



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	48-18
Appellant:	Donna Mills and Terrie-Ann Howard
Respondent (Assessment Manager):	Richard Jones
Co-respondent (Concurrence Agency):	Sunshine Coast Regional Council
Site Address:	152 The Esplanade, Golden Beach and described as Lot 18 on RP 96152 – 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 garage, upper deck and front entry area to an existing Class 1A Dwelling. Sunshine Coast Regional Council (Council) as the Concurrence Agency directed the Assessment Manager to refuse the additions as Council considered they did not meet and could not be conditioned to meet the performance outcomes of the Sunshine Coast Planning Scheme 2014, Part 9.3.6 Dwelling House Code, Performance Outcomes PO2 (d) PO3 (b) and the Queensland Development Code P2 (c).

Date and time of hearing:	10.00am, 22 February 2019
Place of hearing:	The subject site
Tribunal:	Deanna Heinke – Chair Lisa Lambie – Member Christopher Finch – Member
Present:	Donna Mills – Appellant Terri-Ann Howard - Appellant Peter Chamberlain –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 Richard Jones of Fluid Building Approvals, the Assessment Manager, to refuse the application to build a garage, upper deck and front entry area to an existing Class 1a Dwelling.

Background

1. The subject site is a 550 m² allotment located at 152 The Esplanade, Golden Beach. The subject site is rectangular in shape, relatively flat and with a frontage to The Esplanade of approximately 16 metres. The existing dwelling is setback 6 metres from the street frontage.

2. The property features a single, detached two storey brick dwelling with a partially recessed double garage located underneath the existing living and dining areas. External brick stairs located at the right end of the dwelling enable access to the first level living area. At the first level the living and dining areas are located at the front of the house.
3. The subject site is surrounded by other two storey brick dwellings on similar sized land parcels. The Esplanade stretches for a significant length in Caloundra and Golden Beach. The section of The Esplanade which is considered to warrant consideration in the appeal is that part located between Joan and Roy Street, Golden Beach. This section of The Esplanade contains dwellings of various construction periods of single and two storey brick construction. Setbacks from the street frontage appear to be predominantly 6 metres.
4. The subject site is located directly opposite a linear park. The Esplanade is located parallel to a linear coastal park which adjoins Pumicestone Passage. The property has extensive views along The Esplanade, the linear coastal park and Pumicestone Passage.
5. The owners of the property propose to renovate and modify the current design to construct a front deck at the upper level and an entry area enclosing a staircase at one side of the dwelling. The garage area is proposed to be extended to align with the extension of the upper deck. The appellants own a caravan which they propose to accommodate in an extended garage area.
6. The appellants engaged a building designer to prepare plans for modifications to the existing dwelling to accommodate (a) a new entry, (b) a garage area underneath the dwelling to accommodate two cars and a caravan and additional living area at the ground level and (c) at the first floor, an extended outdoor deck is proposed from the existing living and dining area.
7. The plans detailing the extent of the proposed alterations were prepared by Entire Design Solutions and lodged with Richard Jones of Fluid Building Approvals (Assessment Manager) in order to obtain a Development Permit for Building Works.
8. The Assessment Manager lodged a request for concurrence agency response for building work with Council as the proposed building design did not comply with the Sunshine Coast Planning Scheme Dwelling House Code and Queensland Development Code MP1.2 in the following respects:
 - a. A garage extension is proposed to be sited at 4.5m from the road frontage in lieu of the required 6m setback; and
 - b. A deck addition is proposed to be sited at 4.5m to the road frontage in lieu of the required 6m setback; and
 - c. A front entry area is proposed to be built at 50mm from the side property boundary in lieu of the required 1.5m setback in the QDC MP1.2; and
 - d. A minor addition to the first floor will be sited at 1.8m to the side property boundary in lieu of the required 2m setback.
9. On 18 October 2018, Council recommended a part approval and part refusal of the application and issued their decision notice to the building certifier stating:

“I refer to your application and advise that Council, as a concurrence agency for the application, completed its assessment of the application.

Council recommends part approval and part refusal –

You are advised that Council recommends approval to allow the following item that was applied for:-

- 1.8m from the upper floor lounge exterior wall to the side boundary.

The following is recommended for refusal –

4.5m setback from the garage OMP to the road/property boundary

Council considers that the 4.5m setback from the garage OMP to the road/property boundary does not satisfy the requirements of 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 within the street.

Reason

- The visual continuity and pattern of the street comprises of predominantly of dwelling with garages approximately 5.5m from the road frontage with the continuity of the built form generally being maintained.
- As the garage is set forward of the general line of the buildings in the street, Council considers that the garage does not maintain the visual continuity and pattern of the buildings within the street.

