



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	20-035
Appellant:	Kelly and Adam Caple
Respondent: (Assessment Manager)	Sunshine Coast Regional Council
Site Address:	3 Barlee Street, Eumundi and described as Lot 2 on RP166376 – the subject site

Appeal

This is an appeal under section 229, section 1 of Schedule 1 and item 1 of Table 1 of the *Planning Act 2016 (PA)* against the Sunshine Coast Regional Council's (**Respondent**) decision to refuse a development application for building work (assessable against the Planning Scheme) for a class 10a detached garage associated with a dwelling house made by the Appellant, given by a Decision Notice dated 28 October 2020 (**development application**).

Date and time of hearing:	11am, 18 March 2021
Place of hearing:	The subject site
Tribunal:	Samantha Hall – Chair Linda Tait - Member
Present:	Appellant Kelly Caple – Appellant Adam Caple – Appellant Don Grehan – Pacific BCQ Sunshine Coast Regional Council Tracey Douglas – Senior Development Planner Jessica McKauge – Development Planner

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(c) of the PA **replaces** the decision of the Respondent to refuse the development application with a decision to approve the development application with the following conditions:

- A. The garage is to be constructed of quality materials in Slate grey and non-glossy finish.
- B. Landscape screening is to be planted and maintained along the sides and rear of the garage. Planting density results in small trees capable of growing to minimum 5 metres

tall above slab height, planted at 2 metre centres and shrubs planted at 1 metre centres. Species are to avoid declared plants and environmental weeds.

Background

1. The subject site was included in the Low density residential zone of the SCRC Scheme (**LDR Zone**).
2. The subject site was a sloping block that fell away from the street, with the existing dwelling house located close to the street and the proposed garage to be constructed toward the rear of the subject site, down an already constructed steep driveway, separated from the house by a pool and landscaped area. The proposed garage had a floor area of 96m²¹ and a maximum height of 5366mm.
3. On or about 20 August 2020, Mr Don Grehan of Pacific BCQ, on behalf of the Appellant, lodged the development application with the Respondent “as a concurrence agency”.
4. It should be noted that there was some confusion in the documentation provided by the Tribunal with respect to the role of the Respondent in respect of the development application, as to whether the Respondent was a concurrence agency or the assessment manager.
5. By email dated 19 April 2021, the Tribunal sought submissions from the parties in this respect (**Tribunal’s orders**).
6. By written submissions dated 19 April 2021 for the Appellant (**Appellant’s submissions**) and 30 April 2021 for the Respondent (**Respondent’s submissions**), the parties agreed that the proposed garage required two development applications, being:
 - (a) an application for a development permit for building work (building work assessed against the Building Assessment Provisions) in which the assessment manager was Mr Grehan; and
 - (b) an application for a development permit for building work made assessable by the Respondent’s Planning Scheme in which the assessment manager was the Respondent.
7. The Tribunal is satisfied that the development application is therefore that set out in paragraph 6(b), being the application made to the Respondent as assessment manager for assessing building work made assessable by the Respondent’s Planning Scheme.
8. The development application was accompanied by a covering letter prepared by Mr Grehan which provided supporting information to assist the Respondent’s assessment, including a geotechnical report and consents to the proposed garage provided by the owners of two adjoining properties (58 and 62 Crescent Road).
9. By letter dated 25 August 2020, the Respondent issued an Information Request to the Appellant (**Information Request**). The Information Request identified three key issues the Respondent had identified with the development application:
 - (c) height;
 - (d) floor area; and
 - (e) *Landslide hazard and steep land overlay code* of the SCRC Scheme (**LHSLO Code**).

¹ Note the Information Request identified the Respondent considered the floor area comprised 120m² as the floor area calculation in the development application did not include the attached awning.

