



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	20-009
Appellant:	Jill & John Chiverton c/o Innovative Planning Solutions
Respondent (Assessment Manager):	Richard Jones
Co- Respondent (Concurrence Agency):	Sunshine Coast Regional Council (SCRC)
Site Address:	3 Bambaroo Close Nambour described as Lot 25 on RP 113353 – the subject site

Appeal

Appeal made under Section 229(1)(a)(i) and Schedule 1, section 1, Table 1, Item 1(a) of the *Planning Act 2016* against the decision of the Assessment Manager, as directed by the concurrence agency to refuse the development application to build a domestic carport on the basis that it conflicts with the Dwelling Code provisions of the relevant planning scheme.

Date and time of hearing:	Monday 20 July 2020 at 11:00am
Place of hearing:	The subject site
Tribunal:	Markus Pye – Chair Catherine Baudet – Member
Present:	Jill Chiverton & John Chiverton – Appellants Pamela Davidson – Innovative Planning Solutions Clemm Davidson – Innovative Planning Solutions Mitch Schwieso – Council representative Peter Chamberlain – Council representative Greg Rogerson - Attendee

Decision:

The Development Tribunal (Tribunal) in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) **replaces** the decision of the assessment manager with another decision, namely, that the development application be approved 'as proposed'.

Background:

1. The subject property is located at 3 Bambaroo Close Nambour, being Lot 25 on Registered Plan 113353, designated Low Density Residential and is 812m² in size. The subject property is located on the left hand (western) side of the street, one lot from the cul-de-sac's entry intersection. Bambaroo Close appears designated as a minor street.
2. In 2019 the Appellants had plans for a carport to be located within the 6m front setback zone drafted by Graham Green dated 5-9-19 and submitted to Mr Richard Jones of Fluid Building Approvals as the Assessment Manager.
3. Mr Jones submitted the proposal to Sunshine Coast Regional Council as the concurrence agency for a response regarding Development Approval for Building Works because the proposed design did not comply with the Acceptable Outcomes of the Dwelling Code being part of the relevant planning scheme for the Sunshine Coast Regional Council.
4. After a 20 February 2020 Sunshine Coast Regional Council Ordinary Meeting, on 2 March 2020 the Assessment Manager was notified that the council resolved a DIRECT REFUSAL of the application.
5. On 26 March 2020 a Form 10 – Application for Appeal was lodged by Innovative Planning Solutions on behalf of the Appellants.
6. The Tribunal hearing was held on site on 20 July 2020.
7. Further submission from the Appellant 'Supplementary Grounds of Appeal dated 27 July 2020.
8. SCRC response to Appellant submission of 27 July 2020 dated 7 August 2020.

Jurisdiction:

1. The Tribunal has jurisdiction for this appeal under *Planning Act 2016* (PA), Section 229(1)(a)(i) and of Schedule 1, sections 1(1) and 1 (2)(g) and Table 1, Item 1(a).

Decision Framework:

It is noted that:

1. the onus rests on the appellant to establish that the appeal should be upheld (s. 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 person who made the decision appealed against (s. 253(4) of the PA),
3. the Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings), and
4. the tribunal is required to decide the appeal in one of the ways mentioned in s.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 Tribunals Registrar on 24 April 2020.
2. Appellants -Supplementary grounds in support of appeal. Dated 27 July 2020.
3. SCRC response to supplementary grounds in support of appeal. Dated 7 August 2020.
4. Drawings by Graham Green noted as Project No.219-104, Sheets No. 1-6 dated 5-9-19.
5. Notification of *Refusal* to the Appellant by the referral agency Sunshine Coast Regional Council dated 2 March 2020 citing that the 1500mm front setback of the proposed carport does not meet the *Sunshine Coast Planning Scheme 2014 Dwelling House Code, Performance Outcome PO2 Garages, carports and sheds: (b) do not dominate the streetscape; and (d) maintain the visual continuity and pattern of buildings and landscape elements within the street.*
6. Submissions by adjacent and opposite neighbours having no objections to the proposal.
7. Verbal representations made by the Appellant, the Council and an Attendee at the hearing.
8. The on-site inspection of the subject site and neighbouring areas at and around the time of the hearing.
9. *Sunshine Coast Planning Scheme 2014 (SCPS)*
10. *Planning Act 2016.*
11. *Planning Regulation 2017*
12. *Building Act 1975*

Findings of Fact:

The Tribunal makes the following findings of fact:

