



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-008
Appellant:	Ms Kerry Bosma
Respondent: (Assessment Manager)	John Dunn of JDBA Certifiers
Co-Respondent: (Concurrence Agency)	Sunshine Coast Regional Council
Site Address:	70 Rod Smith Drive, Coes Creek, Qld. described as Lot 2 on SP 203849 – the subject site

Appeal

Appeal under Section 229 and Schedule 1, Table 1, Item 1 (a) of the Planning Act 2016 against the Sunshine Coast Regional Council as the Referral Agency direction that the Carrying Out of Building Work Application (CAR 21/0980) be refused.

(For clarity, Council required that the proposed Building Work Application for an extension to an existing dwelling be refused because the proposed work did not meet the 'Performance Outcomes' of the Sunshine Coast Planning Scheme's 'Dwelling House Code' with respect to the ground storey's set back from the property boundary and the upper storey's set back from the property boundary).

Date and time of hearing:	Tuesday 7 June 2022 at 1.30 pm
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Henk Mulder – Member
Present:	Kerry Bosma (Acting for the Owner, Applicant and Appellant) Patrick Ferris (for JDBA Certifiers, Applicant's Agent) Rebecca Bartho (Sunshine Coast Regional Council, Respondent) Tracey Douglas (Sunshine Coast Regional Council, Respondent)

Decision:

1. The Development Tribunal, in accordance with section 254(2)(c) of the *Planning Act 2016* **replaces** the decision of the Sunshine Coast Regional Council that the Carrying Out of Building Work Application (CAR 21/0980) be refused with a decision that the

Carrying Out of Building Work Application (CAR 21/0980) **be approved**, with the following conditions:

- a) *No additional shade device, structure or element whether temporary or permanent is to be supplied or installed to the verandah or surrounding roof area other than as shown on the Plans.*
- b) *Such other conditions, as the assessment manager reasonably requires, to ensure compliance with the building assessment provisions.*

Background

The Proposal

1. The subject site is a rectangular corner block with frontages to Gardenvale Drive and Rod Smith Drive. The subject site has an area of 748 square metres that slopes downhill along the Rod Smith Drive boundary to the south, where the extension to the existing dwelling is proposed.
2. A single storey dwelling exists on the high corner of this block and is set back 6.65 metres from the Gardenvale Drive frontage and 4.5 metres from the Rod Smith Drive frontage (Ace Space Design 'Site Plan', Issue 'E' Plan 1 of 8, dated 8/11/2021)..
3. A two storey extension is proposed to this existing dwelling comprising:
 - a. A ground floor extension to include a storage area, car port and bathroom that is proposed to be set back at least 4.75 metres from the Rod Smith Drive property boundary (Ace Space Design 'Lower Floor Plan. Proposed', Issue 'E' Plan 2 of 8, dated 8/11/2021).
 - b. A level one (upper level) extension to include a bedroom, bathroom, store, wet bar and veranda (facing Rod Smith Drive), The veranda and roof of which is proposed to be set back at least 4.75 metres from Rod Smith Drive (Ace Space Design 'Upper Floor Plan', Issue 'E' Plan 4 of 8, dated 8/11/2021)..
4. The upper *floor level* of proposed extension will align with the floor level of the existing dwelling for accessibility reasons, resulting in the eaves of the proposed extension being at approximately the *same relative level* as the existing single storey dwelling (Ace Space Design 'Lower Floor Plan. Proposed', Issue 'E' Plan 2 of 8, dated 8/11/2021. Ace Space Design 'East Elevation', Issue 'E' Plan 5 of 8, dated 8/11/2021).
5. The *maximum roof height* of the proposed extension will be somewhat lower than the existing *maximum roof height* of the existing single storey dwelling *when viewed from Rod Smith Drive* (Ace Space Design 'Site Plan', Issue 'E' Plan 1 of 8, dated 8/11/2021. Ace Space Design 'East Elevation', Issue 'E' Plan 5 of 8, dated 8/11/2021).

