



## Development Tribunal – Decision Notice

---

### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	<b>19-008</b>
<b>Appellant:</b>	Nathan Slonim
<b>Respondent (Assessment Manager):</b>	John Dunn
<b>Co-respondent (Concurrence Agency):</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	10 Lilac Court, Mooloolaba and described as Lot 7 on RP 214550 – the subject site

---

### **Appeal**

Appeal under Section 229 of the *Planning Act 2016* (“the PA”) against the Decision Notice of the Assessment Manager to refuse a carport to an existing class 1A Dwelling. Sunshine Coast Regional Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the carport as Council considered that the carport does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO2 (d).

---

<b>Date and time of hearing:</b>	10.00am, 12 July 2019
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Deanna Heinke– Chair Christopher Finch – Member Paul Bourke – Member
<b>Present:</b>	Nathan Slonim – Appellant and owner Melinda Slonim - owner John Dunn – Building Certifier, JDBA Certifiers Peter Chamberlain – Sunshine Coast Regional Council representative - Council representative Carrol Popple – Sunshine Coast Regional Council representative – Council representative

---

### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) confirms the decision of John Dunn of JDBA Certifiers, the Assessment Manager, to refuse the application to build a carport to an existing Class 1a Dwelling.

## Background

1. The subject site is Lot 7 RP 204550 at 10 Lilac Court, Mooloolaba and is situated towards the end of a cul-de-sac.
2. The property features a single, detached single storey brick dwelling with a double car port attached to the front of the dwelling. The dwelling may have originally been constructed with car accommodation which has been built in to form part of the dwelling.
3. A single garage is located at the side of the dwelling, between the dwelling and the side boundary fence. A roofed double carport is located between the dwelling and the front boundary.
4. The subject site is surrounded by other single storey brick dwellings on variable sized land parcels. Setbacks of dwellings, carports and garages from the street frontage appear to be 6 metres or greater. The subject site is the exception, with a carport erected at its closest point, within approximately 100mm of the road frontage.
5. Located opposite the subject site is a vacant vegetated area and forms part of an extended allotment which abuts the Sunshine Motorway. This allotment is included in the Environmental Management and Conservation Zone.
6. On 14 December 2018 the appellant lodged a Development Application Form 2 with JDBA Certifiers.
7. On 18 December 2018 John Dunn of JDBA Certifiers (Assessment Manager) sent a Confirmation Notice to the appellant advising of the receipt of the development application for dwelling additions and alterations being a carport. The Confirmation Notice also advised that the Referral Agency was the Sunshine Coast Council.
8. On 18 December 2018 the Assessment Manager lodged a request for concurrence agency response for building work with Council, stating that the Request Type related to Design and Siting – Schedule 9, Part 3, Division 2, Table 3 of the Planning Regulation 2017. The Assessment Manager stated that the area of non-compliance with the Dwelling House Code and/or Queensland Development Code related to Code 9.3.6, section AO2.1 – Carport setback 0.10m to 1.00m from the Lilac Court road boundary.
9. On 20 December 2018, Council responded to JDBA Certifiers stating:

“I refer to your application and advise that Council, as a concurrence agency for the application, completed its assessment of the application on 20/12/18. You are advised that:-

- Council directs the assessment manager to refuse the application for the reasons stated in this response.

This application has been assessed and Council considers that the carport does not comply with the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO2 (d).

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

## Reason for Refusal

The street comprises of predominantly dwellings setback approximately 6m from the road boundary frontage. Some corner properties have dwellings with setbacks closer than 6m. The street area within the front setback is a mixture of open landscaped allotments and a variety of front boundary fences. There are no class 10a buildings in this street forward of the line of dwellings that have been approved by Council.

As the carport is set forward of the general line of the dwellings, with only a 100 mm front road boundary setback, the carport does not maintain the visual continuity and pattern of the buildings within the streetscape.

