



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	24-041
Appellant:	Alksulat Pty Ltd ACN 616 917 947 trading as e.designers
Respondent (Assessment manager):	Stewart Magill
Co-respondent (Concurrence agency):	Sunshine Coast Regional Council ('Council')
Site address:	7 Hardwood Court, Buderim Qld 4556 and described as Lot 32 on RP208967 – the subject site

Appeal

This is an appeal under section 229, section 1 and schedule 1, item 1(a) of table 1 of the *Planning Act 2016 (PA)* against the refusal by the assessment manager, at the direction of the concurrence agency of a development application for building work (assessable against the Planning Scheme) for a class 10a carport, deck and pool associated with a dwelling house made by the Appellant (**development application**).

Date and time of hearing:	1pm, 11 November 2024
Place of hearing:	The subject site
Tribunal:	Linda Tait – Chair Catherine Baudet - Member
Present:	Appellant Lyndsay Halson, ALKSULAT Pty Ltd (e.designers) – (Appellant) John Farrugia – Land owner Respondent - Jon Day – Pure Building Approvals Stewart Magill – Pure Building Approvals Co-respondent – Concurrence agency Cameron Wilson-Yapp – Sunshine Coast Regional Council Jeffrey Dodd – Sunshine Coast Regional Council

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:

- A. The carport is to have a maximum depth of 5.4m and achieve a minimum setback of 1.1m from the front boundary.
- B. The carport is to remain unenclosed with no garage door or new walls.
- C. The deck is to remain unenclosed with no new walls. Balustrading is to comprise of slatted timber or solid glass balustrading (except as varied for pool safety requirements).
- D. The colours and materials of the carport, pool and deck are to match the main house.
- E. Landscape screening of the deck and pool is to be planted and maintained between the deck/pool and front boundary. Planting density results in plants capable of growing to minimum deck height, planted at no less than 1m centres. Species are to comprise local native plants, avoiding declared plants and environmental weeds.

Background

- 1. Hardwood Court is an arc shaped cul de sac of approximately 250m length which slopes down from 58m AHD at Mountain Ridge Crescent to 28m AHD at the end of the cul de sac. (Contours from Council Interactive Mapping). The subject site is located approximately halfway along Hardwood Court, on the outer (longer) side of the arc. The frontage of the site slopes from 42m to 37m AHD. (Contours from Site Plan prepared by e-designers ref. 23019 dated 2/11/23.)
- 2. The subject site contains an existing dwelling house and shed. The house has a driveway on the northern, upper side. Responding to the slope, the house is supported on slender posts of various heights, increasing to the south (down the slope).
- 3. This tribunal matter relates to a proposed open carport, deck and pool between the existing dwelling and the front boundary. The proposed 6.58m deep carport is illustrated as having a 500mm front setback (OMP to front boundary) and 560mm side setback (Outer most projection - OMP to northern side). The proposed deck and pool are illustrated as having an 1800mm setback (OMP to front boundary).
- 4. The subject site has an area of 827m². The subject site adjoins two access handles servicing rear lots to the south, with a lot containing a dwelling beyond (13 Hardwood Court). To the north is a standard, non-rear lot (2 Wallum Court) which addresses Hardwood Court.
- 5. The Sunshine Coast Planning Scheme 2014 (**planning scheme**) identifies that the subject site is located in the Low Density Residential Zone, Precinct LDR1 (Protected Housing Area) and Buderim Local Plan. The land is also subject to mapped constraints including Land Subject to Landslide Hazard and Steep Land Overlay (Moderate Hazard Area).