Refusal of the Application

6. On the 15 February 2022, the Sunshine Coast Council directed refusal of this Building Application (CAR 21/0187) based on non-compliance with the Sunshine Coast Planning Scheme 2014 'Dwelling Housing Code' (DHC).
7. With respect to the ground floor car port, the relevant 'Performance Outcomes' of that Dwelling Housing Code (DHC) being: "**Garages, Carports and Sheds PO2 (d) maintain the visual continuity and pattern of buildings and landscape elements within the street**".

(An 'Acceptable Outcome' **AO 2.1** is provided that *inter alia* states a setback of "...at least 6 metres from any road frontage.")

8. With respect to the lower storey the relevant 'Performance Outcomes' of that Dwelling Housing Code (DHC) being: "**Set Backs PO3 (b) create a coherent and consistent streetscape, with no or only minor variations in frontage depth**".

(An 'Acceptable Outcome' **AO 3** is provided that *inter alia* states a "...setback to any road frontage at least:- (a) 4.5 metres for the ground storey").

9. With respect to the upper storey, its veranda and roof, the relevant 'Performance Outcomes' of that Dwelling Housing Code (DHC) being: "**Set Backs PO3 (b) create a coherent and consistent streetscape, with no or only minor variations in frontage depth**".

(An 'Acceptable Outcome' **AO 3** is provided that *inter alia* states a "...setback to any road frontage at least:- (b) 6 metres for any levels above the ground storey").

Nearby Developments

10. A two storey, corner dwelling (with an enclosed upper storey balcony) exists across the street from the subject property. The upper storey of this property with its enclosed veranda has a setback of 3.8 metres from the road (Advice from Council, PC09/1728 – privately certified prior to the Sunshine Coast Planning Scheme – no planning approval required)

(This property has a street address of 2 Cooe Court – Cooe Court being the name of the street forming the northern extension of Rod Smith Drive. This corner property has a streetscape appearance of being located with its side elevation to Rod Smith Drive).

This property has a relative level and the visual appearance of being considerably higher than the subject property and much higher than the proposed extension by virtue of its two storeys and the land elevation of this property, with the ground level and street sloping down towards the subject property.

11. The property immediately to the south of the subject property (68 Rod Smith Drive) is a single storey property set back approximately 5.25 metres from the Rod Smith Drive property boundary (JDBA Certifiers annotated air photograph, provided to the Tribunal on 15 June 2022).

This single storey property has a garage with a minor setback of its garage (approximately 0.5 metres) behind the alignment of the front wall of the dwelling.

This dwelling is set lower than the proposed extension because of the ground level and Rod Smith Drive sloping down from the subject property.

This property is visually separated from the proposed extension by a storm water and sewerage easement along the southern side boundary of the subject property and a 1.8 metre high, timber side boundary fence running from the road for the full length of the boundary between the two properties.

12. The second property down, to the south of the subject property, (46 Bedford Court) is a single story corner dwelling set back approximately 4.8 metres from Rod Smith Drive (JDBA Certifiers annotated air photograph, provided to the Tribunal on 15 June 2022).

This dwelling is lower than the proposed extension because of the ground level and Rod Smith Drive sloping down from the subject property.

The Rod Smith Drive streetscape, looking towards the subject property, is strongly influenced by a 1.8 metre high, corrugated, dark 'colourbond' fence running along the length of the frontage of this property to Rod Smith Drive.

13. The next property south, down Rod Smith Drive (37 Bedford Court) is a single storey corner dwelling for which Council approved a relaxation to 3.9 metre setback from Rod Smith Drive for the corner of this dwelling (Advice from Council, CAR17/2202).

The majority of this dwelling is set back more than 5.6 metres from Rod Smith Drive (JDBA Certifiers annotated air photograph, provided to the Tribunal on 15 June 2022).

