



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-041
Appellant:	Ian McMahon
Assessment Manager:	Sunshine Coast Regional Council
Site Address:	16 Albatross Avenue Aroona and described as Lot 8 RP 140773 – the subject site

Appeal

Appeal under section 229 and item 1(a) of table 1 of section 1 of schedule 1 of the Planning Act 2016 against the decision to refuse a development permit for construction of a Class 10a carport.

Date and time of hearing:	The Appeal was decided on submissions
Place of hearing:	NA
Tribunal:	Markus Pye – Chair Dr Christopher Robertson – Member
Site Viewing:	10am 16 December 2022

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the Planning Act 2016 (PA) **confirms** the decision of the Assessment Manager to refuse a development application for building works within the road boundary setback.

Background

1. The subject site is a regular-sized but irregular-shaped low density residential allotment with a long and broken frontage to Albatross Avenue. The street frontage appears to have a regular width road reserve. The property has two crossovers, one which appears standard width to the left hand side boundary area and the other near to the right hand side boundary as an entry to the proposed carport. This crossover appears new and is wider than typical to allow side by side vehicle access in the yard frontage. The Tribunal has no knowledge as to whether this new crossover was approved.

2. The proposed development was for a double carport of 64m², the dimensions being 9480mm to front entry and 6000+mm deep, and 3382 rising to 4272mm at the rear. The carport was to be set 30mm from the side boundary and 100mm from the front boundary line to the road reserve.
3. The Appellant submitted the proposal to Sunshine Coast Building Approvals who subsequently submitted a DA Form 2 for the proposal to Sunshine Coast Regional Council on the Appellant's behalf.
4. Sunshine Coast Regional Council issued a decision notice refusing the proposal on 27 July 2022.

Jurisdiction

5. The tribunal has jurisdiction for this appeal under Planning Act 2016 (PA), section 229(1)(a)(i) and Schedule 1, sections 1(1) and 1(2)(g) and Table 1, Item 1(a) being an appeal by the Appellant against the refusal of the development application by the Assessment Manager.

Decision framework

6. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
7. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA).
8. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
9. The tribunal is required to decide the appeal in one of the ways in section 254(2) of the PA.

Material considered

10. The material considered in arriving at this decision comprises—
 - a. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 17 August 2022.
 - b. Further submissions by the Appellant dated 9 November 2022, 23 November 2022 and 12 December 2022
 - c. Submissions by Sunshine Coast Regional Council (SCRC) dated 8 December 2022
 - d. Sunshine Coast Regional Council Scheme 2014
 - e. 9.3.6. Dwelling house code, Sunshine Coast Planning Scheme (SCPS) 2014
 - f. 7.2.7 Caloundra West Local Plan Code, SCPS 2014
 - g. Planning Regulation 2017 (PR)
 - h. Qld Development Code MP1.2 Design & Siting

Findings of fact

11. The matter of road boundary setbacks in relation to a Class 10 buildings may be varied by a planning scheme subject to the provisions of Section 33 of the Building Act 1975. This

variation is an alternative to the Queensland Development Code MP 1.2, which sets the statewide design and siting requirements and applies to new building work for single detached dwellings (Class 1) and associated Class 10 buildings and structures on lots 450m² and over in area.

12. Due to the reduced setback of the proposed development, it fell within the design and siting category under Schedule 9, Part 3, Division 2, Table 3 of the PR.
13. SCRC assessed the proposed development under the 9.3.6. Dwelling house code SCPS 2014.
14. The Tribunal acknowledges that at the time of the site viewing, the proposed carport had been constructed on the subject site appearing generally in accordance with the sketch design drawing.

