



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	36 - 2018
Appellant:	Project BA
Respondent (Assessment Manager):	Sunshine Coast Inspection Services
Co-respondent (Concurrence Agency): (if applicable)	Sunshine Coast Regional Council
Site Address:	2 Maxwell Court, Coolum Beach and described as Lot 11 on RP 148147 – the subject site

Appeal

Appeal under section 229 and schedule 1 (Appeals), section 1, table 1 and item number 1 of the *Planning Act 2016* (PA) against the decision of the assessment manager to refuse a development application for Development Permit for Building Works (Dwelling House – Additions, Garage, Deck, Patio). The Sunshine Coast Regional Council (Council) as the concurrence agency directed the Assessment Manager to partially approve the development and refuse the new garage, new entrance staircase and new patio on the basis that it did not meet and could not be conditioned to meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, being performance outcome PO3(b) of the Dwelling House Code.

Date and time of hearing:	23 November 2018 at 10:00am
Place of hearing:	The subject site
Tribunal:	Linda Tait – Chair Joelie Clark – Member
Present:	Luke Neller – Project BA – Appellant Dan & Carine Owens – Land Owners Stephanie Raven – Council representative Peter Chamberlain – Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the PA, replaces the decision of the assessment manager with another decision, namely, that the development application be approved.

Relevant directions have been made in the final paragraph of this decision.

Background

The subject site is located at 2 Maxwell Court, Coolum Beach, more formally described as Lot 11 on RP 148147. The subject site is included in the Low Density Residential Zone of the *Sunshine Coast Planning Scheme 2014* (SCPS 2014).

The subject site is a corner lot with a street frontage to Maxwell Court and a street frontage to Mona Vista Court.

The subject site contains an existing dwelling 3 storey dwelling, garage/games room and pool. The garage/games room is located 900mm from the adjacent eastern boundary, beyond the end of the sealed pavement of Mona Vista Court.

On 4 July 2018, a Notice of Engagement as Private Building Certifier was lodged by Sunshine Coast Inspection Services with Sunshine Coast Regional Council in relation to Building Works being additions, alterations and new pool fence involving Class 1A and 10B structures.

The application was referred to Sunshine Coast Regional Council requesting a Concurrence Agency Response (Building Work) on 11 July 2018 (Council reference CAR18/0446) on the basis of design and siting, *Planning Regulation 2017 Schedule 9, Part 3, Division 2, Table 3*.

The application form for the Concurrence Referral stated that the proposal involves "Garage additions, patio over new & existing [sic] garage within 1.5m from the side and within 6m from the front boundary, additions to residence over 4.5m high and within 2m from the side boundary. The proposed additions over the existing and new garage are also over 4.5m high and within 2m of the side boundary. The bedroom addition when completed will be more than 4.5m high and less than 2m from the side boundary".

The applicant's written reasons and justification note the site's steep topography, the amenity benefits of sheltering and securing vehicles, that the "additions do not affect the overall aesthetics of the street scape due to the street finishing at the side of the residence and the neighbouring [sic] property, the visual continuity and pattern of buildings within the street will be maintained". The applicant also states "The neighbours [sic] have agreed to the proposal".

On 14 August 2018, Council issued the Referral Agency directing the assessment manager to issue a part approval of the development application, approving the new patio roof over existing garage terrace 0.9m from the side (north-east) boundary and approving dwelling existing along the (south-east) boundary within 2.0m from the side boundary.

The Referral Agency Response also directed the refusal of the new garage with deck above, the new entrance staircase and the new roof over the deck and staircase. The reasons given for directing such refusal stated:

"1. The proposed development within the front setback is not considered a minor variation in frontage depth. Therefore, the proposed development does not comply with and cannot be conditioned to comply with the *Sunshine Coast Planning Scheme 2014*, Part 9, Dwelling House Code 9.3.6, Performance Outcomes PO3(b).

