



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-059
Appellant:	Petrina Laurelle Douglas and Geoffrey Allan Boon
Respondent (Assessment manager):	Trevor Gerhardt
Co-respondent (Concurrence agency):	Sunshine Coast Regional Council
Site address:	18 Yallanga Place, Mooloolaba Qld 4557 described as Lot 23 of RP174076 – 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 'carport' (Reference Sunshine Coast Building Approvals Reference Number 240823, Sunshine Coast Regional Council DBW24/0180 and CAR24/0541).

Date and time of Hearing:	11:00am, 22 nd January 2025
Place of Hearing:	The subject site
Tribunal:	Victor Feros OAM—Chair Elizabeth Anderson—Member
Present:	Petrina Laurelle Douglas and Geoffrey Allan Boon—Appellant Trevor Gerhardt for Sunshine Coast Building Approvals – Assessment Manager - Respondent Shaun Matthews and Jessie Kay for Sunshine Coast Regional Council – Co-Respondent

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) replaces the decision of the Assessment Manager dated 06 November 2024 with another decision, namely to grant a preliminary approval for the siting of and the design of the proposed *open carport* on the subject land as shown on Points North Design and Drafting Design Drawings – 18 Yallanga Place, Mooloolaba – Revision A.1 – Proposed Renovation – Sheets WD-01-WD-15 Dated 06 August 2024

Background

1. The subject site, described as Lot 23 on RP174076, situated at 18 Yallanga Place, Mooloolaba, is rectangular in shape, having an area of 736m², with frontage to Yallanga Place of 18.294m.
2. The level site is developed as a single-level detached house, containing an enclosed double garage incorporated into the house design. The proposed on-site unenclosed carport accommodation is sought to accommodate additional vehicles on site.
3. Yallanga Place is a no-through road, a residential street ending in a cul-de-sac.
4. An Application for Carport purposes was lodged by Trevor Gerhardt of Sunshine Coast Building Approvals (Assessment Manager), on behalf of the owner-resident, Geoffrey Allan Boon, with Sunshine Coast Regional Council as Concurrence Agency (Council Reference DBW24/0180 and CAR24/0541)
5. Sunshine Coast Regional Council, by decision made 24 October 2024, directed the Assessment Manager to refuse the Application on the grounds that the proposed development:

1. *The proposal does not meet Performance Outcomes P02 (b) of the Dwelling House Code:*

P02 – Garages, carports and sheds:-

(a) Do not dominate the streetscape;

The excessive height of the proposed carport combined with location in front of the existing line of buildings within the street would dominate the streetscape. The carport would be highly visible from the eastern end of Yallanga St (sic) and from Quondong Street. The proposed hip roof of the carport would present bulk to the street and further increase its dominance. There are no other carports, garages or building of a similar scale located within 6 metres of the road.

2. *The proposal does not meet Performance Outcome P02 (d) of the Dwelling House Code:*

P02 – Garages, carports and sheds:-

(b) Maintain the visual continuity and pattern of buildings and landscape elements within the street.

The proposed carport would not maintain the visual continuity and pattern of buildings and landscape elements in the street. There are not any other carports, garages or buildings in Yallanga Pl or Quondong St, within 6.0metres of the front boundary. Whilst there are 3 properties with unlawful shade sails within the front setback, these are very lightweight structures and are predominantly screened from the street by landscaping and fences. Regardless, three shade sails in a street of 29 properties does not comprise the dominant visual pattern in the street.

3. *There are alternative locations for a carport to be accommodated within the site that would better meet the Performance Outcomes.*

6. The Application was duly refused by the Assessment Manager 6 November 2024 and an Appeal to the Development Tribunal was instituted on 13 November 2024.

Jurisdiction

7. This Appeal has been made under section 229 of the PA, as a matter that may be appealed to a Tribunal.
8. Schedule 1 of PA, section 1(2) however states table 1 may apply to a Tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section. Paragraph (g) of section 1(2) states: “a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission”.
9. The Tribunal has determined that the application lodged with the assessment manager and the referral of the development application to Council satisfies that requirement being a development application for approval of preliminary building works under the section 33 of the *Building Act 1975*, which allows alternative provisions to QDC boundary clearance and site cover provisions for particular buildings.
10. The Application was subsequently refused by the assessment manager as directed by Council as the referral agency. Table 1 item 1(a) in schedule 1 of the PA states that for a development application an appeal may be made to a tribunal against the refusal or all or part of the development application.
11. The refusal directed by Council and the refusal made by the Assessment Manager have enlivened the jurisdiction of the Tribunal.

