



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	21-065
Appellants:	Stefan Waskow and Lauren Croxton
Respondent (Assessment Manager):	John Dunn - JDBA Certifiers
Co-respondent (Concurrence Agency):	Sunshine Coast Regional Council
Site Address:	39 Chantilly Crescent Beerwah and described as Lot 57 on RP835983 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the Planning Act 2016 (PA) against the refusal of a Development Application for Building Works for additions to a dwelling house being an existing carport. The decision followed a concurrence agency response by the Sunshine Coast Regional Council (Council), directing refusal of the application. Council stated in part, that the proposal does not meet Performance Outcomes PO2(d) of the Dwelling House Code under the Sunshine Coast Planning Scheme 2014.

Date and time of hearing:	22 April 2022 10-00 a.m.
Place of hearing:	The subject site
Tribunal:	Anthony Roberts – Chair Lisa Lambie - Member
Present:	Mr SM Waskow & Ms LD Croxton – Appellants Mr M Schwieso & Ms R Saunders - Council representatives Mr P Ferris JDBA Certifiers – Assessment Manager

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the Planning Act (2016), has decided this appeal by replacing the decision of the Assessment Manager to refuse the application with a decision to approve the existing development with the following conditions:

1. The carport is to remain open on all sides and is not to be enclosed with walls, screens or a door.
2. The setback area between the southern side boundary of the site and the existing carport to be landscaped with appropriate vegetation which will provide effective screening to the height of the carport.

Background

The subject site is a residential property situated in a well-established residential estate in Beerwah. The 632 square metres allotment is flat (as is the surrounding area) and has frontage of 20.5 metres to Chantilly Crescent which has a straight alignment for in excess of 100 metres each side of the subject site. The land is zoned Low Density Residential.

The existing dwelling is single storey brick on a concrete slab construction with a front setback of approximately 5.7 metres. The street frontage of the site presents an existing open carport (the subject of this appeal) and a timber fence incorporating recesses with substantial landscaping.

The carport is of open, lightweight steel construction with a sloping skillion roof and is 4.5 metres wide, 5.5 metres long and 3.2 metres high. The structure is constructed on the front boundary with a setback of 2.2 metres from the southern side boundary.

A chronology of events leading up to this appeal is as follows:

- 2016 - Carport erected at a setback of 0.0 metres from the front boundary by Wholesale Patios, Garages and Carports under contract to previous owners.
- 12 May 2021 - Council conducts site investigation and confirms existence of unapproved carport.
- 13 May 2021 - Council issues 'Unapproved building work – breach' notice to the Appellants stating that 'concerns had been raised with Council' concerning the carport structure that had been constructed without a Concurrence Agency Response (CAR) from the Council and that an inspection had confirmed the breach. The letter stated that to remedy the situation the Appellants had two options which were: to remove the carport or obtain a building work development approval from a private building certifier (which necessitated a CAR) to keep the carport.
- 7 September 2021 - JDBA Certifiers as Assessment Manager submitted an application to Council for a CAR for retrospective approval for a 0.0 metre setback for the carport.
- 14 October 2021 - Council issues a CAR directing refusal of the application.
- 12 November 2021 - Assessment Manager issues Decision Notice refusing the carport application consistent with the CAR direction from Council.
- 12 November 2021 - Appellants lodge Form 10 – Notice of Appeal with the Tribunal Registrar.

The hearing for the appeal was held at the subject site on 22 April 2022 commencing at 10-00 a.m. The Tribunal had the opportunity to view the existing carport structure from both the subject property, neighbouring properties, and the streetscape more generally.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 - Appeal Notice' (together with attachments) lodged with the Tribunals Registrar on 12/11/2021.
2. Sunshine Coast Regional Council - Concurrence Agency Response - dated 14/10/2021.
3. Sunshine Coast Regional Council - Council Assessment Report - dated 14/10/2021.
4. Assessment Manager Decision Notice refusing application BA211185 - dated 12/11/2021.

5. Sunshine Coast Regional Council - Submission to Development Tribunal 'Carport Assessment' - undated.
6. The Planning Act 2016 (PA).
7. The Planning Regulation 2017 (PR).
8. The Building Act 1975 (BA).
9. The Building Regulation 2006 (BR).
10. The Queensland Development Code (QDC).
11. The Sunshine Coast Planning Scheme (2014).
12. The Sunshine Coast Dwelling House Code (Dwelling House Code).
13. Verbal submissions made by the parties at the hearing and during the site inspection.
14. Post-hearing submission made by JDBA – dated 28 April 2022.
15. Post-hearing submission made by Council – dated 28 April 2022.
16. Post-hearing submission made by Council – dated 9 May 2022.

