



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	9-18
Appellant:	Mrs Rosemary McCormick
Assessment Manager:	North Shore Building Approvals (Nick Schofield)
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council
Site Address:	3 Blackfriars Close, Coolum Beach, Lot 14 RP137148 – the subject site

Appeal under section 229 of the *Planning Act 2016* (PA) against the Decision Notice of the Assessment Manager to refuse a Class 10a Carport. Sunshine Coast Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building as it did not meet and could not be conditioned to meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, Performance Outcome P02, Garages, Carports and Sheds, items (b) and (d).

Date and time of hearing:	21 May 2018 at 10.00 am
Place of hearing:	The subject site - 3 Blackfriars Close, Coolum Beach, Lot 14 RP137148
Tribunal:	Mr Richard Prout – Chair Mr Andrew Montgomery-Hribar - Member
Present:	Mrs Rosemary McCormick – Property owner plus Applicant Mr Barry McCormick – Property owner Mr Vince Whitburn – Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 229 of the PA **confirms** the decision of the Assessment Manager to refuse the Class 10a Carport.

Background

The subject site is a 556 m² allotment located at 3 Blackfriars Close, Coolum Beach and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014. The allotment is rectangular in shape with a street frontage of 19.782m.

The existing owners purchased the property in October 2012 and at the time the property had been marketed as a four bedroom detached dwelling with a double carport located in the front of the dwelling.

As per the Sunshine Coast Regional Council (Council) records the dwelling on the site was approved in March 2000 as a three bedroom dwelling with a large double garage facing Blackfriars Close. At the time of its construction the dwelling was complying with the provisions of the

Sunshine Coast Planning Scheme 2014 and the Queensland Development Code MP1.2 (QDC MP1.2).

The owners advised the Tribunal that their neighbour recalls the carport having been in place since 2009. The Council historical air photography confirms that the carport was built sometime between 2008 and 2013.

The property owners were of the opinion that the existing double garage was converted into two bedrooms with the original third bedroom in the dwelling converted to a media room around this time.

The Council has no record of any building approvals having been obtained for any of the alterations.

In September 2017 the development came to the attention of the Council following an enquiry from a member of the public. After investigating the matter Council issued a letter to the property owners in October 2017 advising the following:

Council has no record of the required building permits being issued for the carport or the enclosure of the garage.

In order to achieve compliance for the carport and garage enclosure you have the following options:

- *Obtain a building development permit for the carport and enclosure of the garage; or*
- *Demolish and remove the carport and reinstate the garage.*

The owners engaged a building designer in October 2017 and subsequently lodged a Development Application for Building Work with a Private Building Certifier, North Shore Building Approvals (Assessment Manager).

The Assessment Manager lodged a request for referral agency response for building work with Council on 26 October 2017. The Council issued a Concurrence Agency Response on 25 January 2018 instructing the Assessment Manager to refuse the application as it did not meet and could not be conditioned to meet the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO2 for Garages, Carports and Sheds, item (b) and (d).

The Development Tribunal (the Tribunal) received application for appeal Form 10 from the Applicant on 19 February 2018.

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 Development Tribunals Registry on 19 February 2018;
2. Assessment Manager Decision Notice, Job No: 17-119, dated 31 January 2018, refusing the carport as directed by Council;
3. Concurrence Agency Response from Council dated 25 January 2018 instructing Assessment Manager to refuse the Development Application for Building Work;
4. The following drawings by Peter Cooke Building Designer, dated 14 October 2017, Job Number 1737, Sheet 00 Cover Page, Sheet 01 General Notes, Sheet 02 Site Plan, Sheet 03

Original Ground Floor Plan, Sheet 04 Ground Floor Plan, Sheet 05 Elevations, Sheet 06 Section and Framing;