10. The Information Request required further information be provided by the Appellant in respect of the following:
 - (a) how Performance Outcome PO2 of the Dwelling house code of the SCRC Scheme (**DH Code**) was addressed in relation to amenity and the impact upon adjacent land and dwelling houses, given the size of the proposed garage and the slope of the land. It suggested that letters of support from all adjoining property owners would assist to demonstrate “no loss of amenity”;
 - (b) how the proposed garage satisfied the filling and excavation requirements in AO3.1 (Table 8.2.10.3.1) of the LHSLO Code.
11. By email dated 10 September 2020 from Mr Grehan to the Respondent, the Appellant provided a response to the Information Request (**Response to RFI**).
12. The Response to RFI made changes to the development application to address the Information Request and provided the following details:
 - (a) a reduction in the size of the proposed garage to 98m² (including removal of the awning);
 - (b) a restatement of the Appellant’s response to amenity issues as already provided to the Respondent in in the development application;
 - (c) consent to the proposed garage from the owner of a further adjoining property (75 Fullager Drive);
 - (d) a statement that the LHSLO Code was not to be addressed as part of the development application.
13. By email dated 7 October 2020 from Ms Jessica McKauge on behalf of the Respondent to Mr Grehan, the Respondent identified remaining outstanding matters as including the following:
 - (a) the height of the proposed garage which had not been reduced;
 - (b) continued concerns about amenity impacts upon the neighbouring properties, including consent not being provided by the owners of 60 Crescent Road; and
 - (c) that the requirements of the LHSLO Code had not been addressed.
14. By email dated 9 October 2020 from Mr Grehan to Ms McKauge, Mr Grehan provided no further response to the outstanding matters raised by the Respondent and instead requested that the Respondent’s decision be expedited.
15. By Decision Notice dated 28 October 2020, the Respondent advised that on 26 October 2020, the Respondent decided to refuse the development application (Decision Notice). The reasons for the refusal were identified as being:
 - (a) *“The proposal does not comply with Performance Outcome PO2 as the scale of the garage does not preserve the amenity of adjacent land and dwelling houses.*
 - (b) *The proposal does not comply with the Purpose (9.3.6.2 (1)) and Overall outcomes (9.3.6.2 (2)(b)) of the Dwelling house code as the proposal does not maintain the amenity of neighbouring residential premises, nor is it designed to protect the amenity of neighbouring residential premises.*
 - (c) *The proposal cannot be conditioned to comply with the assessment benchmarks.”*

16. The Statement of Reasons accompanying the Decision Notice identified the applicable codes in the SCRC Scheme to be:
 - (a) Biodiversity, waterways and wetlands overlay code (**Biodiversity Code**);
 - (b) LHSLO Code;
 - (c) DH Code.
17. On or about 10 November 2020, the Appellant filed the Form 10 – Appeal Notice with the Registry of the Building Tribunals.
18. The grounds of appeal identified by the Appellant were:

“The Appellant is dissatisfied with Council’s Refusal of their application to construct a 12m x 8m x 4.366m garage in the belief that their having a side boundary setback of 2m and a rear boundary setback of 18m satisfies PO2 of the Dwelling House Code of the SCRC Planning Scheme as the building will not detrimentally affect on the amenity of neighbouring residential premises given that, by comparative assessment, the proposed boundary setbacks are equivalent to the Acceptable Outcomes for a dwelling.”
19. By email dated 13 March 2021 from the Appellant to the Registrar of the Development Tribunals, the Appellant provided the Tribunal with a further consent to the proposed garage provided by the owners of another adjoining property (5 Barlee Street).
20. The hearing of the appeal was conducted at the subject site by the Tribunal on 18 March 2021.

Jurisdiction

21. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.²
22. Section 1(1) of Schedule 1 of the PA provides that Table 1 states the matters that may be appealed to a tribunal. However, pursuant to section 1(2) of Schedule 1 of the PA, Table 1 only applies to a tribunal if the matter involves one of a list of matters set out in sub-section (2).
23. Section 1(2)(g) of Schedule 1 of the PA, relevantly refers to a matter under the PA, to the extent the matter relates to the *Building Act 1975 (BA)*, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
24. So, Table 1 of Schedule 1 of the PA applies to the Tribunal.
25. Under item 1 of table 1 of Schedule 1 of the PA, an appeal may be made against the refusal of a development application. The appeal is to be made by the applicant, who in this case was the Appellant and the respondent to the appeal is the assessment manager, who in this case is the Respondent.
26. In circumstances where the Decision Notice was dated 28 October 2020 and was received on 29 October 2020³, this appeal was to be filed on or before 26 November 2020.⁴ This was satisfied.
27. Accordingly, the Tribunal is satisfied that it has the jurisdiction to hear this appeal.