2. The streetscape in the vicinity of the subject lot generally consists of large residential dwellings with dwellings generally setback 4.5m – 6m from the road boundaries. The proposed garage, deck and patio roof will subsequently dominate the streetscape with built form and will not make a positive contribution to the streetscape character. As such the proposal does not achieve the outcomes of the Dwelling house code."

On 13 September 2018, the assessment manager issued a decision notice refusing the development application.

On 17 September 2018, an application for appeal was lodged by Luke Neller of Project BA. The appeal application included an Authority to Act signed by land owner Dan Owens.

At the hearing, on 23 November 2018, verbal representations were made by Council and both verbal and written representations were presented by Luke Neller. The hearing was held on site. The proposed development was discussed in relation to the context of the existing house and garage, including adjacent dwellings. It was noted that the proposed new garage would be adjacent to an existing garage. Council stated that the entrance stairs were of less critical concern. A revised plan which increased the set back of the stair and roof over had been discussed prior to the hearing and Council stated at the hearing that the revised plan was acceptable. An alternative design outcome for the new garage with deck and roof over was discussed at the hearing.

Written representations were subsequently provided by the Appellant on 27 November 2018. The written representations provided detailed responses to Dwelling House Code Performance Outcome PO2 and PO3. A copy of the amended plans was also attached.

Council were provided a copy of the Appellant representations. On 14 December 2018, Council responded:

“ ... Council does not accept setbacks that are conditioned to be generally in accordance with what might occur on the site. Based on the setback dimensions provided on the plans below, the following changes appear to have been made:

- Garage setback 0.9m from the road boundary increased to 0.95m (OMP), in lieu of 6.0m (P02)
- Entrance staircase setback 1.15m from the front boundary increased to 1.824m (OMP) in lieu of 4.5m (P03)
- New deck and patio (over garage addition) with Nil – 1.15m setback from the front boundary increased to 2.76m in lieu of 6.0m (P03)

The above amendments have been found to conflict with Performance Outcomes P02 & P03 of the Dwelling house code and therefore Council does not recommend they be supported.”

Key issues in this matter are assessment benchmarks in the Dwelling House Code, Performance Outcome PO2 and PO3.

Jurisdiction

The Tribunal has jurisdiction in this appeal as it involves an appeal under section 229 and schedule 1 (Appeals) section 1, table 1 and item 1 of the PA against the decision of the assessment manager to refuse a development application for Development Permit for Building Works (Dwelling House – Additions, Garage, Deck, Patio).

With reference to PA schedule 1, section 1(2)(g), the tribunal has jurisdiction as the appeal involves “a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission”.

The development application was not subject to impact assessment.

Decision framework

Pursuant to PA section 253(2) the onus rests on the appellant to establish that the appeal should be upheld. The tribunal has heard the appeal by way of reconsideration of the evidence.

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).

The tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

With reference to PA section 254(3), the decision approves the development illustrated on the revised plans presented by the Appellant during the appeal, being a minor change to the development application. The revised plans show the staircase entrance location adjusted further away from the frontage, and the roof on the upper floor above the garage is setback to reflect the alignment of the existing house.

With reference to the PA schedule 2 definition of Minor Change, this change is a minor change as it is not substantially different development, the change does not involve the inclusion of prohibited development in the application, referral to extra referral agencies, consideration by an existing referral agency of additional matters prescribed by a regulation, or public notification.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 17 September 2018.
2. Decision Notice – Refusal for additions and alterations and new pool fence dated 13 September 2018.
3. Council Concurrence Agency Response – Refused by Sunshine Coast Regional Council dated 14 August 2018 including copies of referenced plans Drawing No. JKP021 – Sheets 2-8 of 8 prepared by J K Pedersen
4. Application form Development Services Request for Concurrence Agency Response (Building works)
5. Appellant written statement dated 23 November 2014 including responses to Dwelling House Code Performance Outcome PO2 and PO3
6. The Planning Act 2016
7. The Planning Regulation 2017
8. Sunshine Coast Planning Scheme 2014
9. Verbal representations by the Appellant at the hearing
10. Verbal representations by the Council at the hearing.