5. The following drawings by Coral Homes dated 10 February 2000, Reference Number J3985, Sheet 1 of 8 Floor Plan Layout, Sheet 2 of 8 Elevation, Sheet 3 of 8 Site Plan, Sheet 4 of 8 Bracing Plan Layout, Sheet 5 of 8 Slab Layout, Sheet 6 of 8 Noggings For Patio Supports, Sheet 7 of 8 Section & Details, Sheet 8 of 8 Timber Schedule;
6. Register Plan 137148, Dated 30 May 1974;
7. Letter from Council to property owners dated 25 September 2017, advising that it had come to the Council's attention that a carport had been erected at the subject site without the required development approvals having been obtained and requesting a site inspection of the property;
8. Letter from Council to property owners dated 4 October 2017, confirming site inspection of the subject site by Council officer on 25 September 2017;
9. Sunshine Coast Council Application Form – 2017/2018 Planning and Environment Request for Referral Agency Response (Building Work) dated 26 October 2017, lodged by North Shore Building Approvals (Assessment Manager);
10. Information Request from Council to Assessment Manager dated 8 November 2017;
11. Email from Council to Assessment Manager dated 15 January 2018;
12. Letter of support dated 28 November 2017, from owner of 6 Blackfriars Close, Coolum Beach;
13. Letter of support dated 9 November 2017, from owner of 38 Hewitt Street, Coolum Beach;
14. Letter of support dated 27 November 2017, from owner of 3 Blackfriars Close, Coolum Beach;
15. Air photography of the site provided by Council for the following years, namely: 2000, 2003, 2005, 2007, 2008, 2013, 2015, 2016, 2017, and current nearmap;
16. Building and Pest Report dated 11 September 2012 from Sunshine Coast Building and Pest Reports Pty Ltd;
17. Verbal submissions at the hearing from all parties to the appeal;
18. The Sunshine Coast Planning Scheme 2014;
19. The Queensland Development Code MP 1.2;
20. The *Planning Act 2016*;
21. The *Building Act 1975*.

Findings of Fact

The Tribunal makes the following findings of fact:

Subject Site

1. The subject site is a 556 m² allotment located at 3 Blackfriars Close, Coolum Beach and is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014;

2. The allotment is rectangular in shape with a street frontage of 19.782m;
3. The allotment has a Unitywater sewer main running parallel with the northern side boundary for almost its full length. The sewer main offset from the side boundary is approximately 1m. Apart from this infrastructure the allotment is not constrained;
4. The existing dwelling on the site was approved in March 2000 as a three bedroom dwelling with a large double garage facing Blackfriars Close. At the time of its construction the dwelling was complying with the provisions of the Sunshine Coast Council Planning Scheme 2014 and the QDC MP1.2;
5. The allotment was created on 30 May 1974;
6. The following buildings were noted onsite at the Hearing:
 - A detached dwelling with a roofed pergola approved by a Private Building Certifier in March 2000. The original approval for the dwelling included a large double garage which has subsequently been converted into two bedrooms; and
 - An open carport with a front road boundary setback of 398 mm from Blackfriars Close - subject of the Appeal.
7. The Council historical air photography confirms that the carport was built sometime between 2008 and 2013. The owners advised the Tribunal that their neighbour recalls the carport having been in place since 2009;
8. The existing owners purchased the property in October 2012 and at the time the property was marketed as a four bedroom detached dwelling with a double carport located in the front of the dwelling. When purchasing the property the owners stated that following:
 - The owners engaged Sunshine Coast Building and Pest Reports Pty Ltd to inspect the property and provide an Inspection Report. The Inspector Report stated the following under the heading Additional Comments:

Carport built at front of house and downpipes discharges at ground. Refer to local authority in regards to approvals/final to all improvements to property when carrying out the appropriate searches.
 - The owners engaged the services of a Bill Lyons Solicitors to carry out the conveyancing for the purchase, however they did not engage the solicitor to perform a Council building search; and
 - The owners did not contact the Council or carryout their own Council building search.
9. The streetscape in Blackfriars Close and the surrounding area consists of residential dwellings with a mixture of open fronted allotments or 1.8 m high front boundary fences/walls with soft landscaping and buildings setback 6 m from the front road boundary;
10. There is one other property in the street that has a carport located within the front road boundary setback (16 Blackfriars Close). The Council representative reviewed the Council records for this property following the Hearing and confirmed Council has no record of any building approval or boundary relaxation for the carport;
11. 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 9.3.6, Table 9.3.6.3.1 which states the following:

- (a) *for a lot exceeding 300m² – at least 2 (two) car parking spaces with at least one space capable of being covered.*

Application Process

1. In September 2017 the property owners received a letter from the Council advising that the open carport at the front of their property had been erected without the required development approvals having been obtained;

2. In October 2017 the property owners received another letter from Council advising the following:

Council has no record of the required building permits being issued for the carport or the enclosure of the garage.

In order to achieve compliance for the carport and garage enclosure you have the following options:

- *Obtain a building development permit for the carport and enclosure of the garage; or*
- *Demolish and remove the carport and reinstate the garage.*

3. The owners engaged a Building Designers in October 2017 and subsequently lodged a Development Application for Building Work with a Private Building Certifier, North Shore Building Approvals (Assessment Manager);

4. The Assessment Manager lodged a request for referral agency response for building work with the Council on 26 October 2017 addressing the relevant performance outcomes of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1, plans of the proposed carport;

5. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the *Building Act 1975* allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover. Table 9.3.6.3.1 of the Dwelling House Code clearly states that Acceptable Outcomes A02.1(a) is an alternative provision to the QDC;

6. The Council issued an Information Request on 8 November 2017 to the Assessment Manager stating:

This application is being considered for refusal as the carport does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO2 (b) and (d) for Garages, Carports and Sheds.