Findings of Fact

The Tribunal makes the following findings of fact:

Jurisdiction:

The Tribunal has jurisdiction to hear the appeal under the PA section 229(1)(a)(i) and Schedule 1, sections 1(1)(b), 1(2)(g) and Table 1, item 1(a) being an appeal by the Appellants against the refusal of the development application by the Assessment Manager on the direction of the Referral Agency.

Decision Framework:

Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:

(2) Generally, the appellant must establish the appeal should be upheld.

(4) The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.

(5) However, the tribunal may, but need not, consider— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.

Section 254 of the PA deals with how an appeal such as this may be decided. The first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal and not relevant here) 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) [not relevant].

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

Section 33 of the BA (alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) 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, provided those alternative provisions are either a qualitative statement or quantifiable standard. The Tribunal considers that both the Dwelling House Code Acceptable Outcome AO2.1 (as a quantitative standard) and Performance Outcome PO2.1 (as a qualitative statement) are alternative provisions as defined in the BA, and that they therefore supersede the equivalent boundary clearance requirements in the QDC MP1.2. To comply with the boundary requirements called up (indirectly) by the BA, building work must satisfy either AO2.1, or PO2.1 of Council's Dwelling House Code.

As the proposal does not comply with AO2.1 of the Council's Dwelling House Code (which sets out a requirement for a 6m front setback for carports, garages and sheds), it must be assessed and determined to be compliant against all four parts of the performance criteria stated in PO2.1 and re-stated below:

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.

Matters in Dispute:

Council's assessment of the development confirmed that the development complied with elements (a) to (c) of PO 2.1. In this particular case, Council has relied on PO2.1(d) as the basis for its decision.

In Council's CAR refusal of the reasons for refusal were stated as follows:

"The proposal does not meet:

Sunshine Coast Planning Scheme, Dwelling House Code, Performance Outcome PO2(d) – Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.

1. The visual continuity and overall pattern of Chantilly Crescent comprises of dwellings approximately 4.5m – 6.0 m from the road frontage with carports, garages and sheds predominantly setback 6.0m, and the continuity of the built form generally being maintained. The street is characterised by open landscaped front yards. Council considers the carport proposed 0.0m front boundary to be inconsistent with the setback pattern of the street. It is noted that a number of unapproved carports exist within the street that encroach within 6.0m of the front boundary, located at 31 and 40 Chantilly Crescent. These structures are not considered as existing approved structures in this assessment. The proposed carport would not maintain the visual continuity and pattern of buildings and landscape elements in accordance with the Sunshine Coast Planning Scheme 2014 – Dwelling House Code, Performance Outcome PO2 (d).
2. There is opportunity to establish a covered carparking space on the site without the need to encroach within 6.0m of the front boundary, as such, Council sees no reason to depart from the planning scheme for this proposal. "

At the hearing, confirmation was provided by Council representatives that the only focus of the appeal was the siting of the carport relative to the frontage of the subject site, and the achievement or otherwise of PO2.1(d) of the Dwelling House Code.

Visual Continuity and Pattern of Buildings and Landscape Elements within the Street:

In relation to the first component of Council's reasons for refusal concerning impact on the visual continuity and pattern of building and landscape elements within the street, Council's position is that:

- the *visual continuity and overall pattern of dwellings in the street* comprises dwellings setback approximately 4.5m – 6.0 m from the road *frontage* with carports, garages and sheds predominately setback 6.0m.
- the street characterised by *open landscaped front yards*.
- the carport setback 0.0m from the front boundary of the subject site is inconsistent with the setback pattern of the street as a whole and consequently does not maintain the visual continuity and pattern of buildings within the street - therefore failing to comply with Dwelling House Code, Performance Outcome PO2 (d).

The Appellants' contention in relation to this consideration is that:

- the carport does not impact the amenity of the street as it is setback from adjoining properties and blends in with the front landscaping works conducted by the owners which soften the built form of the structure.
- carports and similar structures are built to the front boundary within the immediate vicinity of the site.

Based upon the site inspection conducted on 22 April 2022, the Tribunal finds that Chantilly Crescent presents a varied 'streetscape' comprising varied building pattern and mixed landscape elements along the extent of the street. As a whole, Chantilly Crescent does not exhibit an 'open landscaped front yard' character due mainly to the varied setback of dwellings and visual clutter introduced by such elements as solid colorbond, aluminium and timber fencing along the side and front boundaries of some properties together with the existing intrusion of carport and shed structures within the required setback.