² Section 229(1)(a) of the PA.

³ See Item 3 (Date written notice of decision received) of the Form 10 – Notice of Appeal / Application for Declaration of this appeal.

⁴ Section 229 of the PA.

Decision framework

28. The Decision Notice was issued by the Respondent on or about 28 October 2020. At that time, the PA was in force.
29. The Appellant filed a Form 10 – Notice of Appeal / Application for Declaration on or about 10 November 2020.
30. The appeal is a PA appeal, commenced after 3 July 2017 under section 229 of the PA. As such, the appeal is to be heard and determined under the PA.
31. This is an appeal by the Appellant, the recipient of the Decision Notice and accordingly, the Appellant must establish that the appeal should be upheld.⁵
32. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Respondent which decided to give the Decision Notice the subject of this appeal.⁶
33. The Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal⁷.
34. At the hearing of this appeal, the Respondent sought leave from the Tribunal to present other evidence to the Tribunal comprising 3 undated photographs of a shed on a different property within the Respondent's local government area that the Respondent contended was of a similar bulk and scale to the garage the subject of this appeal (**Respondent's photographs**).
35. The Appellant did not oppose the presentation of the Respondent's photographs and the Chairperson of the Tribunal granted the leave sought by the Respondent during the hearing.
36. The PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and the Tribunal may seek the views of any person⁸.
37. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal.⁹
38. At the hearing of this appeal, the parties and the Tribunal agreed to the parties providing additional information to the Tribunal and a timeframe in which that information was to be given.
39. By email dated 19 March 2021, the Respondent provided electronic copies of the Respondent's photographs, along with additional details about the shed the subject of the Respondent's photographs.
40. By email dated 19 March 2021, the Appellant provided images of the type of garage proposed for the subject site, along with additional details about the proposed garage.
41. The Tribunal's orders sought written submissions from the parties with respect to the type of development approval being sought and clarity around the assessment manager and any concurrence agency for the development application.

⁵ Section 253(2) of the PA.

⁶ Section 253(4) of the PA.

⁷ Section 253(5)(a) of the PA.

⁸ Section 249 of the PA.

⁹ Section 253 and section 246 of the PA.

42. The parties provided their responses in the form of the Appellant's submissions and the Respondent's submissions.
43. The Tribunal is required to decide the appeal in one of the following ways set out in section 254(2) of the PA:
- (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) *for a deemed refusal of an application:*
 - (i) *ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
 - (ii) *deciding the application.*

Material Considered

44. The material considered in arriving at this decision comprises:
- (a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Development Tribunals Registrar on or about 10 November 2020.
 - (b) The Respondent's photographs provided to the Tribunal in hard copy at the hearing on 18 March 2021.
 - (c) An email dated 19 March 2021 from Ms Tracey Douglas of the Respondent to the Registrar, Development Tribunals with attached electronic copies of the Respondent's photographs, along with additional details about the shed the subject of the Respondent's photographs.
 - (d) An email dated 19 March 2021 from the Appellant to the Registrar that included images of the proposed garage and further details about the proposed garage.
 - (e) An email dated 19 April 2021 from Mr Grehan on behalf of the Appellant to the Registrar, Development Tribunals providing the Appellant's submissions as required by the Tribunal's orders.
 - (f) An email dated 30 April 2021 from Ms Douglas of the Respondent to the Registrar, Development Tribunals, providing the Respondent's submissions as required by the Tribunal's orders.
 - (g) *Sunshine Coast Regional Council Planning Scheme 2014 (SCRC Scheme).*
 - (h) *Planning Act 2016 (PA).*
 - (i) *Development Assessment Rules (Version 1.3) 11 September 2020 (DAR).*
 - (j) *Planning Regulation 2017 (PR).*
 - (k) *Building Act 1975 (BA).*
 - (l) *Building Regulation 2006 (BR).*

(m) *Queensland Development Code (QDC)*.