Categories of Assessment

- 6. Planning scheme Table 5.5.1 – Categories of Development and categories of assessment – Material change of use – Low density residential zone, identifies that Dwelling house is Accepted Development. The category of assessment is not changed by the Precinct, or Overlays. The parties agreed that building height was not in question and complies.
- 7. *Planning Regulation 2017*, schedule 9, part 3, division 2, table 3 – Design and Siting requires referral to local government for assessment triggered by:
 - (a) *the Queensland Development Code, part 1.1, 1.2 or 1.3 applies to the building work and, under the part, the proposed building or structure does*

not include an acceptable solution for a relevant performance criteria under the part; or

- (b) *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; or*
- (c) *all of the following apply—*
 - (i) *under the Building Regulation, section 6, 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;*
 - (ii) *the provision applies for building work;*
 - (iii) *under the provision, the proposed building or structure is not of the quantifiable standard for a relevant qualitative statement under the provision against:*

8. The application material did not specifically reference the above trigger but sought a siting variation. The referral agency response made reference to the table 3 trigger.
9. The abovementioned Planning Regulation trigger has not been appealed by the Appellant in this case and is not in question by either party. The category of assessment is Building Works where the Sunshine Coast Council provided Concurrence Assessment.

Appeal material

10. This Tribunal appeal follows the Sunshine Coast Council Referral Agency Response CAR23/0760 dated 8 May 2024 recommending refusal of the Addition to a Dwelling House (Carport, Swimming Pool and Deck) and the resultant refusal issued by Stewart Magill of Pure Building Approvals on 29 August 2024.
11. A Form 10 Notice of appeal was lodged by the Appellant Alksulat Pty Ltd and with the property owner's signature, John Farrugia, both dated 29 August 2024. A receipt was provided for Development Tribunal appeal fees dated 29 August 2024.
12. Accordingly, the notice of appeal was lodged within the applicant's appeal period.
13. The hearing of the appeal was conducted at the subject site by the Tribunal on 11 November 2024.

Assessment benchmarks

14. *Planning Regulation 2017*, schedule 9, part 3, division 2, table 3 (item 4) identifies matters the referral agency's assessment must be against:

For building work stated in item 1, column 2, paragraph(a)—whether the proposed building or structure complies with the performance criteria stated in the paragraph.

For building work stated in item 1, column 2, paragraph(b) or (c)—whether the proposed building or structure complies with the qualitative statement stated in the paragraph.

15. As the planning scheme nominates setbacks in the Dwelling House Code, the latter assessment from table 3 (Item 4) applies.
16. The Sunshine Coast Council Referral Agency Response reasons for refusal were identified as being:
1. *The proposal does not meet Performance Outcome PO2 (b) of the Dwelling house code:*

PO2 - Garages, carports and sheds:- (b) do not dominate the streetscape;

Whilst the proposed carport would be entirely open and have a skillion roof structure, it would protrude closer to the verge than any other nearby structure and cause a visual impact to the streetscape. As such, the siting and design of the proposed carport would dominate the streetscape and not comply with Performance Outcome PO2 (b).
 2. *The proposal does not meet Performance Outcome PO2 (d) of the Dwelling house code:*

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

There do not appear to be any other carports in Hardwood Street, within close proximity to the subject site, that are as close as 500mm to the front boundary, noting the dominant pattern of structures in the street are located 4.5 metres to 6 metres to the front boundary. Whilst it is noted that there appear to be three other examples of carport/garages within the front setback in the street at 6 & 23 Hardwood Court and 1 Wallum Court, they were all built prior to the current planning scheme requirements (1992, 2013 and 1995 respectively) and provide greater front setbacks than the proposal. Additionally, these three examples in a street of 19 properties fronting Hardwood Court do not comprise the dominant visual continuity and pattern of the street. As such, the siting and design of the proposed carport would not maintain the visual continuity and pattern of buildings and landscape elements in the street and not comply with Performance Outcome PO2 (d).
 3. *The proposal does not meet Performance Outcome PO3 (b) of the Dwelling house code:*

PO3 - Where located in a residential zone, the dwelling house is set back from any road frontage so as to:- (b) create a coherent and consistent streetscape, with no or only minor variations in frontage depth.