10. On 7 February 2019 the Council issued an Enforcement Notice to the owners (the appellant and his wife) relating to the carport.
11. On 22 February 2019, the building certifier, John Dunn of JDBA Certifiers issued a decision notice to the applicant, Nathan Slonim and advised that the application was refused, stating that the reason for refusal is "Sunshine Coast Council concurrence agency advice."
12. On 4 March 2019 the owner Nathan Slonim, lodged an appeal with the Registrar for the Development Tribunal.
13. On 12 July 2019 the Tribunal conducted the hearing on the subject site.

## Jurisdiction

1. Schedule 1 of the PA states the matters that may be appealed to the Tribunal (section 229 of the PA).
2. Table 1 of schedule 1 states matters that may be appealed to the Planning and Environment Court or the Tribunal (subject, in the case of the Tribunal, to section 1(2) of schedule 1). Item 1 of table 1 confers jurisdiction for this appeal as it relevantly allows an appeal against the refusal of a development application (other than an excluded application, which this is not).
3. The pre-condition in section 1(2) of schedule 1 for the application of table 1 to the tribunal is satisfied in this instance because of paragraph (g) of section 1(2). The development application in this instance is a matter under the PA that relates to the *Building Act 1975* (BA). The appellant seeks approval for certain building work that is assessable against the building assessment provisions in the BA.
4. Only a person who received, or was entitled to receive, an information notice about a decision under the BA has a right to appeal the decision to the Tribunal.
5. The Form 10 which commenced this appeal included a checkbox on page 2 indicating that the appeal was about an Enforcement Notice (presumably the Enforcement Notice issued by the Council to the appellant on 7 February 2019, as mentioned above). The appellant later clarified that the appeal was intended to be about the assessment manager's decision dated 22 February 2019 refusing the development application, as directed by the Council and the Council agreed to treat the appeal as being about that decision. The Form 10 on page 1 identified the date of the decision sought to be appealed as 22 February 2019, which was consistent with the appeal being about the assessment manager's decision.

## **Decision Framework**

1. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
2. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Assessment Manager who made the decision appealed against (section 253(4) of the PA).
3. The Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under section 246 of the PA.
4. The Tribunal may decide that the Tribunal has no jurisdiction to decide the tribunal proceedings (section 252(1) of the PA). Otherwise, the Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

## **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 Tribunal Registrar on 4 March 2019.

Those documents included:

2. Sunshine Coast Regional Council's Concurrence Agency advice dated 20 December 2018
3. Assessment Manager Decision Notice, dated 22 February 2019
4. Sunshine Coast Council Enforcement Notice dated 7 February 2019
5. DA Form 2 Building works dated 4 December 2018
6. Concurrence Agency Referral Report -180570 prepared by JDBA Certifiers and dated 18 December 2018
7. Confirmation Notice – JDBA Certifiers dated 18 December 2018
8. Sunshine Coast Council email dated 9 January 2019
9. JDBA Certifiers email dated 8 January 2019
10. Drawing A101 Rev 2 Site Plan and A102 Rev 2 Front and End Elevations
11. Various letters of support received from neighbours located at 8, 9 and 12 Lilac Court and Define Property.
12. *Sunshine Coast Planning Scheme 2014, Dwelling House Code*
13. *The Planning Act 2016 (PA)*
14. *The Planning Regulation 2017*
15. *The Building Act 1975 (BA)*
16. *The Building Regulation 2006*

17. *The Queensland Development Code (QDC) Part MP 1.2*

18. *Development Assessment Rules (Effective 11 August 2017)*

## **Findings of Fact**

The tribunal makes the following findings of fact:

### *Subject Site*

- 1.) The subject site is located at 10 Lilac Court, Mooloolaba. Lilac Court is a relatively short cul-de-sac which contains approximately 11 residential allotments.
- 2.) The subject site is located towards the head of the cul-de-sac and is relatively irregular in shape and flat in topography.
- 3.) The property features a single level detached dwelling with a single garage situated between one end of the dwelling and the side fence. A roofed double carport extends from the roof of the dwelling to approximately 100mm from the front alignment.
- 4.) The subject site is surrounded by other single storey brick dwellings on similar sized land parcels. Setbacks from the street frontage are predominantly 6 metres. The two sites located at the head of the cul-de-sac are larger in area and contain dwellings which are situated in excess of 6 metres from the front alignment.
- 5.) With the exception of the subject site, Lilac Court does not contain dwellings with garages or carports within the 6 metre setback from the front alignment.