Findings of Fact

The Tribunal makes the following findings of fact:

Issues in dispute in appeal

45. The issues in dispute in the appeal centred on the issue of amenity and whether the proposed garage preserved the amenity of adjacent land and dwelling houses.
46. The Decision Notice identified the following three codes within the SCRC Scheme as being relevant to the Respondent's consideration of the development application:
 - (a) Biodiversity Code;
 - (b) LHSLO Code;
 - (c) DH Code.
47. Section 5.3.2(5) of the SCRC Scheme relevantly provided that "*Where development is proposed on premises partly affected by an overlay, the category of development and category of assessment for the overlay only relates to the part of the premises affected by the overlay*".
48. Given this, the Biodiversity Code would not apply to the assessment of the development application because while the overlay mapping in the SCRC Scheme identified that the overlay affected part of the subject site, the proposed garage was located outside of the mapped area of this constraints code.
49. The LHSLO Code does not apply because the development application sought approval for "Building Work (Concurrence Assessment)" and the SCRC Scheme's Categories of Assessment for the LHSL Overlay state "No Change" and there is no other trigger in the SCRC Scheme.
50. Accordingly, the applicable assessment benchmarks for the concurrence assessment are those in the DH Code, being the only relevant Code of the SCRC Scheme for the purposes of the appeal.

DH Code

51. AO2.1 of the DH Code relevantly provided:

"Where located on a lot in a residential zone, a garage, carport or shed:-

- (a) is setback at least 6 metres from any road frontage;*
- (b) does not exceed a height of 3.6 metres; and*
- (c) has a total floor area that does not exceed 56m²".*

52. AO2.2 of the DH Code relevantly provided:

"Where located on a lot in a residential zone, the total width of a garage door facing a street (and that is visible from the road frontage) does not exceed 6 metres within any one plane, with any additional garage door being set back a further 1 metre from the street frontage to break up the apparent width of the garage façade."

53. Due to the sloping site, fencing and setback from the front boundary, none of the proposed garage's three doors would be visible from Barlee Street. Accordingly, AO2.2

of the DH Code was not applicable and this acceptable outcome was not raised by either party to the appeal.

54. The proposed garage did not meet acceptable outcome AO2.1 of the DH Code as it had a height of 5.366m and comprised a total floor area of 98m².

55. Accordingly, the proposed development must instead be assessed against the relevant performance outcomes in PO2 of the DH Code.

56. PO2 of the DH Code relevantly provided:

“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.”*

57. PO2(a) of the DH Code was the source of the issue raised by the Respondent with respect to amenity, requiring that the proposed garage “preserve the amenity of adjacent land and dwelling houses”.

58. To dispense with the remaining paragraphs in PO2 of the DH Code, the Tribunal finds the following:

- (a) PO2(b) – the development application complied, as the proposed garage was to be located 65 metres down a slope from the road frontage and would not dominate the streetscape;
- (b) PO2(c) – the development application complied because, as noted above, the proposed garage was not to be located close to the road frontage and accordingly it had no bearing upon landscapes adjacent the road frontage;
- (c) PO2(d) – the development application complied because, as noted above, the proposed garage was not to be located close to the street and indeed, being some 65m downhill from the street, it would make no contribution to the visual continuity or pattern of buildings and landscape elements within the street.

Was the Respondent also a concurrence agency?

59. The Appellant’s submissions contended that the Respondent was not just the assessment manager for the development application but also a referral agency because Acceptable Outcome AO2.1(b) of the DH Code was an alternative provision to P4 of the QDC by the application of sections 32(b) and 33 of the BA and section 10 of the BR. The Appellant’s reasoning for this was that AO2.1(b) of the DH Code addressed similar subject matter to P4 of the QDC, being with respect to the height of garages, carports and sheds.