At the hearing, the Tribunal noted some dwellings along Chantilly Crescent appeared to be constructed at a setback of less than 6.0m. Council representatives clarified that, although dwelling houses can be constructed at a front setback of 4.5 metres, the Dwelling House Code requires other structures such as garages, sheds and carports to be setback at least 6.0 metres from the front boundary.

Within the immediate vicinity of the subject site, there are at least two examples of carport structures within the 6 metre street setback at 31 and 40 Chantilly Crescent and a large shed on the property boundary on the allotment located on the corner of Chantilly Crescent and Pine Camp Road.

With respect to these examples Council contends that as the two carport structures are unapproved and the shed pre-dates the requirements of the current Planning Scheme they should be disregarded for the purposes of consideration of the subject site. In this regard, the Tribunal is inclined to agree with Council but notes that these structures do in reality seem to detract from the Council's design intention of having visual continuity and consistent pattern of buildings and landscape elements and that Council confirmed that no compliance action had been pursued on the unapproved carports to date.

In relation to the subject site itself, the Tribunal noted that from the northern aspect the carport is virtually obscured by the existing front fence incorporating substantial landscaped recesses

and that the lightweight design of the structure (with a high flat sloping roof) is relatively unobtrusive. Both parties agree that the lightweight, open-sided structure does not 'dominate' the streetscape.

The Tribunal therefore finds that the carport itself, as constructed, does not have a detrimental impact on the visual values of the streetscape and that it effectively maintains the existing visual continuity and pattern of buildings and landscape elements already evident in the street.

Alternative siting and need for car accommodation:

In relation to the second component of Council's reasons for refusal concerning the opportunity to establish a covered carparking space on the site without encroaching within the 6.0 metre front boundary setback, Council representatives at the hearing put forward that there was sufficient space on the northern side of the site to establish a covered carport in compliance with the required setback. In response, the Appellants dismissed this possibility stating that it would be impractical and expensive to relocate the carport, driveway and associated street crossover to the northern side of the site.

In relation to this consideration, the Tribunal agrees with the Appellants' position that while relocation may be an 'on paper' possibility, to all intents and purposes it would be unduly costly and impractical.

In support of their case in relation to retaining the carport, the Appellants state that the carport is necessary to provide covered protection for their vehicles and is in fact a requirement of Council's Planning Scheme.

A material consideration here is whether the original dwelling contained car accommodation which was subsequently converted for habitable purposes creating a consequent need for new car accommodation which would likely need to intrude into the 6.0 metre setback. Neither Council nor the Appellants produced evidence to determine if this was the case or not.

In this matter assessment must be considered against the performance outcomes set out in PO2 of Council's Dwelling House Code. However, the Tribunal acknowledges that the Dwelling House Code does require that onsite car parking is to be provided for two cars (for lots greater in area than 300sq/m) with at least one of them capable of being covered and notes that the existing carport within the 6.0 metre street setback provides a practical solution to meet this requirement.

Reasons for the Decision

In this appeal, the Tribunal considers the Appellants have satisfied the onus to demonstrate the appeal should be upheld. Therefore, the Tribunal has determined to replace the decision of the Assessment Manager to refuse the application with a decision to approve the development with conditions for the reasons identified below.

The Tribunal found that Council's Planning Scheme intent that garages, carports and sheds do not dominate the streetscape is clear. However, the Tribunal finds that Chantilly Crescent does not predominantly exhibit an 'open landscaped front yard' character due mainly to the varied setback of dwellings and visual clutter introduced by such elements as solid colorbond, aluminium and timber fencing along the side and front boundaries of some properties together with the existing intrusion of carport and shed structures within the required setback.

Further, the Tribunal found that the design of the carport (as constructed), together with the landscape treatment of the site, means that it does not dominate the streetscape and is consistent with the prevailing 'visual continuity and pattern of building and landscape elements' of the street. The Tribunal therefore considers Performance Outcome PO2.1(d) has been satisfied. However, to ensure that the structure does not, through alteration, become more

visually dominant in future and to enhance the existing visual buffers, a condition preventing enclosure of the structure and a condition requiring supplementary landscaping are considered appropriate by the Tribunal.

A handwritten signature in black ink, appearing to be 'A Roberts', on a light blue rectangular background.

Anthony Roberts

Development Tribunal Chair
Date: 7 June 2022

Appeal Rights

Schedule 1, Table 2, item 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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