Findings of Fact

The Tribunal makes the following findings of fact:

- The application made to Sunshine Coast Inspection Services, as the Assessment Manager, was correctly referred to Council as a Concurrence Agency under the Planning Regulation 2017, Schedule 9, Part 3, Division 2, Table 3.

- The items for consideration for the Concurrence Agency assessment are the garage setbacks and the setbacks of the dwelling house extension.
- The subject site is a corner lot with a street frontage to Maxwell Court and a street frontage to Mona Vista Court.
- The property at the end of Mona Vista Court adjacent to the site is characterised by a garage.
- The property opposite the site at the end of Mona Vista Court is characterised by a driveway and access.
- The subject site contains an existing 3 storey dwelling, garage/games room and pool. The garage/games room is located 900mm from the adjacent eastern boundary, beyond the end of the sealed pavement of Mona Vista Court.
- Council's concurrence agency response recommended approval of the new roof over the existing garage and the dwelling extension along the south-west boundary within 2.0m of the side boundary.
- During the hearing, Council advised that the revised entrance stairs were acceptable.
- The proposed building design links the existing dwelling and the existing garage/games room diagonally.
- Council's concurrence agency response reasons for refusal stated that the development does not comply with the Sunshine Coast Planning Scheme 2014, Part 9 Dwelling House Code, 9.3.6, Performance Outcomes PO3(b).
- Council's concurrence agency response states that "*The streetscape in the vicinity of the subject lot generally consists of large residential dwellings with dwellings generally setback 4.5m – 6m from the road boundaries. The proposed garage, deck and patio will subsequently dominate the streetscape with built form and will not make a positive contribution to the streetscape character. As such the proposal does not achieve the outcomes of the Dwelling house code.*"
- The Appellant's written representations to the Tribunal address Dwelling House Code Performance Outcomes PO2 and PO3, stating that the "buildings to the east have an outlook towards the North and East to take advantage of the ocean views" (rather than towards the garage). "As you approach the garage, the streetscape is dominated by the neighbour's garage which is in direct line of sight for approaching traffic".

Reasons for the Decision

The Tribunal has considered all the information provided and is of the view that the proposed development illustrated on the amended proposal plans provided with the Appellant's representation complies with the Dwelling House Code Performance Outcomes PO2 and PO3.

It is determined by the Tribunal that the proposed garage location complies with Performance Outcome PO2(a) because the garage will be adjacent and opposite to other existing garages.

It is determined by the Tribunal that the proposed garage complies with Performance Outcome PO2(b) because the single storey garage is to be located between the existing house and existing garage on the secondary frontage. The house and roofed patio area are also taller than the proposed garage. In this way, it is determined by the Tribunal that the proposed garage will not dominate the streetscape.

It is determined by the Tribunal that the proposed garage complies with Performance Outcome PO2(c) in that there will be no loss of landscaping.

It is determined by the Tribunal that the proposed garage complies with Performance Outcome PO2(d) in that the location of the garage between two parts of the existing building (house and garage) and in proximity to other garages maintains the visual continuity and pattern of buildings within the street.

It is determined by the Tribunal that the proposed development complies with Performance Outcome PO3(b) creating a “coherent and consistent streetscape, with no or only minor variations in frontage depth” because the proposed building additions links two existing building elements, creating a diagonal line between the two existing parts of the building.

The Tribunal therefore replaces the decision (refusal) with another decision (approval) of the development in accordance with plans submitted on behalf of the Appellant and identified as ‘DWG DO 002’ dated 26 November 2018, sheets 1-7.

The referenced plans are a minor change to the development application material as discussed above.

The Tribunal directs the Assessment Manager, being the Building Certifier, to notify the Registrar of any approval conditions on or before 4 weeks from the date of decision and further directs that the conditions, as notified, are to become the formal conditions of the approval.

Linda Tait
Development Tribunal Chair
Date: 18 January 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:

The Registrar of Development Tribunals
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