Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	**22-18**
Appellant:	Daniel Robert Rowlingson.
Assessment Manager:	MyCert Building Certification Queensland.
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council ('Council').
Site Address:	5 Santa Monica Avenue, Coolum Beach and described as Lot 3 on RP86149 ('the subject site').

Appeal

Appeal under Section 229 of the *Planning Act 2016* ('the PA') against the assessment manager's refusal of the appellant's development application under Section 51 of the PA ('the application') for a building works development permit for the erection of a new carport on the subject site.

Date and time of hearing:	11.00am, 17 August 2018
Place of hearing:	On the subject site, 5 Santa Monica Avenue, Coolum Beach.
Tribunal:	• Neil de Bruyn – Chair • Paul Bourke – Member
Present:	• Daniel Rowlingson – 'the appellant,' • Christie Mills – co-applicant, • Peter Chamberlain – representing Council.

Decision:

The Development Tribunal ('Tribunal'), in accordance with Section 254(2)(c) of the PA, has decided this appeal by replacing the decision of the assessment manager to refuse the application, with a new decision to conditionally approve the application.

Background

The subject site is located within the local government area of the Sunshine Coast Regional Council and within the planning scheme area of the Sunshine Coast Planning Scheme 2014 ('the planning scheme'). Under the planning scheme, the subject site is included within the Low-Density Residential Zone and the Coolum Local Plan Area. The subject site is also affected by various overlays under the planning scheme.

Under the applicable zone, the use of a premises for a dwelling house is accepted development subject to compliance with applicable requirements, or code assessable development where there is any non-compliance with an applicable requirement. The applicable requirements for accepted

development are the acceptable outcomes set out under the Dwelling House Code. A dwelling house is defined under the planning scheme to include outbuildings and works normally associated with a dwelling house (such as a carport).

Under the applicable zone, building work (that is, as in this case, not minor building work, as defined) is accepted development subject to compliance with applicable requirements, or code assessable development where there is any non-compliance with an applicable requirement. The applicable requirements for accepted development are the acceptable outcomes set out under the Dwelling House Code and the Transport and Parking Code.

In approximately October or November 2017, the application was made to the assessment manager for a building works development permit for a new, open-sided, double carport within the site. As the outermost projection of the proposed carport was to be located 550mm from the front boundary of the subject site, the application required referral to Council as a concurrence agency (Schedule 9, Part 3, Division 2, Table 3 of the Planning Regulation 2017).

On 21 December 2017, Council decided to direct the assessment manager to refuse the application on the grounds that the proposed carport would not achieve Performance Outcome PO2(d) of the Dwelling House Code. This performance outcome ('PO') provides as follows:

"Garages, carports and sheds:-

a) ….;
b) ….;
c) ….; and
d) maintain the visual continuity and pattern of buildings and landscape elements within the street."

The assessment manager duly issued a decision notice dated 30 April 2018, stating that the application had been refused based upon the direction of the Council as a concurrence agency.

On 10 May 2018, the appellant lodged this appeal against the assessment manager's decision to refuse the application.

At the hearing of the appeal, on 17 August 2018, an alternative siting solution for the proposed carport was discussed, involving its relocation further to the west to an increased setback of approximately 4m from the road frontage. Subsequently, both Council and the appellant have formally confirmed their acceptance of this alternative siting solution, and the appellant has provided updated development plans (Dwg No. 171801 Revision G, dated August 2018) showing this solution.

Specifically, it is noted that these updated plans show a front setback, measured to the outermost projection of the carport (as required), of approximately 3.5m (no dimension given), and that Council has subsequently confirmed its acceptance of, and support for, the siting solution as shown on these updated plans.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for Appeal/Declaration, attached grounds for appeal and associated correspondence lodged with the Tribunal's Registrar on 10 May 2018.
2. Planning Act 2016.
3. Planning Regulation 2017.
4. Sunshine Coast Planning Scheme 2014.