4.5m setback from the upper deck OMP to the road/property boundary

Council considers that the 4.5m setback from the upper deck OMP to the road/property boundary does not satisfy the requirements of the Sunshine Coast Planning Scheme 2014 Dwelling House Code Performance Outcomes PO3(b), namely:

PO3 (b) – Create a coherent and consistent streetscape with no or only minor variations in frontage depth

Reason

- The reduction from the Acceptable Outcome of 6m road/property setback to 4.5m is not considered a minor variation in frontage depth.

0mm setback from the front entry OMP to the side boundary

Council considers that the 0mm setback from the front entry OMP to the side boundary does not satisfy the requirements of the QDC P2 (c)

QDC P2 (c) do not adversely impact on the amenity and privacy of residents on adjoining lots

Reason

The bulk of the entry wall, only 50mm from the side boundary, may:-

- Be seen as a visual nuisance from the adjacent property.
- Cause a sense of enclosure to the adjacent residents being so close to their property.
- Hinder the views in the northerly direction from the adjacent upper storey front areas.
- Affect the prevailing breezes from the north easterly direction.

10. On 13 November 2018 the building certifier, Richard Jones of Fluid Building Approvals, issued a decision notice to the applicant Simon Abbott of Smith and Sons and advised that the application was refused, stating that the reason for refusal are:

- *“The assessment manager was directed to refuse the majority of the application by the Sunshine Coast Regional Council in accordance with their referral agency role.*
- *The aspect of the Referral Agency response that involved a “Part Approval” is not relevant to the project, as advised by the property owner.*
- *The elements of the proposed building works that have been recommended for refusal by Council are the most significant in terms of the scale and scope of the project.”*

11. On 14 November 2018, the owners Donna Mills and Terri-Ann Howard, lodged an appeal with the Registrar for the Development Tribunal.

12. On 22 February 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.

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 14 November 2018.

Those documents included:

Land owner’s consent to the making of an application for appeal dated 14 November 2018

- Land owner’s letter to the Development Tribunal dated 14 November 2018
- Sunshine Coast Regional Council’s Concurrence Agency advice dated 18 October 2018

2. Assessment Manager Decision Notice, dated 13 November 2018, refusing the application;
3. Drawings lodged with the Concurrence Agency Response (Building Work) Application, prepared by Entire Design Solutions dated June 2018, including:
 - Drawing A-01 Site Plan
 - Drawing A-04 Proposed Ground Floor Plan
 - Drawing A-05 Proposed First Floor Plan
 - Drawing A-09 Exterior 3D views
 - Drawing A-10 Exterior 3D views
 - Drawing A-11 Arial View
4. Verbal submissions at the hearing from all parties to the appeal;
5. *Sunshine Coast Planning Scheme 2014*
6. *Planning Act 2016 (PA)*
7. *The Planning Regulation 2017*
8. *The Building Act 1975 (BA)*
9. *The Building Regulation 2006*
10. *The Queensland Development Code (QDC) Part MP 1.2*
11. *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 a 550 m² allotment located at 152 The Esplanade, Golden Beach.
2. The subject site is rectangular in shape, relatively flat and with a frontage to The Esplanade of approximately 16 metres.
3. The property features a single, detached two storey dwelling with a double garage recessed underneath the upper level.
4. The existing dwelling is setback 6 metres from the front frontage, with the exception of the external stairs which are located 4.5 metres from the front boundary. The existing double garage is recessed approximately 3 metres underneath the dwelling's upper level.
5. External brick stairs located at the right end of the dwelling enables access to the first level living area. At the first level the living and dining areas are located at the front of the house.
6. The subject site is surrounded by other two storey dwellings on similar sized land parcels. The section of The Esplanade situated between Joan Street and Roy Street contains dwellings of similar 1970's construction period.
7. The subject site is located directly opposite a linear park. The Esplanade is located parallel to a linear park which adjoins Pumicestone Passage.
8. All properties situated on The Esplanade have extensive views along The Esplanade, the linear park and Pumicestone Passage.
9. The majority of dwellings located on The Esplanade situated between Joan Street and Roy Street appear to be predominantly set back 6m from the front boundary.