- *The carport portion forward of the required 6m setback, is considered to dominate the streetscape;*
- *It does not maintain the visual continuity and pattern of buildings within the street.*

Demonstrate how the proposed development complies with Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes.

You are invited to discuss these areas and submit a re-designed carport location to comply with the above criteria.

7. The Assessment Manager responded to the Council Information Request on 29 November 2017, providing a letter of support from the adjoining property owners and a number of letters of support from the surrounding properties;

8. The Council responded to the Assessment Manager again on 15 January 2018 stating the following:

This application has been re-assessed as per the submitted information.

The neighbours consent applies to the DHC PO2 (a) which indicates that the carport will preserve the amenity of the adjacent land and dwelling house.

Council considers that the carport only complies with the DHC PO2 (a) and (c)

However, Council considers that this carport does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO2 (b) and (d) for Garages, Carports and Sheds.

PO2 (b) do not dominate the streetscape.

The streetscape consists of residential dwellings with a mixture of open fronted allotments or up to 1.8 m high front and side boundary fences/walls with soft landscaping and with buildings generally setback 4.5m or greater from the road boundaries.

The proposed carport is 398mm from front/ road boundary. The carport portion forward of the required 6m setback, is considered to dominate the streetscape;

PO2 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.

As the proposed building is set forward of the line of the buildings in the street, it does not maintain the visual continuity and pattern of buildings within the street.

At this stage, Council has not refused the application and provides an opportunity for the applicant to withdraw the application and obtain a part refund.

You are invited to discuss the Performance Outcomes to ascertain if further information can be submitted to Council which may help in further assessment or changing the design to achieve a compliant Performance Outcome.

9. The Council issued a Concurrence Agency Response on 25 January 2018 instructing the Assessment Manager to refuse the application as it did not meet and could not be conditioned to meet the requirements of the Sunshine Coast Planning Scheme Performance Outcome PO2 for Garages, Carports and Sheds, namely:

The CARPORT does not comply with and cannot be conditioned to comply with the Sunshine Coast Planning Scheme 2014,, Performance Outcome P02 item (d) for Garages, Carports and Sheds item (b) and (d).

(b) Do not dominate the streetscape;

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

PO2 (b) do not dominate the streetscape.

The streetscape consists of residential dwellings with a mixture of open fronted allotments or up to 1.8 m high front and side boundary fences/walls with soft landscaping and with buildings generally setback 4.5m or greater from the road boundaries.

The proposed carport is 398mm from front/ road boundary. The carport portion forward of the required 6m setback, is considered to dominate the streetscape;

P02 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.

As the proposed building is set forward of the line of the buildings in the street, it does not maintain the visual continuity and pattern of buildings within the street.

10. The Assessment Manager issued a Decision Notice on 31 January 2018, refusing the Class 10a Carport as directed by Council;

11. The Tribunal Registry received the application for appeal, Form 10 from the applicant on 19 February 2018 from one of the Property Owners.

Reasons for the Decision

The Tribunal confirms the decision of the Assessment Manager to refuse the Class 10a Carport for the following reasons:

The Tribunal is of the opinion that the development is not complying with the Performance Outcome P02 (b) and (d) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1 as:

- *P02 (b) do not dominate the streetscape.*

The streetscape in Blackfriars Close and the surrounding area consists of residential dwellings with a mixture of open fronted allotments or 1.8 m high front boundary fences/walls with soft landscaping and buildings setback 6 m from the front road boundary.

The carport is 6 m wide and is set forward of the line of the dwelling with only 398 mm front road boundary setback and the carport does have a dominating appearance when viewed from the street.

- *P02 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*

As previously stated the streetscape in Blackfriars Close Avenue and the surrounding area consists of residential dwellings with a mixture of open fronted allotments or 1.8 m high front boundary fences/walls with soft landscaping and buildings setback 6 m from the front road boundary.

As the carport is set forward of the line of the dwelling with only a 398 mm front road boundary setback the carport does not maintain the visual continuity and patterns of the buildings and landscape within the streetscape.

The Tribunal is also of the opinion that the development cannot be conditioned to meet the Performance Outcome P02 (b) and (d) of the Sunshine Coast Planning Scheme 2014, Dwelling House Code 9.3.6, Table 9.3.6.3.1.

Richard Prout
Chair, Development Tribunal
Date: 1 June 2018

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.

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
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