There do not appear to be any other dwelling houses (excluding garages, carport and sheds) located as close as 1.8 metres to the front property boundary, or within the required 4.5 metre front setback, in Hardwood Street. The proposed setback would not be a minor variation to the frontage depth achieved by other dwelling houses within the street. Furthermore, the existing landscaping at the front of the site would be removed in order to accommodate these additions, which would exacerbate the visual anomaly and dominance of the additions on the streetscape. As such, the proposed additions would not maintain a consistent and coherent streetscape, nor would they be a minor variation to the frontage depth in the street, and would not comply with Performance Outcome PO3 (b).

Jurisdiction

17. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.¹
18. Section 1(1) of schedule 1 of the PA provides that table 1 states the matters that may be appealed to a tribunal. However, pursuant to section 1(2) of schedule 1 of the PA, table 1 only applies to a tribunal if the matter involves one of a list of matters set out in sub-section (2).
19. Section 1(2)(g) of schedule 1 of the PA, relevantly refers to a matter under the PA, to the extent the matter relates to the *Building Act 1975 (BA)*, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
20. Table 1 of schedule 1 of the PA applies to the Tribunal.
21. Under item 1 of table 1 of schedule 1 of the PA, an appeal may be made against the refusal of a development application. The appeal is to be made by the applicant, who in this case was the Appellant and the respondent to the appeal is the assessment manager, who in this case is the Respondent.
22. In circumstances where the decision notice was dated 29 August 2024 and was received on 29 August 2024², this appeal was to be filed within 20 business days after the day the notice is given.³ This was satisfied.
23. Accordingly, the Tribunal is satisfied that it has the jurisdiction to hear this appeal.

Decision framework

24. The concurrency agency response was issued by Council on 8 May 2024.
25. The decision notice was issued by the respondent on or about 29 August 2024. At that time, the PA was in force.
26. The Appellant filed a Form 10 – Notice of appeal / Application for declaration on 29 August 2024.
27. The appeal is a PA appeal, commenced after 3 July 2017 under section 229 of the PA. As such, the appeal is to be heard and determined under the PA.
28. This is an appeal by the Appellant, the recipient of the decision notice and accordingly, the Appellant must establish that the appeal should be upheld.⁴
29. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Respondent who decided to give the decision notice the subject of this appeal.⁵
30. The Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal⁶.

¹ Section 229(1)(a) of the PA.

² Dates for both the Decision and Form 10 – Notice of Appeal / Application for Declaration of this appeal.

³ Section 229 of the PA.

⁴ Section 253(2) of the PA.

⁵ Section 253(4) of the PA.

⁶ Section 253(5)(a) of the PA.

31. The PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and the Tribunal may seek the views of any person⁷.
32. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal.⁸
33. The Tribunal is required to decide the appeal in one of the following ways set out in section 254(2) of the PA:
 - (a) *confirming the decision; or*
 - (b) *changing the decision; or*
 - (c) *replacing the decision with another decision; or*
 - (d) *setting the decision aside and ordering the person who made the decision to remake the decision by a stated time; or*
 - (e) *for a deemed refusal of an application:*
 - (i) *ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
 - (ii) *deciding the application.*

Material considered

34. The material considered in arriving at this decision comprises:
 - a. Form 10 – Notice of Appeal
 - b. Receipt for payment of Development Tribunal Application Fees dated 29 August 2024.
 - c. Decision Notice issued by Pure Building Approvals on 29 August 2024.
 - d. Form 2 – Building Works details – identifying the new building class as 10a, 10b.
 - e. Pure Building Approvals correspondence addressed to the Development Tribunals dated 29 August 2024. This letter provides grounds for the appeal.
 - f. Perspective View reference 23019 dated 2/11/23 prepared by e-designers
 - g. Site Plan reference 23019 dated 2/11/23 prepared by e-designers
 - h. Proposed Upper Floor Plan 23019 dated 2/11/23 prepared by e-designers
 - i. Existing Lower Floor Plan 23019 dated 2/11/23 prepared by e-designers
 - j. Proposed Elevations 23019 dated 2/11/23 prepared by e-designers
 - k. Siting Variation correspondence (undated) with Request for Concurrence Agency Response (Building Work).and photographs of the site and context.
 - l. Letter containing copy of Cameron Wilson-Yapp email dated 10 November 2023 and 15 November 2023 regarding Council's concerns during the assessment of

⁷ Section 249 of the PA.