60. The Respondent’s submissions addressed this point, stating that the Respondent did not consider that AO2.1(b) of the DH Code constituted an “alternative or different” provision to that contained in the QDC just because it concerned similar subject matter to P4 of the QDC. The Respondent noted that P4 provided “*that the ‘height of a building is not to unduly (a) overshadow adjoining houses; and (b) obstruct the outlook from adjoining lots’*”. The Respondent expressed the view that the two provisions could co-exist without

conflict and were capable of being assessed independently of each other. Finally, the respondent stated: *“the requirement that a carport not be over 3.6m in height does not displace the requirement in P4 of the QDC that the height of a building not unduly overshadow adjoining houses and obstruct the outlook from adjoining lots.”*

61. Further, the Respondent noted that the DH Code clearly identifies in “Notes” sections, those acceptable outcomes that are alternative provisions to the QDC. AO2.1(b) of the DH Code was not noted as an alternative provision in this way.
62. The Tribunal has considered both parties’ submissions about this issue and the Tribunal prefers the Respondent’s position that AO2.1(b) of the DH Code was not an alternative provision to P4 of the QDC. The Tribunal is satisfied that the two provisions can indeed co-exist without conflict and that while they each dealt with height of garages, carports and sheds, they did not do so in a way that would compromise compliance with both provisions.
63. Accordingly, the Tribunal is satisfied that the Respondent was just the assessment manager of the development application and was not also a concurrence agency.

Reasons for the Decision

64. PO2(a) of the DH Code of the SCRC Scheme required the proposed garage to “preserve the amenity of adjacent land and dwelling houses”.
65. The Decision Notice also identified conflict with the purpose and overall outcomes of the DH Code, in particular:
 - (a) 9.3.6.2(1) which provided: *“The purpose of the Dwelling house code is to ensure dwelling houses achieve a high level of comfort and amenity for occupants, maintain the amenity and privacy of neighbouring residential premises and are compatible with the character and streetscape of the local area.”*
 - (b) 9.3.6.2(2)(b) which provided: *“a dwelling house is sited and designed to protect the amenity and privacy of neighbouring residential premises.”*
66. PO2, section 9.3.6.2(1) and section 9.3.6.2(2)(b) of the DH Code, can be distilled down to two main issues for consideration:
 - (a) Would the proposed garage maintain the amenity and privacy of the neighbouring residences?
 - (b) Would the proposed garage be compatible with the character and streetscape of the local area?

Maintenance of amenity and privacy?

Neighbour consents

67. The Respondent had a form titled *“Concurrence Agency Application for Assessment against the Queensland Development Code (QDC) Design and Siting Requirements – Neighbour’s Statement”* which stated that while it was the Respondent’s policy to obtain neighbour’s comments in response to concurrence agency applications that related to design and siting variations, this was not a requirement of either the PA or the DAR (**Neighbour’s Statement**).
68. The Appellant provided Neighbour’s Statements signed by 4 neighbouring residents who stated they had no concerns with the proposed garage. There were two neighbouring residences that did not provide a Neighbour’s Statement and at the hearing the Appellant

gave oral evidence that their consent wasn't withheld as such; their consent wasn't sought by the Appellant for reasons unrelated to the appeal.

69. While the Tribunal finds that the provision of the Neighbour's Statements provided some comfort as to the views of the current neighbouring residents, this didn't conclusively demonstrate compliance with the amenity requirements of the SCRC Scheme.

What is amenity?

70. "Amenity" is a concept that is long steeped in planning and planning law and has transcended a number of different planning regimes in Queensland.

71. There is no neat legal definition of amenity, despite there being a large body of caselaw that has considered the term.