Application Process

1. The owners of the subject site propose to modify the current dwelling to extend a deck at the first level of the dwelling within the 6 metre front setback. By extending out a double garage is proposed to be constructed beneath, to within 4.5 metres of the road frontage. In addition, a new entry area is proposed to be located adjacent to the deck and garage and is proposed to be extended to the side boundary.
2. The plans detailing the extent of the proposed alterations were prepared by Entire Design Solutions and lodged with Richard Jones of Fluid Building Approvals (Assessment Manager) in order to obtain a Development Permit for Building Works.
3. The Assessment Manager lodged a request for concurrence agency response for building work with Council as the proposed building design did not comply with the Sunshine Coast Planning Scheme Dwelling House Code and Queensland Development Code MP1.2 in the following respects:
 - (a) A garage extension is proposed to be sited at 4.5m from the road frontage in lieu of the required 6m setback; and
 - (b) A deck addition is proposed to be sited at 4.5m to the road frontage in lieu of the required 6m setback; and
 - (c) A front entry area is proposed to be built at 50mm from the side property boundary in lieu of the required 1.5m setback in the QDC MP1.2; and
 - (d) A minor addition to the first floor will be sited at 1.8m to the side property boundary in lieu of the required 2m setback.
4. On 18 October 2018, Council recommended a part approval and part refusal of the application and issued their response to the building certifier as described in paragraph 9 above under the heading 'Background'.
5. On 13 November 2018 the building certifier, Richard Jones of Fluid Building Approvals, issued a decision notice to the applicant Simon Abbott of Smith and Sons and advised that the application was refused, stating that the reason for refusal as set out in paragraph 10 above under the heading 'Background'.
6. On 14 November 2018, the owners Donna Mills and Terri-Ann Howard, lodged an appeal with the Registrar for the Development Tribunal.
7. On 22 February 2019, the Tribunal conducted the hearing on the subject site.

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 Precinct LDR1 (Protected Housing Area) and the Golden Beach/Pelican Waters Local Plan Area. The subject site is also affected by various overlays under the planning scheme.
2. The Esplanade is a principal road within the Golden Beach/Pelican Waters Local Plan (local plan). Within the road reserve, right angled car parking spaces are located on the opposite side of the subject site. A linear park is located between The Esplanade and Pumicestone Passage. The local plan identifies the linear park as a greenspace link and a coastal path. The local plan also identifies various locations along the coastal path as locations of significant views. An overall outcome of the Local Plan is the protection of the significant views to Pumicestone Passage and other views and vistas to surrounding natural areas identified on Figure 7.2.13A (Golden Beach/Pelican Waters local plan elements.)
3. 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).

4. 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.
5. The current provisions of the Dwelling House Code specifically seek to discourage the erection of garages and carports in the 6 metre street frontage setback area, while supporting a reduced setback of 4.5 metres for certain single storey building elements such as entry porches, verandahs or other living areas.
6. As the outermost projection of the proposed extension was proposed to be located 4.5 metres 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).
7. The Sunshine Coast Planning Scheme 2014 defines “streetscape” as:

“The collective combination of urban form elements that constitute the view of a street and its public and private domains. These elements include buildings, roads, footpaths, vegetation, open spaces and street furniture.”

Reasons for the Decision

The Tribunal **confirms** the decision of the Assessment Manager to refuse the Class 1a upper deck, garage and front entry area for the following reasons.

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

The predominant setback of dwellings located along that section of The Esplanade between Joan Street and Roy Street are principally setback 6 metres from the front boundary. At the time of the hearing there was little evidence of any dwellings or garages being constructed within the 6 metre frontage setback.

PO3 (b) – create a coherent and consistent streetscape, with no or only minor variations in frontage depth

The proposal before the Tribunal sought to extend what is in effect, part of the upper level of the dwelling, front entry area and garage underneath to encroach 1.5 metres within the required 6 metre setback, to within 4.5 metres of the front boundary. The Tribunal does not consider this to constitute a minor variation in frontage depth.

Within reasonable proximity of the subject site, the streetscape of The Esplanade predominantly consists on single and two storey dwellings. In the main most lots have no fence along the front alignment and the dwellings appear to be principally setback 6 metres from the road frontage.

The Tribunal is not satisfied that to approve the proposed additions to the dwelling as proposed would create a coherent and consistent streetscape as required by the Performance Outcome PO3 (b).

QDC P2 (c) do not adversely impact on the amenity and privacy of residents on adjoining lots

The proposal before the Tribunal sought to extend the front entry area to the side boundary.

The Tribunal considered that the proposed front entry area represented a non-habitable room forming part of a Class IA building. The tribunal considered that the proposed structure built to

the side boundary could be considered to adversely impact on the amenity and privacy of residents on the adjoining lot.

Deanna Heinke
Development Tribunal Chair
Date: 8 April 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 Facsimile (07) 3237 1248

Email: registrar@hpw.qld.gov.au