⁸ Section 253 and section 246 of the PA.

the application. Further email 5 December 2023 from Cameron Wilson-Yapp to e-design regarding Council's assessment.

- m. Email dated 5 February 2024 between e-design and Zana Larikka of Council making reference to a recent meeting and further explanation of Council's assessment.
- n. Referral Agency Response dated 8 May 2024 including reasons for refusal.
- o. *Sunshine Coast Planning Scheme 2014 (planning scheme)* and interactive mapping
- p. *Planning Act 2016 (PA)*.
- q. *Development Assessment Rules (Version 1.3) 11 September 2020 (DAR)*, being the version in force at the time of the application.
- r. *Planning Regulation 2017 (PR)*.
- s. *Building Act 1975 (BA)*.
- t. *Building Regulation 2006 (BR)*.
- u. *Queensland Development Code (QDC)*.

Findings of fact

The Tribunal makes the following findings of fact:

Issues in dispute in appeal

- 35. The issues in dispute in the appeal centred on compliance with the planning scheme assessment benchmarks with regard to design and siting prescribed as alternatives to the QDC for the proposed carport, pool and deck.
- 36. The referral agency response identified the Dwelling House Code as being relevant to the Respondent's consideration of the development application.
- 37. Planning scheme part 1, table 1.6.1 identifies that section 9.3.6 Dwelling House Code are QDC alternative provisions with regard to setback, site cover, and QDC performance criteria 4 and 8 for a dwelling house or class 10 building or structure located on the same lot as a dwelling house.
- 38. Planning scheme part 5, table 5.7.1 identifies that carrying out building work not associated with a material change of use is Accepted Development if the applicable use code identifies acceptable outcomes applicable to accepted development. The assessment benchmarks are nominated as 'The use code applicable to the use for which the building works is to be undertaken and the Transport and Parking Code'.
- 39. Planning scheme part 5, table 5.5.1 identifies that a Material Change of Use for Dwelling House is Accepted Development. The assessment benchmarks are the Dwelling House Code.
- 40. This appeal relates to the Respondent's recommended refusal of the proposed siting of a carport located 500mm (OMP) to the front property boundary, in lieu of 6m; elevated swimming pool located 1.8m (OMP) to the front property boundary, in lieu of 4.5m; and covered deck located 1.8m (OMP) to the front property boundary, in lieu of 4.5m with reference to the Dwelling House Code, particularly Performance Outcome PO2(b), PO2(d) and PO3(b).

41. The Appellant contends that while the proposed siting of the carport, swimming pool and deck do not comply with Acceptable Outcome AO2.1 and AO3, the proposal complies with the Assessment Benchmarks, being the Dwelling House Code Overall Outcomes and Performance Outcomes.

Dwelling House Code

42. The Appellant made reference to the Purpose of the Dwelling House Code as expressed in the Overall Outcomes (extracted below).

