



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-035
Appellant:	Simon Lane (property owner)
Respondent: (Assessment manager)	Trevor Gerhardt
Co-respondent: (Concurrence agency)	Sunshine Coast Regional Council
Site address:	27 Conway Court, Bli Bli Qld 4560, described as Lot 17 on RP 135580 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal, at the direction of the concurrence agency, of a 'Preliminary Approval' for building works for the construction of a 'garage' (Reference Sunshine Coast Building Approvals Reference Number 240728, Sunshine Coast Regional Council CAR24/0158).

Date and time of hearing:	Thursday 17 October 2024 at 10.00 am
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Elizabeth Anderson – Member
Present:	Simon Lane (Appellant and property owner) Catherine Lane (Property owner) Trevor Gerhardt (Respondent, assessment manager) Angus McKinnon (Observer) Alice Hanigan (Sunshine Coast Regional Council, Co-respondent) Shaun Matthews (Sunshine Coast Regional Council, Co-respondent)

Decision:

The Development Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016* **confirms** the decision of the Assessment Manager to refuse the preliminary approval of the proposed building works (Sunshine Coast Building Approvals Reference Number 240728, Sunshine Coast Regional Council CAR24/0158).

Background

The Approval Sought

1. Preliminary approval was sought for proposed building works for a garage attached to the front of the existing dwelling, with the assessment provisions limited to:
 - Design and Siting (QDC MP1.2 and relevant alternative provisions); and
 - Sunshine Coast Planning Scheme 2014 – Dwelling House Code
2. The preliminary approval sought excludes all other assessment provisions including but not limited to BCA assessment.

The subject site

3. The subject site is a rectangular block of 802 square metres developed with a modern, high set, single storey residence attached to an older double storey residence with an enclosed undercroft fronting Conway Court. The subject site is located on the high, western side of Conway Court, with a frontage of approximately 19.8 metres to Conway Court.

The proposal

4. The proposal is for the construction of an enclosed double garage attached to the front of the existing dwelling fronting Conway Court.
5. The proposed garage would be approximately 8240mm in width and approximately 6045mm in depth and approximately 3192mm in height fronting Conway Court.
6. The proposed garage would be set back between approximately 396 mm and 805mm from the front property boundary to Conway Court (805mm at its northern corner and 396 mm at its southern corner, from the front property boundary to Conway Court).

Assessment of the application

7. On 20 March 2024, the Respondent requested the Referral Agency, Sunshine Coast Regional Council, response to the proposed preliminary approval for building works.
8. On 22 March 2024, the Referral Agency, Sunshine Coast Regional Council, issued an information request to the respondent (No details of this information request have been provided to the Tribunal from any party, but emails indicating this information request was issued are in the lodgement documents provided to the Tribunal).
9. On 20 June 2024, the respondent advised Council they would not be providing any further information and requested Council to proceed with its assessment and issue a referral agency response. (No details of this have been provided to the Tribunal from either side, apart from emails to this effect in the lodgement documents provided to the Tribunal).
10. On 8 July 2024 the Referral Agency, Sunshine Coast Regional Council, directed the Assessment Manager to refuse the preliminary approval.
11. Council's stated reasons for refusal were:
 1. *The proposal does not meet Performance Outcome PO2 (b) of the Dwelling house code:*

Sunshine Coast Planning Scheme, Dwelling house code, performance outcome PO2 (b) - Garages, carports and sheds do not dominate the streetscape.

The proposed garage would dominate the streetscape, as it is an enclosed structure located within close proximity of the front boundary and would be visually evident within the existing streetscape, which is characterised by structures that are well set back from front boundaries.

2. *The proposal does not meet Performance Outcome PO2 (d) of the Dwelling house code:*

Sunshine Coast Planning Scheme, Dwelling house code, performance outcome PO2 (d) - Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.

The visual continuity and overall pattern of Conway Court comprises of dwellings approximately 4.5m - 6m from the road frontage with carports and garages predominantly setback 6m, with the continuity of the built form generally being maintained, due to their being minimal exceptions to front setbacks, and only open, lightweight and small scale structures located within property frontages.

Located at 805mm from the front boundary, the proposed enclosed garage is inconsistent with the type of buildings located within the front setback of properties within the street and would not maintain the visual continuity and pattern of buildings and landscape elements within the street.

3. *Unable to be modified to achieve compliance:*

The proposed garage could not be reduced in size to provide an appropriate setback to achieve compliance with the assessment benchmarks and was therefore unable to be conditioned to comply with Performance Outcome PO2.

