compliant with applicable setback provisions are relatively remote from the subject site and do not form part of its particular streetscape.
36. Accordingly, the tribunal finds that the proposed carport would be inconsistent with the achievement of PO2(d) of the code. The tribunal further accepts the evidence provided by Council at the hearing to the effect that the proposed carport would be consistent with the achievement of the other aspects of PO2 (that is, PO2(a) to (c), inclusive).
37. The tribunal has considered the three appeal decisions cited by the appellant and Council.
38. Following its review of Appeals 19-003 and 21-066, cited by the appellant, the tribunal finds no basis to change its above-mentioned finding, noting that both decisions dealt with cases in which the relevant developments were found to be consistent with the achievement of PO2(d), which has not been found to be the case in this appeal.
39. In Appeal 23-042, cited by Council, that tribunal found, in confirming the refusal of the relevant application, that the local streetscape demonstrated a consistency of character and a spacious and moderately attractive streetscape with relatively generous setbacks exceeding that proposed in that particular case. The circumstances of that decision are found to be similar to those in the case of this appeal.
40. Hence, on the basis of the three quoted appeal decisions, this tribunal finds no basis to depart from its above-mentioned finding.
41. With regard to Council's other grounds for directing the refusal of the application, the tribunal finds that:
- a) Council's assertion to the effect that the subject site already contains two covered car parking spaces is incorrect, in that the appellant and respondent confirmed at the hearing that the former garage has been converted to a new living area. In any event, the tribunal also notes that the code does not contain a provision precluding an applicant from providing additional on-site car parking capacity within the subject site.
 - b) The design and/or siting of the proposed carport would not be able to be conditioned or modified to achieve compliance with the code.

Reasons for the decision

42. The tribunal, in accordance with section 254(2)(a) of the PA, has decided this appeal as set out in paragraph 1 above.

43. The tribunal's reasons for this decision are that:

- a) the proposed carport location, set back only 1.4m from the street frontage, would be inconsistent with the achievement of PO2(d) of the code.

That is, the proposed 4.6m encroachment into the acceptable outcome of 6m would be inconsistent with the predominant character of the local streetscape and would not maintain the visual continuity and pattern of development and landscape elements within the street.

- b) The design and/or siting of the proposed carport would not be able to be conditioned or modified to achieve compliance with the code.

Neil de Bruyn
Development Tribunal Chair

Date: 13 March 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 (07) 1800 804 833

Email: registrar@epw.qld.gov.au