9.3.6.2 Purpose and overall outcomes

- (1) *The purpose of the Dwelling house code is to ensure dwelling houses achieve a high level of comfort and amenity for occupants, maintain the amenity and privacy of neighbouring residential premises and are compatible with the character and streetscape of the local area.*
 - (2) *The purpose of the Dwelling house code will be achieved through the following overall outcomes:*
 - (a) *a dwelling house incorporates a high standard of design and makes a positive contribution to the streetscape character of the area in which it is located;*
 - (b) *a dwelling house is sited and designed to protect the amenity and privacy of neighbouring residential premises;*
 - (c) *a dwelling house provides a high level of amenity to the residents of the dwelling house;*
 - (d) *a dwelling house is provided with an acceptable level of infrastructure and services; and*
 - (e) *where provided, a secondary dwelling:*
 - (i) *is located, designed, constructed and used to have an association with the primary dwelling; and*
 - (ii) *is small in size, such that the secondary dwelling is ancillary to the primary dwelling.*
43. The Appellant also made reference to Dwelling House Code Performance Outcomes PO2 and PO3 (extracted below).

PO2 Garages, carports and sheds:-

- (a) *preserve the amenity of adjacent land and dwelling houses;*
- (b) *do not dominate the streetscape;*
- (c) *maintain an adequate area suitable for landscapes adjacent to the road frontage; and*
- (d) *maintain the visual continuity and pattern of buildings and landscape elements within the street.*

PO3 Where located in a residential zone, the dwelling house is set back from any road frontage so as to:-

- (a) *achieve a close relationship with, and high level of passive surveillance of, the street;*
 - (b) *create a coherent and consistent streetscape, with no or only minor variations in frontage depth;*
 - (c) *make efficient use of the site, with opportunities for large back yards;*
 - (d) *provide reasonable privacy to residents and neighbours on adjoining lots; and*
 - (e) *maintain reasonable access to views and vistas, prevailing breezes and sunlight for each dwelling house.*
44. The referral agency response reasons for refusal made specific reference to with reference to the Dwelling House Code, particularly Performance Outcome PO2(b), PO2(d) and PO3(b) (extracted above). However, the setbacks nominated 'in lieu of' are setbacks nominated in the Acceptable Outcomes:

AO2.1 Where located on a lot in a residential zone, a garage, carport or shed:-

- (a) *is setback at least 6 metres from any road frontage;*
- (b) *does not exceed a height of 3.6 metres; and*
- (c) *has a total floor area that does not exceed 56m².*

Note—AO2.1(b) and (c) do not apply to a garage under the main roof of a dwelling house. Note—AO2.1(a) alternative provision to QDC.

AO3 Where located in a residential zone, the dwelling house (other than a garage, carport or shed) is setback to any road frontage at least:-

- (a) *4.5 metres for the ground storey; and*
- (b) *6 metres for any levels above the ground storey.*

Note—AO3 alternative provision to QDC.

45. These matters are the focus of the Tribunal with regard to the proposed building works.

Evidence provided at the hearing

46. The Appellant, the Respondent and the Co-Respondent gave evidence of the communication during the assessment of the concurrence assessment, including emails and discussions about the proposed development and consideration of alternative locations. This is reflected in the lodged materials of this appeal.
47. The Co-Respondent acknowledged the likely additional cost and geotechnical reporting required to consider an alternative arrangement.
48. However, the focus of the Tribunal has been on the proposal plans as lodged (and refused).
49. Furthermore, with reference to Planning Act s45(3), code assessment is an assessment only against the assessment benchmarks in a categorising instrument for the development. It cannot include consideration of a person's personal circumstances, financial or otherwise.