12. On 19 July 2024, the respondent issued the decision notice to refuse the preliminary approval (Preliminary Approval Decision Notice Reference Number 240728).

Jurisdiction

13. 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.
14. Section 1(1)(b) of the schedule provides that the matters stated in Table 1 of the schedule ('Table 1') are the matters that may be appealed to a tribunal. However, subsection 1(2) of the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
15. Section 1(2)(g) provides that Table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the Building Act 1975, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
16. 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

17. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
18. 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.
19. 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)).
20. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

21. The material considered in arriving at this decision was:
 - a. Form 10 – Notice of Appeal (with the supporting documents and further information contained therein).
 - b. Referral agency response directing refusal issued by Sunshine Coast Regional Council, dated 8 July 2024.
 - c. Development Application – Refusal issued by the respondent dated 19 July 2024.
 - d. Sunshine Coast *'Planning Scheme 2014'* (version 27 January 2024) – (including Schedule 1, *Administrative Definition 'Streetscape'*).
 - e. Sunshine Coast Regional Council *'Dwelling House Code: PO2 - Garages, carports and sheds: 23 January 2024.*
 - f. Sunshine Coast Regional Council Referral Agency Response (CAR 24/0423) for 6 Naroma Court, Coolum Beach (that the respondent stated at the hearing his evidence relied on, and which was submitted to the registry on 23 October 2024 as a document that formed part of his submission).
 - g. Sunshine Coast Regional Council Referral Agency Response (CAR 24/0390) for 11 Mace Drive, Buderim (that the respondent stated at the hearing, his evidence relied on, and which was submitted to the registry on 23 October 2024 as a document that formed part of his submission).
 - h. Development Tribunal Decision Notice (Appeal 24-010) for 10 Booker Parade, Golden Beach (that the Respondent stated at the Hearing his evidence relied on, and which was submitted to the Registry on 23 October 2024 as a document that formed part of his submission).

Findings of fact

22. The tribunal makes the following findings of fact:

The view of the proposed development from the north

23. The proposed garage will be visible from the front property boundary at the driveway to 14 Conway Court on the east side of Conway Court and from the verge, road and front of the properties between this property and the proposed development.
24. The proposed garage will be visible from the mid-point along the frontage on the property boundary at 21 Conway Court on the west side of Conway Court and from the verge, road and fronts of the properties between this property and the proposed development.

The view of the proposed development from the south

25. The proposed garage will be visible from the front of the side property boundary between 28 Conway Court and 30 Conway Court on the east side of Conway Court, and from the verge, road and front of the properties between this property boundary and the proposed development.
26. The proposed garage will be visible from the front property boundary at 33 Conway Court on the west side of Conway Court, and from the verge, road and front of the properties between this property boundary and the proposed development.

Findings concerning the properties fronting Conway Court (western side, north of the subject site)

27. To the north of the subject property at 29 Conway Court is a single storey dwelling located well set back behind a 2 metre high horizontal paling front fence and *colorbond* fence and gate with a grassed verge that sweeps out to the narrower verge in front of the subject property. There are three large mature trees on the verge.
28. The next property to the north (31 Conway Court) is a high set, well set back single storey dwelling with a garage underneath, with a retaining wall raising to 1 metre on the front property boundary with low dense shrubs and extensive grassed areas behind and a low hedge on the side property boundary.
29. Further north, 33 Conway Court is a single storey dwelling, well set back with a stone retaining wall rising to 1.65 metres with a 1 metre high, open paling front fence above. There is a narrow grass verge in front and open grassed areas behind with clumps of dense landscaping and occasional palm trees.

Findings concerning the properties fronting Conway Court (western side, south of the subject site)

30. To the south of the subject property at 25 Conway Court is a high set, single storey dwelling with very dense landscaping including large mature palms, with no front fence, well set back behind a narrow grass verge.
31. The next property to the south (23 Conway Court) is a high set single storey dwelling set well back, more than 6 metres from the property boundary, with a timber deck extending at front ground level, to the front property boundary enclosed by an open metal pool fence. There are small planter boxes with low plants and a sail cloth over part of this deck.
32. Further south, 21 Conway Court is a single storey dwelling, set well back beyond 6 metres, located side on to the street, with no front fence and extensive grassed areas in front.