1. The dwelling lots adjoining the subject street are generally not uniform in size, length and width as it is a short, cranked cul-de-sac with the result that dwelling setbacks are generally not uniform, and also vary in setback depending on angles of the buildings to the frontage. Two of the 14 lots adjoining Bambaroo Close are from adjacent Amaroo Ave, one having minimal setback (approx. 1.5m) to the street boundary and both are viewed as part of the street and **streetscape*. Therefore the original building setbacks in the street range greatly from approx. 1.5m to 10m or more to the full house frontage.
2. Including the entrance corner and the adjacent Avenue lots, the street comprises single and double storied circa 1960's to 1970's vintage dwellings with a Bambaroo Close frontage. The buildings range through styles, types and colours and included varied roofs being hipped, gabled and flat metal roof forms. The buildings also vary in visual prominence depending on their scale and other landscape features with most appearing as a singular statement to the street. The discernible pattern of building type is that the left hand side (western) street dwellings are generally of a masonry 2 level type.

3. Dwellings on lots of this subdivision era generally incorporated vehicle accommodation either as single garage or double garage integrated within the house volume although other dwellings in the streetscape have attached garage/carports, those being prominent visual elements. The subject property has a single garage integrated into its volume with an entry height of 2100mm customary to fit a vehicle of the day. Modern popular SUV vehicles are now in the order of 300mm higher, which by modern standards makes it less than considered practical.
4. It is noted that there are 'non-original' additional carports to 4 dwellings attached to the building frontage on the left hand side/end of the street illustrating an emerging pattern of additional car parking requirements potentially as noted for practicality. The additional car parking requirements pattern also identified one within the Bambaroo *streetscape on Patterson Street being built adjacent to that front boundary.
5. The subject site's existing dwelling does not comply with the *acceptable solutions* of the siting requirements of the planning scheme or alternatives in that the outer most projection is 5250mm as opposed to customary 6000mm.
6. In the larger context, the 'streetscape' topography slopes down from left to right (west to east) and has defining feature to the left hand side being a significant stone retaining wall running the street length. This is coupled with a wider than normal verge to accommodate this element. There is no other defining visual patterns of landscape or buildings, each lot having their own landscape elements ranging from low through to abundant vegetation, masonry or lightweight fencing or boundary hedging to complement each property.

**Streetscape* (as defined by Sunshine Coasts Planning scheme): 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:

1. In a SCRC submission dated 7 August 2020 Council states:
"In accordance with the Planning Regulation 2017, Schedule 9, Part 3, Division 2, Table 3, the referral agency assessment is subject to the identified 'matters referral agency's assessment must be against', which is limited to whether the proposed carport complies with the qualitative statement (performance outcome) associated with the alternative provision; in this case limited to PO2 only." That being specifically PO2 (b) & (d).
2. As noted, the specific *"matters referral agency's assessment must be against"* those being: for building work stated in item 1, column 2, paragraph (b) or (c)—whether the proposed building or structure complies with the qualitative statement stated in the paragraph.

Definitions: qualitative statement see the [Building Act, section 33\(6\)](#).
quantifiable standard see the [Building Act, section 33\(6\)](#).

3. Building Act 1975:
 - *qualitative statement* means a statement about a performance or outcome sought to be achieved when applicable buildings or structures are completed.
 - *quantifiable standard* means a standard that achieves a performance or outcome sought under a qualitative statement.

4. With that *qualitative statement* being the limiting constraint for assessment, then does the proposed carport comply with the *qualitative statement* (2 identified non-compliant 'performance outcomes') of the 9.3.6 Dwelling code? Those being:
 - PO2 Garages, carports and sheds:-
 - (b) do not dominate the *streetscape; and
 - (d) maintain the visual continuity and pattern of buildings and landscape elements within the street
5. PO2 (b) The Tribunal considers the proposal complies with (b) as it is an open, transparent, modest 'domestic scale' carport which is designed to appear 'ancillary' to the house and, compliment through the continuing use of the existing materials and language of the dwelling the carport serves. The proposed carport and location is of a type that the *performance outcomes* envisage particularly given the proposal is 1500mm off the front boundary on a street with an extra wide verge.
6. PO2 (d) The Tribunal considers the proposal complies with (d) as it maintains the *visual continuity and pattern of buildings and landscape elements within the street*. That *continuity* being a distinctive range of varied dwelling forms, scales, materials and design, coupled with a diverse range of landscape elements. The proposal also maintains the emerging pattern for increased vehicular accommodation.
7. Therefore the Tribunal considers that the proposal complies with the *qualitative statement (performance outcome)* of the applicable code and replaces the decision of the concurrency agency to one which directs the carport to be approved as proposed.

Markus Pye

Development Tribunal Chair

Date: 31 August 2020

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:

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