50. The Co-Respondent noted that they could see the idea and intent of the development, providing convenient access, and noted the lack of shelter for parking on the site.
51. The Appellant gave evidence that the site was very steep and that safe access was required with shelter near the front door.
52. The Co-Respondent and Respondent advised that the assessment of steep land against the Landslide hazard and steep land overlay code was not triggered as a part of the concurrence assessment of the proposed works.
53. With reference to Dwelling House Code Performance Outcome PO2, the Co-Respondent stated that the proposed carport would be dominant in the street and that there were not many examples of similar setback structures in the locality. They stated that there were examples of garages 2.5m-3m setback, including three examples in the locality, approved some time ago.
54. The landowner raised that he is open to landscaping in front of the deck but would prefer to keep the yard open.
55. Regarding solid block fences along front boundaries in the street and locality, the Co-Respondent stated that there are no planning scheme provisions regarding solid fencing.
56. The Co-Respondent made reference to the Performance Outcome wording rather than the measurements listed in the Acceptable Outcomes.
57. All parties were in dispute about what constitutes the pattern of development in the street.
58. The Respondent stated that the pattern of development was fragmented in the street.
59. The Appellant raised examples of solid garages, shade sails and two storey brick dwellings which had greater visual bulk than the proposed structures. They also raised that most dwellings are orientated with living areas facing away from the subject land. Further, the Appellant raised that the road was a curving cul de sac with less passing traffic and therefore, less visual impact.
60. The Co-Respondent stated that there was no pattern of setback reduction to support the proposal.
61. With regard to landscaping, the Co-Respondent stated that if planting would make the difference, they would have applied a condition for landscaping, rather than recommending refusal.
62. The Tribunal including all parties viewed the land, the slope, the immediate context including the streetscape and views from adjoining properties and opposite.
63. There were established shrubby trees in the road reserve in front of the property boundary. It was noted that they were outside of private land. There are also powerlines along the property verge.
64. The land sloped away steeply from the driveway, down the hill, with the poles below the house very exposed. Due to the slope of the site and the raised location of the house, together with the double access handles between the site and the next house fronting Hardwood Court to the south, the two properties were visually disconnected.
65. The adjoining corner lot to the north, contains a dwelling with driveway to Hardwood Court. While this house has a deck facing Hardwood Court, it wrapped around to the

south, facilitating views over the rear of the subject site to the south beyond. The front of adjoining property features established trees, shrubs and dense underplanting.

Reasons for the decision

Maintenance of amenity

66. The Dwelling House Code includes the protection of amenity.

What is amenity?

67. 'Amenity' is a concept that is long steeped in planning and planning law and has transcended a number of different planning regimes in Queensland.
68. There is no neat legal definition of amenity, despite there being a large body of case law that has considered the term.
69. The most succinct way the Tribunal can describe amenity is taken from the recent case of *Barro Group Pty Ltd v Sunshine Coast Regional Council* [2021] QPEC 18 at paragraphs [141] – [142], where His Honour Judge Williamson QC DCJ relevantly provided the following:

... the concept of amenity is a broad one and not examined solely by reference to empirical standards. The assessment of impacts on amenity, as a consequence, involves an examination of intangible considerations (such as character and sense of place), where questions of degree, judgment and impression intrude.

Whilst the examination of the potential impacts of development on amenity involves matters of degree, impression and judgment, the exercise is not carried out by reference to some amorphous notion that takes its meaning from those who seek to maintain the status quo. Rather, such an assessment is informed by a range of considerations, including an objective reading of the adopted planning controls to ascertain what, if any, reasonable expectation there should be about the type and intensity of development intended for any given locality.

70. So, to consider whether the proposed carport, deck and pool would preserve the amenity of adjacent land and dwelling houses, the Tribunal needs to consider not just tangible things like the scale, height and materials of the proposed works and the views the neighbours would have of the structure, but also the expectations the community might have about the type of development in the locality.
71. With respect to expectations, the Sunshine Coast Planning Scheme sets the expectations for the community in respect of development that might or might not occur.
72. The law however allows for an applicant to offer alternative outcomes where acceptable outcomes cannot be met. As long as these alternative outcomes, or performance outcomes, can be demonstrated to meet the applicable criteria, an applicant is also entitled to have an expectation that an application will be approved.

Assessment

73. Concurrence assessment was triggered because the Sunshine Coast Planning Scheme Dwelling House Code nominates setbacks alternative to the QDC, and the proposed development does not comply with setbacks nominated in Acceptable Outcomes AO2.1 and AO3.
74. The Referral Agency Response reasons for refusal (extracted above) made specific reference PO2(b) and (d) and PO3(b).