Decision framework

12. Section 246 of the PA provides as follows:
 - (1) *The Registrar may, at any time, ask a person to give the Registrar any information that the Registrar reasonably requires for the proceedings. (...)*
 - (2) *The person must give the information to the registrar within 10 business days after the registrar asks for the information.*
13. Section 253 of the PA sets out matters relevant to the conduct of this Appeal. Subsections (2), (4) and (5) of that section are as follows:
 - (2) *Generally, the Appellant must establish the Appeal should be upheld.*
 - (4) *The Tribunal must hear and decide the Appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.*
 - (5) *However, the Tribunal may, but need not, consider— other evidence presented by a party to the Appeal with leave of the Tribunal; or any information provided under section 246.*

14. Section 254 of the PA addresses how an appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal (not relevant here) and are as follows:

- (1) This section applies to an appeal to a tribunal against a decision.*
- (2) The tribunal must decide the appeal by-*
 - (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) [not relevant].*
- (3) However, the tribunal must not make a change, other than a minor change, to a development application.*

Material considered

15. The material considered in coming to this decision includes:

- (a) Proposed building works plans prepared by Points North Design and Drafting– 18 Yallanga Place, Mooloolaba – Revision A.1 – Proposed Renovation – Sheets WD-01-WD-15 Dated 06 August 2024.
- (b) Sunshine Coast Building Approvals – Development Permit for Building Works Assessable against the Planning Scheme and Concurrence Agency Report dated August 2024.
- (c) Sunshine Coast Council – Request for Concurrence Agency Response (Building Work) dated 23 July 2024.
- (d) Letter dated 15 August 2024 from Gordon and Lesley Macnamara, who reside at 16 Yallanga Place, Mooloolaba, addressed to Sunshine Coast Regional Council, providing support for the proposed carport.
- (e) Letter dated 20 August 2024 from Barry Tucker, who resides at 20 Yallanga Place, Mooloolaba, addressed to Sunshine Coast Regional Council, providing support for the proposed carport.
- (f) Sunshine Coast Regional Council Information Request dated 2 September 2024.
- (g) Sunshine Coast Building Approvals response to Sunshine Coast Council Information Request dated, dated 9 September 2024.
- (h) Sunshine Coast Building Approvals (Assessment Manager) – Preliminary Approval Decision Notice dated 06 November 2024.

- (i) Sunshine Coast Council (Referral Agency) Decision Notice of refusal dated 29 October 2024.
- (j) Form 10 – Appeal Notice, grounds for Appeal and correspondence accompanying the Appeal lodged with the Tribunals Registrar on 13 November 2024.
- (k) Emailed correspondence to the Registrar from Council dated 31 January 2025 with attached Yallanga Streetscape Assessment prepared by Jessie Kay from Sunshine Coast Council.
- (l) Emailed correspondence to the Registrar from Sunshine Coast Building Approvals dated 31 January 2025 objecting to the inclusion of the Yallanga Streetscape Assessment prepared by Jessie Kay from Sunshine Coast Council.

Findings of fact

- 16. The hearing of the appeal was held at the appellant's residence, the subject site, on 22 January 2025.
- 17. The existing garage is incorporated into the original house design and construction. Additional car accommodation in the form of a roofed open carport is proposed, sufficient for the parking of two (2) vehicles, within the existing front setback of minimum 6.0m.
- 18. The existing front setback area is used informally for the outdoor parking of vehicles and features landscaping and a fenced courtyard to the north-east.
- 19. There is, in general, a prevailing, but not necessarily pervasive, streetscape character, with reference to the eastern end of Yallanga Place and its intersection with Quondong Street, regarding residential building setbacks.
- 20. The adjoining occupants have indicated support for the proposed development.
- 21. With specific reference to Performance Outcome PO2(b) of the Dwelling House Code of the Sunshine Coast Planning Scheme 2014 (23 January 2024 Version), the proposed carport will not dominate the streetscape and will not be visually intrusive or otherwise highly visible.
- 22. With reference to Performance Outcome PO2(d) of the Code, the proposed carport will, to any practicable extent, maintain a visual continuity and pattern of buildings and landscape elements within the street.
- 23. With reference to there being alternative locations for a carport within the site 'that would better meet the performance outcomes', such a consideration is not a proper or appropriate matter for a town planning assessment – the relevant test being whether the proposed carport is suitably accommodated where proposed within the streetscape. This Tribunal finds that the proposed location and presentation are suitable for the proposed use.

Reasons for the decision

24. Mitigating grounds considered instructive in the subject instance to any favourable consideration, notwithstanding the reduced building line setback, include the design coherence of the proposed carport with the existing residence in terms of compatible building height, roof articulation, appropriateness of soft landscaping elements, compatibility of building materials and finishes – so rendering the proposed development unobjectionable in the wider streetscape setting.
25. A principal mitigating factor in favour of the development as proposed is that the subject site is at the interface of street development divided by historic Town Plan zoning allocations, resulting in adjoining and adjacent lands to the west along Yallanga Place being developed for medium-density housing in accordance with the attached (medium density) zoning, and elsewhere in the streetscape, land having been developed for single detached dwellings in accordance with the allocated (low density) residential zoning – overall resulting in inconsistencies in streetscape values.
26. Provided that appropriate lot frontage treatments are to be employed, including adequate soft landscaping placements and densities and appropriately designed screen fencing and gating, any otherwise inconsistencies relative to streetscape considerations are capable of amelioration, and it is, in this instance, so determined.

Victor Feros OAM LFPIA
Development Tribunal Chair
Date: 28 April 2025

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
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Brisbane Qld 4001

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