72. The most succinct way the Tribunal can describe amenity is taken from the recent case of *Barro Group Pty Ltd v Sunshine Coast Regional Council* [2021] QPEC 18 at paragraphs [141] – [142], where His Honour Judge Williamson QC DCJ relevantly provided the following:

"... the concept of amenity is a broad one and not examined solely by reference to empirical standards. The assessment of impacts on amenity, as a consequence, involves an examination of intangible considerations (such as character and sense of place), where questions of degree, judgment and impression intrude.

Whilst the examination of the potential impacts of development on amenity involves matters of degree, impression and judgment, the exercise is not carried out by reference to some amorphous notion that takes its meaning from those who seek to maintain the status quo. Rather, such an assessment is informed by a range of considerations, including an objective reading of the adopted planning controls to ascertain what, if any, reasonable expectation there should be about the type and intensity of development intended for any given locality."

73. So, to consider whether the proposed garage would preserve the amenity of adjacent land and dwelling houses, the Tribunal needs to consider not just tangible things like the scale, height and materials of the proposed garage and the views the neighbours would have of the structure but also the expectations the community might have about the type of development in the locality.

74. With respect to expectations, the SCRC Scheme sets the expectations for the community in respect of development that might or might not occur.

75. The Respondent's representatives at the hearing raised issues around community expectations as another reason the Respondent had concerns about the proposed garage, stating that the public had an expectation that the acceptable outcomes identified in the SCRC Scheme were proscriptive and the only acceptable form of development. The Respondent's representatives suggested the broader community didn't understand the role of performance outcomes or how they operated to provide flexibility for development outside of the bounds of acceptable outcomes. The Respondent's representatives explained that the Respondent had and continued to try to educate the community to no avail in this regard.

76. While the Tribunal has some sympathy for the Respondent's difficulties in managing public expectations with respect to planning law, which is not an easy discipline to understand, the law however allows for an applicant to offer alternate outcomes where acceptable outcomes cannot be met. As long as these alternate outcomes, or performance outcomes, can be demonstrated to meet the applicable criteria, an applicant is also entitled to have an expectation that an application will be approved.

Assessment of amenity impacts

77. The Appellant had already constructed a driveway and a concrete slab for the proposed garage some 65 metres from Barlee Street down a slope at the rear of the subject site. The Tribunal members had the benefit of walking down the driveway to the slab and viewing the surrounds, including neighbouring residences up the hill from that perspective.
78. The proposed location for the garage was 2 metres from the side boundary and 18 metres from the rear boundary. The proposed 2m setback would comply with QDC MP1.2 where the height of that part is greater than 4.5m but not more than 7.5m.
79. The slab was located 29.5 metres approximately from the southern most projection of the closest neighbouring property, separated by a pool, water tanks, landscaped areas, lawn and a 1.8 metre high boundary fence. There are some 4 or more trees growing between the sight lines of neighbouring dwellings and the slab area. Accordingly, the proposed location of the garage is some distance from and also downhill from those houses.
80. The Appellant provided additional information to the Tribunal by email dated 19 March 2021 and accompanying that information was an explanation that contended the slope of the block and the cut that had been made for the garage would result in a finished height of the garage to be at the same height or not too much higher than the existing 1.8 metre boundary fence.
81. The Respondent's photographs were provided to demonstrate the impacts the proposed garage could have upon the amenity of a neighbouring property, in that they were taken of a shed that was 54m² in area, 5.483 metres high, with a similar 2 metre setback to the side boundary fence. The Tribunal is not satisfied that the Respondent's photographs provided an accurate indication of potential negative impacts to the amenity of the neighbours of the proposed garage for the following reasons:
 - (a) the photographs illustrated a different topographical circumstance than the current appeal. The illustrated example shown during the hearing was a shed with the opposite circumstance, being above a retaining wall, higher than the adjoining land and without screen planting. The Appellant's proposed garage was at the base of a retaining wall and lower than the closest adjacent properties, thus diminishing the visibility of the proposed garage;
 - (b) the roof line of the proposed garage was different; with the height along the side boundary of the subject site being 2400mm (as opposed to 4900mm), pitching up to 5366mm in the centre of the roof line;
 - (c) the photos showed a shed wall that was constructed of plain metal (a light colour), being a reflective material, whereas the Appellant proposed a non-gloss Slate Grey coloured material and any approval could be conditioned to ensure unobtrusive colours and materials are used;
 - (d) the shed in the photos had not been screened with any landscaping and the Appellant could be conditioned to provide tall screening plants along the boundary within the 2 metre side setback area and rear to minimise the visual impact of the walls of the proposed garage.
82. Given the above, the Tribunal is satisfied that due to the topography and the cut that had been made to the subject site to create a level building pad for the proposed garage, the top of the proposed garage would be lower than all the surrounding residences and would be unlikely to inhibit views of the surrounding valley and hills from the balconies or windows of those homes. It is the Tribunal's view that it would be difficult for the garage to be viewed from Barlee Street when standing in front of the subject site.