75. PO2(b) states *Garages, carports and sheds:-... (b) do not dominate the streetscape* and PO2(d) states (*Garages, carports and sheds:-)... (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*
76. The Tribunal finds that the slim profile carport reflects the house roofline and would blend with the house. As an open sided structure with no garage door, it would not be bulky or dominate the streetscape, provided it is constructed and finished with colours that match the dwelling.
77. In order to minimise impacts to amenity of adjoining properties, it is recommended that a condition be applied, requiring the carport to have a maximum depth of 5.4m as measured from the front of the house. This depth is the standard depth of a car parking space. This is a decrease in depth of 0.6m from that shown on the Proposed Upper Floor Plan and would result in a front setback of 1.1m from the front boundary.
78. In the context of the curvature of Hardwood Court, existing solid boundary fences, gatehouse, solid garages, lightweight timber buildings, solid brick buildings, and varying garden landscape outcomes, the Tribunal finds that Hardwood Court is characterised by variety, rather than consistency of a pattern of buildings and landscape elements. The predominant pattern of buildings is 1 to 2 storey residential buildings. As a consequence, the proposed single storey carport with moderately increased setback would maintain the pattern of buildings.
79. With reference to the referral agency reasons for refusal, and the wording of PO2(d), it is not agreed that structures built prior to the current planning scheme must be excluded from assessment with regard to visual continuity and patterns of development.
80. The Tribunal finds that the carport complies with Dwelling House Code Performance Outcomes PO2(b) and (d).
81. The Tribunal recommends a condition requiring that the carport be maintained as an open sided structure with no door at all times.
82. With regard to the deck and pool structure, the referral agency response identified non-compliance with Dwelling House Code Performance Outcome PO3(b) as a reason for refusal.

PO3 Where located in a residential zone, the dwelling house is set back from any road frontage so as to:-

(b) create a coherent and consistent streetscape, with no or only minor variations in frontage depth;

83. The proposed deck and pool structure are illustrated as having a front setback of 1800m from the front boundary. Similar to the carport, the structure is shown as having a slim profile roof that reflects the angle of the existing house roof. The deck extends slightly beyond the southern wall of the existing house. With the exception of a corner wall on the southern end of the deck, the pool, deck and carport structures are open, visually light weight structures with limited visual impact as viewed from the street.
84. The roofed pool deck is set back further than the carport roof (1.8m) and is 4.29m wide. The pitch is the same as the carport at 6 degrees and would blend in with the carport structure.
85. The proposal plans indicate landscaping is to be provided between the front boundary and the front of the pool/deck structure. No further details have been provided of the proposed landscaping.

86. As noted above, the front public verge contains established shrubby tree vegetation along the frontage.
87. With reference to Dwelling House Code Performance Outcome PO3(b), the dwelling at the subject site does not presently have a front deck. The adjoining dwelling to the north has a deck on the front and southern side. In this way, the introduction of a deck to the front of the building is consistent with the treatment to the adjoining property. As noted previously, the curvature of Hardwood Court and the two adjoining access handles result in variation within the streetscape.
88. With the exception of the vertical walls on the southern corner of the deck, the proposed lightweight appearance of the proposed building works mean that the existing dwelling (and associated setback) represent the primary bulk of building appearance on the site.
89. The vertical walls at the southern end of the deck bring visual prominence to the highest and front part of the deck structure. As proposed, the deck with the wall does not represent a minor variation in the streetscape.
90. The Tribunal recommends conditions requiring that the deck structure remain open, without sections of walls. Slatted timber or solid glass balustrading is acceptable in terms of visual bulk outcomes to the street. Conditions are also recommended requiring dense, landscaping between the deck/pool and front boundary. The planting palette is to comprise native plants consistent with the character of the locality.
91. Through the imposition of conditions, the Tribunal finds that the proposed development complies with PO3(b).
92. The Appellant contended that the proposed development complies with the Dwelling House Code by also complying with the Overall Outcomes.