Reasons for the decision

15. Albatross Avenue is approximately 1 kilometre in length on the slope of a ridge facing east to the Coral Sea on the southern elevation portion, then turning and sloping to face north. The avenue comprises a mix of residential property styles dating from the establishment of the subdivision through to more recent builds concentrated on a portion of the eastern side of the upper portion. For some 40% of the eastern portion of Albatross Avenue, the residences face away from the street due to having a second street frontage and they address that street.
16. The western portion and more northern portion on both the east and west address the street. These portions of the avenue contain single and double storey homes that accommodate vehicles as originally designed within the building envelope, virtually intact without exception. There is one obvious exception having an aged single carport partially within the setback, which, when considered within the streetscape, looks out of place. The subject property is approximately mid-avenue. The landscaping has a constant theme and fencing consists of timber paling, variations of masonry walling and battened infill.
17. The Tribunal reviewed the assessment by Sunshine Coast Regional Council, and the appeal submissions, and after conducting a site viewing understood how council came to the conclusion that the proposal did not satisfy the assessment benchmarks for reduced setbacks.
18. Council concluded that the proposal did not satisfy the following—
 - 9.3.6.3 Dwelling House Code Garages, carports and sheds:-
PO2
(b) do not dominate the streetscape; and
(d) maintain the visual continuity and pattern of buildings and landscape elements within the street; and
 - 9.3.6.2 Purpose and overall outcomes.
 - (1) (...) *are compatible with the character and streetscape of the local area;*
 - (2) (a) (...) *incorporates a high standard of design and makes a positive contribution to the streetscape character of the area in which it is located...*

19. Council's reasons for the refusal also included—

The existing dwelling has a garage which complies with the requirements for parking in the Dwelling house code. As such council sees no reason to depart from the planning scheme for the carport encroachment.

20. In matters of reduced setbacks, each application is decided on its merits. The QDC and SCPS 2014, which can offer an alternative to the QDC requirements, fundamentally agree that vehicle structures are not the desired outcome within the 6m setback zone. The assessment benchmarks are to limit the impacts which are considered negative, which in this instance, council considered exceeded the appropriate limit.

21. To achieve a reduced setback, impacts are to be limited to meet the assessment benchmarks, or ameliorated. The Appellant believed this amelioration could be primarily achieved through design and landscaping given that the Appellant also asserted the lack of alternative siting, which the Tribunal is of the opinion exists. The Tribunal recognises that at in excess of 9m wide it is the scale of a triple carport and used as such as there was a trailer in place at the time of site viewing. The Tribunal concluded that the existing building was in fact evidence that the proposal does not comply and could not comply with the assessment benchmarks.

22. The reasoning supporting this conclusion can be expressed as follows, by reference to the appellant's relevant submissions, and the Tribunal's observations in response:

- That the carport *'maintains the existing streetscape presentation'*—The Tribunal found that the streetscape is virtually intact regarding any reduced setbacks of structures on the front and/or side boundary
- That the *'carport enhances the look of the street with design and finishes'*—The Tribunal did not agree that there is any enhancement value in a structure that only consists of posts and sandwich panel roofing, and further, roofing that is *'not a consistent design with the existing dwelling'*
- *'The property owner is happy to provide additional landscaping to soften the streetscape and enhance the landscape elements of the property'*. The Appellant's submission also stated: *'The property has an existing block wall boundary fence'*— Given that it is a build to boundary structure on two sides of the carport and a block wall along the front boundary, the Tribunal found that this proposed amelioration was not practicable.

23. Further, in response to the appellant's submission that *'the property does not have an existing garage'*, the Tribunal found that—while there was no information before the Tribunal about its current use—there is in fact a garage within the existing building envelope.

24. Having considered all of the submissions in support of the proposed development, and also having had the benefit of a site viewing with the existing structure in place, the Tribunal concluded that the building *'spoke for itself'*, that is, the proposed carport—

- does not maintain the visual continuity and pattern of buildings and landscape elements within the street
- is not compatible with the character and streetscape of the local area,
- does not incorporate a high standard of design and make a positive contribution to the streetscape character of the area in which it is located.

25. Therefore the Tribunal was not satisfied that the Appellant had established that the appeal should be upheld as both the purpose and overall outcome (1) and (2) of the Dwelling house code and Performance Outcome PO2 have not been achieved in relation to the road

boundary setback of the existing Class 10a carport.

Markus Pye

Development Tribunal Chair

Date: 5 January 2023

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 Energy and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833 Facsimile (07) 3237 1248

Email: registrar@epw.qld.gov.au