



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	40 - 18
Appellant:	Chris Perry
Assessment Manager:	Coastal Building Certifications P/L
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council
Site Address:	1 Kylee Crescent, Maroochydore and described as Lot 112 on RP 124527 – the subject site

Appeal

Appeal under section 229 and item 1 of table 1 of section 1 of schedule 1 of the *Planning Act 2016* (PA) against the refusal of a development application for construction of a garage and patio on residential premises.

The Assessment Manager (Coastal Building Certifications P/L) was directed by the Sunshine Coast Regional Council (Council) as the referral (concurrence) agency, to refuse the application for building development approval.

The Council's response was that the proposed development did not meet and could not be conditioned to meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code, and Performance Outcomes P02(d) and PO3(b).

Date and time of hearing:	Friday 18 January 2019 at 2.00pm.
Place of hearing:	The subject site
Tribunal:	Gregory Schonfelder – Chair Kim Calio - Member
Present:	Chris Perry – Appellant Liam Perry – Appellant's son Peter Chamberlain – Sunshine Coast Regional Council - Council representative Ruth Creffield – Sunshine Coast Regional Council – Council representative

DECISION

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) sets aside the decision of the Assessment Manager to refuse the application for additions to dwelling (Class 1a and 10). and orders the Assessment Manager to remake the decision by a new Decision Notice, within 20 business days of the date of this Decision Notice, and directs that the assessment manager approve the application subject to appropriate conditions including the following:

- (a) The site is developed and maintained in accordance with drawing OPTION 3A Plan and Elevation dated 22 January 2019 drawn by Chris Perry.

BACKGROUND

1. The subject site is a triangular shaped 531m² lot on the corner of Kylee Crescent and Surf Road, Maroochydore.
2. The site is generally surrounded by single and two storey dwellings.
3. There is an existing multi gabled roofed dwelling with a double garage accessed from Kylee Crescent. Two small garden sheds (total site cover 14.1m²) are also located on site in the south western corner with the largest located adjacent to the Surf Road frontage.
4. An application was made to the assessment manager for a building development approval to make alterations and additions to the existing dwelling. These included relocating the garage so that it would be accessed from Surf Road, make internal alterations and relocate some of the rooms within the dwelling and add on to the Surf Road façade a roofed deck area.
5. An application was made by the assessment manager to the Council for a referral (concurrence) agency response on the application due to non-compliances with the following Acceptable Outcomes of the Dwelling House Code contained in the Sunshine Coast Planning Scheme 2014:
 - A02.1 as the proposed garage was to be located 2.085m from the frontage of Surf Road rather than a minimum of 6m as identified in the acceptable outcome
 - A03 as the proposed roofed deck was to be located a minimum of 2.045m from the frontage of Surf Road rather than a minimum of 4.5m as identified in the acceptable solution
6. Considerable negotiations were held between the applicant and the Council regarding the application, however the Council on 21 September 2018 issued their response which directed the assessment manager to refuse the building development application.
7. On 24 September 2018, the assessment manager (Coastal Building Certification P/L) in their Decision Notice, reference number 33822, refused the additions to dwelling (Class 1a and 10). This decision forms the basis for this appeal.
8. The Building Development Tribunal received the application for an appeal (Form 10) from the applicant on 5 October 2018.
9. The hearing was held on 18 January 2019 at the subject site and the applicant provided a revised design due to changed circumstances. The garage facing Surf Road will not proceed, internal alterations will be minimised and the roofed deck has been redesigned. The setback of the revised roofed deck from Surf Road still did not comply with the Council's Planning scheme requirements.
10. The applicant, Council representatives and tribunal members discussed the revised plans at length and explored the applicant's concept for the use of the site along Surf Road. Additional screening landscaping was also proposed by the applicant to reduce potential streetscape impacts.

11. It was agreed at the end of the hearing that the applicant would provide further revised plans of the proposal reflecting the discussions held to the Registrar Development Tribunals.

JURISDICTION

As the Appeal is under section 229 and item 1 of table 1 of section 1 of schedule 1 of the *Planning Act 2016* (PA) against the refusal of a development application for construction of a carport and patio on residential premises, the Tribunal has jurisdiction to hear the appeal.

Decision framework

It is noted that:

- the onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA),
- 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 (s. 253(4) of the PA),
- the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings), and
- the tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

Leave was given for the applicant to provide revised plans for the building proposal at the hearing and that further revised plans be provided for the Tribunal to consider

MATERIAL CONSIDERED

The material considered in arriving at this decision comprises:

1. 5 October 2018. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar.
2. 24 September 2018. Assessment Manager (Coastal Building Certification P/L), Decision Notice, reference number 33822, refusing additions to dwelling (Class 1a and 10).
3. 27 August 2018. 'Information Request Concurrence Agency' from Sunshine Coast Regional Council to the Assessment Manager. Council in this information request has also provided suggested setbacks which they may consider in a revised application.
4. BA Form 2 – Building work details. Part of the application for the Building Development application to the Assessment manager.
5. 24 July 2018, Architectural drawings from Architectural Solutions – Building Design. Job number 2018/48, Site plan, revision A, Existing floor plan revision A, Proposed floor plan, revision A, Elevations, revision A.
6. 3 August 2018. Application to Sunshine Coast Regional Council for referral (concurrence) agency response.
7. 6 August 2018. Letter to Sunshine Coast Regional Council from the applicant providing further information for the assessment of the referral (concurrence) agency response.
8. 26 September 2018. Email from the applicant to Sunshine Coast Regional Council purporting to be minutes of meeting held between the applicant and Vince Whitburn from the Council.