9.3.6.2 Purpose and overall outcomes

- (1) *The purpose of the Dwelling house code is to ensure dwelling houses achieve a high level of comfort and amenity for occupants, maintain the amenity and privacy of neighbouring residential premises and are compatible with the character and streetscape of the local area.*
- (2) *The purpose of the Dwelling house code will be achieved through the following overall outcomes:*
 - (a) *a dwelling house incorporates a high standard of design and makes a positive contribution to the streetscape character of the area in which it is located;*
 - (b) *a dwelling house is sited and designed to protect the amenity and privacy of neighbouring residential premises;*
 - (c) *a dwelling house provides a high level of amenity to the residents of the dwelling house;*
 - (d) *a dwelling house is provided with an acceptable level of infrastructure and services; and*
 - (e) *where provided, a secondary dwelling:*
 - (i) *is located, designed, constructed and used to have an association with the primary dwelling; and*

- (ii) *is small in size, such that the secondary dwelling is ancillary to the primary dwelling.*

93. With reference to Purpose (1), the Tribunal hearing and associated site visit identified other properties in the vicinity of the site that have pools at their front boundary. There are also other properties, including the adjoining house to the north that feature decks to the front of the house. This is a characteristic of Queensland dwellings. The dwelling includes sufficient opportunities for privacy for the residents. Furthermore, as identified at the hearing, the private yards of the majority of other dwellings are orientated away from the street frontage, meaning that the proposed development complies with Purpose statement (1).
94. With regard to the siting variation sought, Overall Outcome 2(a), (b), and (c) are relevant. The Tribunal finds that the proposed development comprises a high standard of design that reflects the form of the existing dwelling and the architectural characteristics of dwellings in the area. As above, privacy and amenity are maintained through building orientation, design and through the provision of new front landscaping. The resultant building works will contribute to the functionality and accessibility of the existing dwelling house, contributing to a high level of amenity to the residents of the dwelling house. In this way, the development complies with the Dwelling House Code.

Can the impacts of the proposed development be conditioned?

95. The Tribunal has identified matters that are recommended to be conditioned including, retaining open sides to the carport and open sides to the deck (except for compliant balustrades), landscaping in front of the proposed pool/deck and ensuring that the building works match the colours and materials of the dwelling. Conditions are also recommended requiring the carport to be a maximum of 5.4m, thereby increasing the front setback of the carport while retaining the intended function.
96. Pursuant to Planning Act s254(3), a tribunal must not make a change, other than a minor change, to a development application. The abovementioned changes do not comprise substantially different development and are minor changes. Through the imposition of conditions, the development complies with the assessment benchmarks.

Conclusion

97. While the proposed shed does not comply with Acceptable Outcome AO2.1 and AO3, of the Dwelling House Code, the Tribunal finds that, subject to the imposition of relevant conditions, the proposed building works would comply with PO2 and PO3. The Tribunal also finds that the proposal complies with the Purpose and Overall Outcomes of the Dwelling House Code.
98. The Tribunal therefore sets aside the decision of the assessment manager to refuse the development application and nominates the following conditions, thus ensuring compliance with Dwelling House Code PO2 and PO3:
- A. The carport is to have a maximum depth of 5.4m and achieve a minimum setback of 1.1m from the front boundary.
 - B. The carport is to remain unenclosed with no garage door or new walls.
 - C. The deck is to remain unenclosed with no new walls. Balustrading is to comprise of slatted timber or solid glass balustrading (except as varied for pool safety requirements).
 - D. The colours and materials of the carport, pool and deck are to match the main house.

- E. Landscape screening of the deck and pool is to be planted and maintained between the deck/pool and front boundary. Planting density results in plants capable of growing to minimum deck height, planted at no less than 1 metre centres. Species are to comprise local native plants, avoiding declared plants and environmental weeds.

Linda Tait
Development Tribunal Chair
Date: 16 December 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

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