5. Architectural plans provided by the appellant and issued to the Tribunal on 16 August 2018.
6. Further correspondence with Council and the appellant, subsequent to the hearing, regarding an amended siting of the proposed carport as discussed at the hearing, including amended plans entitled (Dwg No. 171801 Revision G, dated August 2018) ('amended plans').
7. Development Assessment Rules (Effective 11 August 2017).

Findings

The Tribunal makes the following findings:

1. Material Change of Use

   Under the Low-Density Residential Zone, the use of a premises for a dwelling house is accepted development subject to compliance with applicable requirements, or code assessable development where there is any non-compliance with an applicable requirement. The applicable requirements are those set out under the Dwelling House Code.

   A dwelling house is defined under the planning scheme to include outbuildings and works normally associated with a dwelling house (such as a carport).

   Acceptable Outcome AO2.1 of the Dwelling House Code is an applicable requirement in this case and requires (among other things) that a carport on a lot within a residential zone (the case here) be set back at least 6 metres from any road frontage. As the proposed carport will not comply with this requirement, it follows that a code assessable material change of use application could be required for the proposed development.

   In this regard, the Tribunal finds that, having regard to the definition under the PA of a material change of use, the proposed carport would not constitute a material change of use. This conclusion is reached on the basis that the proposed carport would not involve or constitute:

   - the start of a new use of the subject site,
   - the re-establishment on the subject site of a use that has been abandoned, or
   - a material increase in the intensity or scale of the existing use of the subject site for a dwelling house.

   In relation to the third dot-point above, the Tribunal finds in particular that the area of the proposed carport (approximately 36m²) is a minor (and therefore not material) addition to the scale of the existing dwelling house use, in the context of the floor area of the existing house and associated roofed areas. In this regard, it is also noted that the floor area of the carport does not constitute "gross floor area" as defined under the planning scheme.

   The Tribunal also finds that the proposed carport would not constitute or involve any increase in the intensity of the existing dwelling house use, as its addition would not in any way increase the number of vehicles that could normally be accommodated within the site, or the number of vehicle movements that would normally be generated by the use of the premises.

   On the above basis, the Tribunal finds that the proposed carport development would constitute building works only and that it would not constitute a material change of use.

2. Matters in Dispute

At the hearing, confirmation was provided by Mr Chamberlain, representing Council, that the only focus of the appeal was the siting of the carport relative to the frontage of the subject site, and that:

- There were no other aspects of the proposed carport design or siting that were in dispute.

- The siting of the proposed carport had been found by Council to achieve Parts (a) to (c) inclusive of PO2 of the Dwelling House Code, and that it was only Part (d) that the proposed siting was considered by Council not to achieve.

- The proposed carport had been found by Council to achieve all requirements of the Transport and Parking Code which, as noted above, also contains requirements to be met by building work that is accepted development under the planning scheme.

On this basis, the Tribunal finds that the only matter in dispute in this appeal is the front setback of the proposed carport and its achievement or otherwise of PO2 of the Dwelling House Code.

3. Visual Continuity and Pattern of Buildings and Landscape Elements Within the Street

Based upon the site inspection conducted prior to the appeal hearing on 17 August 2018, the Tribunal finds that Santa Monica Avenue displays a substantially varied streetscape with no consistent or continuous pattern of buildings or landscape elements.

Indeed, the streetscape was found to be characterised by a wide variety of building forms, scales and styles, as well a wide variety of landscape elements, such as fencing and soft landscaping treatments, in terms of their heights, types, materials and locations.

4. Precedent

During the hearing, Mr Chamberlain mentioned that a central concern underlying Council's decision to direct the refusal of the application, was the potential for an approval of the application to set a precedent, that could result over time in rows of carport structures within the 6 metre front setbacks on both sides of the street, and the consequential impacts on the visual qualities of the streetscape.