9. 26 September 2018. Email from the applicant to Stephanie Raven from Sunshine Coast Regional Council regarding information she had provided in an email dated 18 September 2018 regarding a revised application. Also attached is an email 10 September 2018 from the applicant to the Sunshine Coast Regional Council which has an aerial photograph and table showing reduced setbacks of buildings in the adjoining areas.
10. 21 September 2018. Referral (concurrence) agency) response from Sunshine Coast Regional Council directing the Assessment manager to refuse the building development application.
11. 31 July 2018. Notice of engagement as a private building certifier by Coastal Building Certification P/L.
12. 18 January 2018, Drawings supplied by applicant at the hearing showing a revised scheme.
13. 22 January 2018, Further drawings were supplied by the applicant through the Development Tribunal Registrar. These drawings show 4 options and also include a sub-option for each option and were in response to the discussions held at the hearing. All options indicate additional screening landscaping.

FINDINGS OF FACT

The Tribunal makes the following finding of fact:

1. Subject Site

- a. The subject site is a 531 m² lot at 1 Kylee Crescent (corner Surf Road), Maroochydore.
- b. The lot is irregular (triangular) in shape with a street frontage of 24.17m to Kylee Street and 31.17m to Surf Road, excluding the three chord corner. With the standard building setbacks the area for building is considerably reduced.
- c. The existing dwelling on the site includes a double garage facing Kylee Crescent. The property has complying off street parking in accordance with Acceptable Outcome A08(a) (Access and Car-parking) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 3.9.6, Table 9.3.6.3.1 which states the following:
For a lot exceeding 300m² – at least 2(two) car parking spaces with at least one space capable of being covered.
- d. The existing dwelling appears to be compliant with the setback provisions when constructed.
- e. The Council advised that the setback for a covered deck from Surf Road is 4.5m minimum.

2. Verbal Submissions at hearing

Applicant

- a. He has owned property for considerable time and wants to provide outdoor areas with protection from the weather.
- b. Design has changed due to financial circumstances and a revised proposal was provided to the tribunal at the hearing.
- c. The proposed garage facing Surf Road will not proceed and the roofed deck has been redesigned. The garage will remain as existing with access remaining from Kylee Crescent.
- d. Surf Road setbacks relating to the roofed decks are now the subject of the revised proposal.
- e. This section of the lot boundary has existing masonry fence and it is proposed to landscape the boundary.

- f. The applicant provided several instances in the surrounding area where the setback has been reduced without any detriment to the streetscape. (Item 9 of Material Considered - aerial photograph and table showing reduced setbacks of buildings in the adjoining areas.)
- g. Adjoining owner in Surf Road was not consulted regarding the setbacks.
- h. The lot is irregular in shape and standard setbacks makes siting of the additions to the existing dwelling for improved liveability very difficult.
- i. Willing to make some concessions to the design.
- j. Low height (skillion) roof and light weight design to roofed deck minimises impact on the street scape.

Council

- a. Streetscape would be impacted
- b. Pattern of building in street consistent with age of subdivision
- c. Alleged illegal building work with required building setback to be investigated
- d. Acknowledged that the site is irregular in shape
- e. Minor variance may have merit in this case for a lesser length than originally proposed by the applicant
- f. Concern that any approval (reduced setbacks) would set a precedent
- g. Need to maintain visual continuity and pattern of building work and landscape elements
- h. Planning scheme specifically requires setback provisions to be maintained as other areas have been severely impacted by previous changes.

REASONS FOR THE DECISION

The Committee sets aside the decision of the Assessment manager to refuse the Class 10a a garage and Class 10a roofed deck and is of the view that revised Option 3A is an appropriate response to the site constraints and can be justified as meeting the performance outcomes of the Dwelling House Code contained in the Sunshine Coast Planning Scheme 2014 for the following reasons:

1. Scale of the Proposal

The applicant has provided revised options which respond, in varying degrees, to the matters raised and discussed at the Hearing on site on 18 January 2019. OPTION 3A provides reductions in the extent of the setback relaxations sought for the roofed deck in both depth and length as follows:

- 3.5m setback (in lieu of 4.5m) for a distance of 6.45m adjacent to the lounge room
- 2m setback (in lieu of 4.5m) for a distance of 6.74m above the outdoor table.

As discussed above the applicant has abandoned plans to relocate the garage so the relaxations now sought all relate to an open roofed structure over a patio. The garage is to remain unchanged in its current location.