Material Considered

14. The material considered in arriving at this decision comprises:
 1. 'Form 10 – Notice of Appeal/ Application for Declaration', being the grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 15 February 2022.
 2. Planning Regulation 2017 (PR)
 3. Planning Act 2016. (PA)
 4. Sunshine Coast Planning Scheme 2014 (SCPS)
 5. Dwelling house code (DHC)
 6. Verbal representations at the Tribunal hearing on 7 June 2022.
 7. Information and images provided by Council by email dated 14 June 2022 to the Registrar.
 8. Information and images provided by JDBA Certifiers, for the appellant, by email dated 15 June 2022 to the Registrar.

Findings of Fact

15. The Tribunal finds that the proposed extension to the existing dwelling will have a minimum 'ground floor set back' of at least 4.75 metres from the Rod Smith Drive property boundary to the outer most projection (Ace Space Design 'Site Plan', Issue 'E' Plan 1 of 8, dated 8/11/2021).
16. This 'minimum set back' is to the proposed supports for the proposed car port and the deck of the veranda forming the roof of the proposed car port (Ace Space Design 'Site Plan', Issue 'E' and 'East Elevation', Issue 'E' Plan 1 of 8, dated 8/11/2021).
17. The set back of the proposed rear wall of the car port and the proposed roller-door and ground floor wall to the proposed ground floor store room are proposed to be set back at least 10.90 metres from the Rod Smith Drive property boundary. (Ace Space Design 'Site Plan', Issue 'E' Plan 1 of 8, dated 8/11/2021 and 'Lower Floor Plan' Issue 'E' Plan 2 of 8, dated 8/11/2021).
18. The proposed extension to the existing dwelling will have a minimum 'upper floor set back' of at least 4.75 metres from the Rod Smith Drive property boundary to the outer most projection (OMP) - being the veranda roof (Ace Space Design 'Site Plan', Issue 'E' Plan 1

of 8 dated 8/11/2021 Ace Space Design 'Upper Floor Plan', Issue 'E' Plan 4 of 8, dated 8/11/2021).

19. The Tribunal finds that the street scape along Rod Smith Drive when viewed from opposite the subject property, and when viewed from the street and verge from both above and below the proposed extension is dominated by:
 - a. The '*side elevations*' of four corner properties (including the side elevation of the existing dwelling on the subject property) with setbacks averaging 4.7 metres.
 - b. The 1.8 metre high side boundary timber fence between the subject property and the adjacent dwelling (68 Rod Smith Drive), and
 - c. The 1.8 metre dark, corrugated, '*colourbond*' fence running along the Rod Smith Drive road property boundary of 46 Bedford Court fronting Rod Smith Drive.

Reasons for the Decision

20. The Tribunal formed the opinion that the proposed extension will enhance the attractiveness and coherence of the Rod Smith Drive streetscape and improve street safety and nearby property security by increasing passive surveillance of the street.
21. The openness at the upper level for the verandah establishes suitable minor variation for building setback due to the OMP being defined by the veranda roof and support post, at a setback that integrates with solid building walls nearby in the street.
22. The extent of fall of the street levels, the width of separation for the easement, and the openness of the verandah ameliorates the visual effect of height differences between nearby residences, at the upper level.
23. With respect to the ground floor extension, the Tribunal formed the opinion that the proposed car port will not dominate the streetscape and will maintain the visual continuity and pattern of buildings and landscape elements within the street.
24. With respect to the lower storey, the Tribunal formed the opinion that the proposed extension will contribute to, and improve, the consistency and coherence of the existing streetscape, with only minor variation in frontage depth.
25. With respect to the upper storey, the Tribunal formed the opinion that the proposed extension will contribute to, and improve, the consistency and coherence of the existing streetscape, with only minor variation in frontage depth.
26. In the circumstances, the Tribunal is satisfied that the Appellant has established, on the balance of probabilities, that the appeal should be upheld.

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:

The Registrar of Development Tribunals

Department of Energy and Public Works

GPO Box 2457

Brisbane QLD 4001

Telephone (07) 1800 804 833

Email: registrar@epw.qld.gov.au