### *The Hearing*

- 6.) The appellant advised during the hearing that the double carport located between the dwelling and the front alignment, had been constructed at the end of 2018.
- 7.) During the hearing Council highlighted the wording of PO2(d) in that their assessment of the carport can only consider the impacts to visual continuity and pattern of buildings and landscape elements with the street. That is, the effect of other garages and carports within the 6m road boundary setback on streetscape and visual amenity in neighbouring streets and suburbs are not to be considered in determining compliance with PO2(d).
- 8.) The documentation put forward to Council as part of the Siting Variation request prepared by John Dunn Building Approvals titled "180570 – Concurrence agency referral report, 10 Lilac Court, Mooloolaba, QLD, 4557" uses various photographic examples of carports, garages and shade sails within the 6m road boundary setback located in the neighbouring streets and locality, as a means of demonstrating precedence. The Tribunal heard that at 3 Lilac Court, a carport erected within the 6 metre front setback and without prior approval, had recently been removed.
- 9.) During the hearing it was observed that the dwelling has a single vehicle garage located between the residence and the side boundary. The double carport roof is suspended from part of the dwelling roof and extends at its eastern end to within approximately 100 mm of the front alignment.

## Relevant Planning Scheme Provisions

1. 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 Mooloolaba/Alexandra Headland Local Plan Area.
2. 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).
3. 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.
4. The current provisions of the Dwelling House Code specifically seek to discourage the erection of garages and carport in the 6 metre street frontage setback area.
5. The relevant acceptable solution under the Dwelling House Code for carport siting is AO2.1 which states –

AO2.1 – Where located on a lot in a residential zone, a garage carport or shed: -

- a.) Is setback at least 6 meters from any road frontage;
- b.) Does not exceed a height of 3.6 meters; and
- c.) Has a total floor area that does not exceed 56 m<sup>2</sup>

To comply with the acceptable solutions AO2.1(a), the carport must be setback 6metres from any road frontage. It is currently setback 100mm from that road boundary and therefore does not comply with the acceptable solution.

The Sunshine Coast Planning Scheme 2014 Dwelling House Code is a performance based document and as such contains performance outcomes in which alternative siting provisions that do not comply with the acceptable solutions are to be assessed against. The relevant performance outcome to be satisfied in this case relating to siting of garage, carport and sheds is PO2.

PO2 – Garages, carports and sheds: -

- a.) Preserve the amenity of adjacent land and dwelling houses;
- b.) Do not dominate the streetscape;
- c.) Maintain an adequate area suitable for landscapes adjacent to the road frontage; and
- d.) Maintain the visual continuity and pattern of buildings and landscape elements within the street.

It is PO2(d) that Council considered was the ground for refusal.

## Reasons for the Decision

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

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

All buildings in the street, including carports and garages, are set back 6 metres or greater from the front boundary. The subject site is the exception, with a carport erected at its closest point, within approximately 100 mm of the road frontage.

The location of the open carport does not comply with the acceptable solution A02.1 siting provisions within the *Sunshine Coast Planning Scheme 2014* Dwelling House Code, therefore compliance must be demonstrated with the relevant performance outcomes including P02(d) above. In an assessment against performance outcome P02(d), the carport location does not maintain the visual continuity and pattern of buildings and landscape elements within the street.

---

**Deanna Heinke**  
**Development Tribunal Chair**  
**Date: 22 August 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  
Department of Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001

**Telephone (07) 1800 804 833**

**Email: [registrar@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)**