The OPTION 3A Plan demonstrates that the extent of incursion proposed into the 4.5m setback set out in AO3(a) along Surf Road equates to a total area of 23.3m² calculated as follows:

- 6.45m² = 1m deep x 6.45m long (adjacent to the lounge room)
- 16.85m² = 2.5 deep x 6.74m long (above the outdoor table)

An incursion of 23.3m² is considered minor in the context of the:

- existing house site cover (190.2m²)
- existing patio site cover (17.5m²)

- lot size of 531m² and
- length of the site frontage to Surf Road (approximately 35m)

The 23.3m² of roofed patio proposed within the 4.5m setback set out in AO3 is approximately 10% of the total existing buildings' site cover (dwelling house, patio and sheds)

2. Compliance with the Dwelling House Code

Performance Outcome PO3 of the Dwelling House code states:

Where located in a residential zone the dwelling house is setback 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*

OPTION 3A is considered to meet the Performance Outcome as follows:

- (a) the roofed deck provides a close relationship with Surf Road providing a high level of surveillance to this street.
- (b) the roofed deck is an open structure of scale that is consistent with the streetscape and the variation in frontage is considered to be relatively minor in the context of the existing structures on site, the area and configuration of the site, extent of the Surf Road site frontage and the width of the Surf Road reserve. In addition, as demonstrated in the aerial photo and table provided by the applicant (Material Considered Item 9) there are some examples of similar responses to the streetscape in Surf Road and the surrounding area. The dwelling house is single storey reducing the impact of the roofed patio and there are numerous examples of solid high fencing along the street frontage dominating the Surf Road streetscape.
- (c) given the configuration of the triangular corner site the roofed deck is an appropriate outdoor recreation response and does not impact on opportunities for large back yards.
- (d) the roofed deck will not impact on the existing privacy of residents or neighbours.
- (e) the roofed deck will increase to outdoor recreation and breezes and will not compromise vistas or sunlight access for any dwelling house.

3. Minor Change

Section 254 of the PA deals with how this appeal may be decided and the first three subsections of that section 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) for a deemed refusal of an application-*

- (i) *ordering the entity responsible for deciding the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
- (ii) *deciding the application.*

(3) *However, the tribunal must not make a change, other than a minor change, to a development application.*

Section 254(3) refers to 'minor change' which is defined in Schedule 2 of the PA as follows:

Minor change means a change that—

(a) for a development application—

- (i) does not result in substantially different development; and*
- (ii) if the application, including the change, were made when the change is made— would not cause—*
 - (A) the inclusion of prohibited development in the application; or*
 - (B) referral to a referral agency if there were no referral agencies for the development application; or*
 - (C) referral to extra referral agencies; or*
 - (D) a referral agency to assess the application against, or have regard to, matters prescribed by regulation under section 55(2), other than matters the referral agency must have assessed the application against, or have had regard to, when the application was made; or*
 - (E) public notification if public notification was not required for the development application;*

Schedule 1 of the Development Assessment Rules addresses the meaning of 'substantially different development'. A change may be considered to result in a substantially different development if any of the following apply to the proposed change:

- (a) involves a new use; or
- (b) results in the application applying to a new parcel of land; or
- (c) dramatically changes the built form in terms of scale, bulk and appearance; or
- (d) changes the ability of the proposed development to operate as intended; or
- (e) removes a component that is integral to the operation of the development; or
- (f) significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or
- (g) introduces new impacts or increase the severity of known impacts; or
- (h) removes an incentive or offset component that would have balanced a negative impact of the development; or
- (i) impacts on infrastructure provisions.

The Tribunal finds that the changed proposal to reduce the scale of the roofed patio and retain the garage in the existing location as illustrated in the amended drawing OPTION 3A constitutes a minor change to the application, as defined under the PA (in terms of section 254(3) of the PA) for the following reasons:

The amended proposal will not result in a substantially different development as it will not:

- (a) involve a new use - as the use remains the same;
- (b) result in the application applying to a new parcel of land;
- (c) dramatically change the built form in terms of scale, bulk and appearance;
- (d) change the ability of the proposed development to operate as intended;
- (e) remove a component that is integral to the operation of the development;

- (f) significantly impact on traffic flow and the transport network, such as increasing traffic to the site;
- (g) introduce new impacts or increase the severity of known impacts;
- (h) remove an incentive or offset component that would have balanced a negative impact of the development; or
- (i) impact on infrastructure provisions.

OPTION 3A is considered a minor change as the reduced roofed patio as now proposed fits within the foot print of the original proposal. The roofed patio under OPTION 3A is of a lesser scale and has a lesser incursion into the 4.5m setback set out in AO3(a) of the Dwelling House Code than the original proposal. As discussed above OPTION 3A is considered to meet PO3 of the Dwelling House Code. In addition, the proposal to relocate the garage and seek a relaxation for the new garage location has been abandoned in OPTION 3A. The garage remains unchanged in its current location with vehicle access to the site also maintained in its current location.

The Tribunal finds that the revised proposal where developed in accordance with Plan OPTION 3A received 22 January 2019, including the proposed landscaping, is an appropriate response to the site and Sunshine Coast Planning Scheme 2014 and should be approved.

Greg Schonfelder
Development Tribunal Chair
Date: 15 March 2019

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:

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