Based on the observations of the Tribunal from the site and locality inspection, the majority of houses in the vicinity of the site (in that part of Santa Monica Avenue between Yandina-Coolum Road to the south and the intersection with Daytona Avenue to the north) already have adequate provision for carports or garages, or were observed to have sufficient areas available to enable compliance with the minimum setback requirement. Hence, even if the proposed carport location set out in the application was approved, the Tribunal finds that the circumstances of the neighbourhood are such that the practical potential for the above-mentioned scenario to arise, and for Council's concerns regarding the setting of a precedent to be realised, are minimal.

5. Alternative Siting Options

Based on observations at the site inspection, and on a review of the submitted architectural plans, it was confirmed that the subject site does not contain either a carport or a garage for the storage of vehicles.

It was also noted that there are no available options for a two-vehicle carport on the site that would achieve the required 6m front setback, other than possibly a tandem carport within the north-eastern part of the site. In this regard, the Tribunal accepts the appellant's submissions, at the hearing, to the effect that a tandem arrangement would not be a practical or desirable solution.

However, both the Council and the appellant are agreeable to the alternative siting solution discussed at the hearing and shown on the amended plans, which are found by the Tribunal to represent a reasonable balance between the Council's and the appellant's respective objectives, and an acceptable siting outcome for the site and the immediate vicinity.

In this regard, it is also noted that the owner and resident of the immediately adjoining residential property at No. 7 Santa Monica Avenue, being the premises most directly affected by the siting of the proposed carport, has provided written confirmation that he is aware of the proposed siting of the carport and has "no issues or concerns" with such siting solution being approved.

6. Minor Change

The Tribunal finds that the changed siting of the proposed carport constitutes a minor change to the application, as defined under the PA.

A minor change to a development application is one that does not result in a substantially different development, and would not cause:

- the inclusion of prohibited development,
- referral to a referral agency, or any extra referral agencies,
- a referral agency to assess the application against, or have regard to, prescribed matters other than those the referral agency must have assessed the original application against, or had regard to when assessing the original application, or
- public notification to be required.

Having regard to the characteristics of a substantially different development, as set out in Schedule 1 of the Development Assessment Rules (effective 11 August 2017), the Tribunal finds that the change to the application would not result in a substantially different development, because it would not:

- Involve a new use of the site,
- involve a new parcel of land,
- dramatically change the built form in terms of its scale, bulk or appearance,
- change the ability of the proposed development to operate as intended,
- remove any component integral to the operation of the proposed development,
- impact on traffic flow or the transport network,
- introduce any new impacts, or increase the severity of known impacts,
- remove any incentive or offset component that would balance a negative impact, or
- impact on infrastructure provision.

The Tribunal finds that the change to the application would also not cause:

- the inclusion of prohibited development,
- referral to any extra referral agencies,
- a referral agency to assess the application against, or have regard to, prescribed matters other than those the referral agency must have assessed the original application against, or had regard to when assessing the original application, or

- public notification to be required.

Reasons for the Decision

The Tribunal has decided this appeal by changing the decision of the assessment manager to refuse the application to a conditional approval of the application, subject to the following condition of approval being included in the decision notice for the application, and the plans referenced in this condition being included as an approved plan of development for the proposed building work for the proposed carport:

"The proposed development is to be undertaken in accordance with the approved plans and documents, including Dwg. No. 171801 Revision G dated August 2018."

The reasons for this decision are:

1. The parties (Council and the appellant) have formally agreed on an alternative siting solution for the proposed carport, which alternative siting solution forms the basis of this decision.
2. The alternative siting solution referred to in 1. above is consistent with the achievement of Performance Outcome PO2(d) of the Dwelling House Code, being the only matter in dispute in this appeal, in that it will not disrupt the visual continuity and pattern of buildings and landscape elements within the street.
3. The change to the application arising from the alternative siting solution referred to in 1. and 2. above is a minor change, as defined under the PA.

Neil de Bruyn
Development Tribunal Chair
Date: 20 September 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
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