83. Similarly, landscape planting to the rear of the garage would minimise the visibility of the garage as viewed from adjacent new residential lots and the Fullager Drive frontage to the west.

Compatibility with character and streetscape?

84. The existing character and streetscape was mixed – modern, angular and more traditional types of homes that were variously setback from the road but that had garages and sheds in front of them.
85. The use of metal sheeting as a building material was featured in the walls and roof of a new dwelling house at the head of the Barlee Street cul-de-sac and the prominent roofs of adjacent and surrounding buildings. Accordingly, the proposed choice of materials for the garage would be compatible with other buildings in the street.
86. Due to the slope of the subject site and adjoining parcels, the proposed garage would be unlikely to be visible from any road frontages, other than Fullager Drive to the rear. At the hearing, Fullager Drive was characterised by vacant land. Once houses are constructed (including fences and landscaping), visibility of the proposed garage would also be limited or not visible at all from Fullager Drive.

Can the impacts of the proposed garage be conditioned?

87. The Decision Notice stated that “*The proposal cannot be conditioned to comply with the assessment benchmarks*”.
88. During the hearing, representatives of the Respondent stated it was the Respondent’s view that because of the height of the proposed garage, a 2 metre setback from the side boundary did not provide sufficient area for landscape screening to be effective.
89. The Tribunal does not agree with the Respondent’s views in that regard and believes that given the cut that has been made for the slab for the proposed garage, if the garage was to be constructed out of natural colours and non-reflective materials, that combined with tall shrubs, bushes or bushy trees planted within both the 2 metre setback from the side boundary and along the rear of the garage, PO2(a) of the DH Code would be complied with, such that these measures would “preserve the amenity of adjacent land and dwelling houses”.
90. Importantly, compliance with PO2(a) of the DH Code does not require that development be screened so as to be invisible when viewed from neighbouring properties.
91. The Appellant provided by way of email dated 19 March 2021, screen shot images of the proposed garage, along with a screen shot of the Slate grey colour and neutral finish of the proposed garage. The Tribunal is satisfied that the colour and finish for the garage proposed by the Appellant “would preserve the amenity of adjacent land and dwelling houses” when undertaken in combination with landscaping to the sides and rear of the building.

Conclusion

92. While the proposed garage does not comply with AO2.1 of the SCRC Scheme, the Tribunal finds that, subject to the imposition of some relevant conditions, the proposed garage would comply with PO2(a), in that it would “*preserve the amenity of adjacent land and dwelling houses*”, when considered within the context of its height and floor area, both of which are ameliorated by the sloping topography, the distance from established houses and the established nearby tree.

93. The Tribunal therefore replaces the decision of the Respondent to refuse the development application with the Tribunal's decision to approve the development application with the following conditions:

- A. The garage is to be constructed of quality materials in Slate grey and non-glossy finish.
- B. Landscape screening is to be planted and maintained along the sides and rear of the garage. Planting density results in small trees capable of growing to minimum 5 metres tall above slab height, planted at 2 metre centres and shrubs planted at 1 metre centres. Species are to avoid declared plants and environmental weeds.

Samantha Hall

Development Tribunal Chair

Date:

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