Findings concerning the properties fronting Conway Court (eastern side, opposite the subject site)

33. This is the low side of Conway Court with many dwellings set below the road level resulting in only part of these dwellings being above the level of the road.
34. 28 Conway Court is a low set, well set back, single storey dwelling, with no front fence and dense landscaping including moderately high mature trees set behind the grass verge.
35. 26 Conway Court is a low set, well set back, single storey dwelling with a 1.8 metre high paling front fence set behind the grass verge with a mature palm tree. There are mature palm trees visible on the property between the fence and the dwelling.

36. 24 Conway Court is a low set, single storey dwelling set well back, below road level with two garages set closer to the road, at near road level at the front of the property with a low block retaining wall along the property frontage with low dense landscaping behind and a timber portico. There are three large mature palm trees on the grass verge.
37. 22 Conway Court is a two storey, well set back, high set dwelling with no visible front fence but very dense landscaping over 2 metres high along the frontage and two large mature trees on the grassed verge.
38. 20 Conway Court is a low set, well set back, single storey dwelling with extensive grassed areas in front with no fence and occasional high dense landscaping, some over 2 metres high.
39. 18 Conway Court is a high set, well set back, single storey dwelling with a garage below, with no fence, extensive grassed areas with clusters of palms merging with the grass verge in front.
40. 16 Conway Court is a single storey dwelling with a low open metal front fence and clumps of low plants on the grass verge in front, and with a light structure carport, apparently set back between 3 to 4 metres from the front property boundary. (Upon closer inspection the Tribunal formed the opinion that this carport may have been located up to, or very close to the front property boundary).
41. 14 Conway Court is a low set, well set back, single storey dwelling with no fence and extensive grassed areas merging with the grassed verged, with dense mature trees and palm clusters close to the front of the dwelling.

Findings concerning the subject property

42. The subject property consists of a high set, double storey existing dwelling to which new, single storey, high set dwelling extensions have been attached.
43. The proposed garage is to be attached to the front of this existing dwelling and extend to within approximately 396mm to 805mm of the front property boundary to Conway Court.
44. The road and verge steps out in Conway Court in front of the subject property, resulting in a narrower verge of approximately 2.5 metres wide in front the proposed garage and the proposed garage being closer to the street than nearby property boundaries.

Findings concerning the 'general streetscape'

45. The houses in Conway Court present to Conway Court as apparently single storey, modestly scaled residences set well back from the front property boundary.
46. The majority of the front garden areas along both sides of the street are of open grass which merges with the verge grass.
47. Where there are planted gardens along the lot frontages, they are attractively planted with palm trees and shrubs, on some occasions sufficiently dense to visually obscure the front of the dwelling.
48. The verge width varies from approximately 4.5 metres to 2.5 metres in front of the subject property.
49. Occasional palm trees, mature trees and planted landscaping occur on the verge in front of some dwellings.

50. There are occasional stone retaining walls along parts of some property boundaries that appear to have been constructed as part of the subdivision. These are generally below 1 metre high.
51. The most noticeable impacts on this general streetscape are the high retaining wall at 33 Conway Court; the deck at ground level and sail cloth at 23 Conway Court; the carport built at 16 Conway Court, and the 2 metre high masonry wall above the 1 metre high retaining wall at 12 Conway Court.

Reasons for the decision

52. The key aspects of concern are:
 - a. The visual impact of the proposed garage as seen from both sides of Conway Court
 - b. Whether the proposed garage will dominate the streetscape of Conway Court
 - c. Maintenance of the visual continuity and pattern of buildings and landscape elements within Conway Court.
53. With regard to visual impact of the garage as seen from both sides of Conway Court, the Tribunal formed the opinion that the proposed garage would be significantly visible to pedestrians and vehicles using Conway Court and from the road frontage of eight properties fronting the east side of Conway Court, and from the road frontage of six properties fronting the west side of Conway Court.
54. With regard to the Sunshine Coast Regional Council *Dwelling House Code* and Performance Outcome PO2(b), the Tribunal formed the opinion that the proposed garage *would dominate the streetscape*.
55. With regard to the Sunshine Coast Regional Council *Dwelling House Code* and Performance Outcome PO2(d), the Tribunal formed the opinion that the proposed garage *would not maintain the visual continuity and pattern of buildings and landscape elements within the street*.
56. The Tribunal did not consider the alternative of a lightweight open carport or the view that there were no other locations for the proposed garage and considered the application only on its own merits.
57. The Tribunal gave no weight to the Council's Information Request and the appellant's failure to provide any requested information in response to it.

Derek Craven Kemp
Development Tribunal Chair
Date: 1 November 2024

Appeal rights

Schedule 1, table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries:

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