



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	21-011
<b>Appellant:</b>	Tracey Watson and Bradley Wong
<b>Respondent (Assessment Manager):</b>	Stewart Magill of Pure Building Approvals
<b>Co-respondent (Concurrence Agency):</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	21 Victor Street, Alexandra Headland Qld 4572 and described as Lot 49 on RP82209 – the subject site

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### Appeal

Appeal under section 229 and item 1(a) of table 1 of section 1 of schedule 1 of the *Planning Act 2016* against the decision to refuse a development permit for construction of a class 10a carport within the road boundary setback.

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<b>Date and time of hearing:</b>	1 June 2021 at 2.00pm
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	John O'Dwyer– Chair Kym Barry – Member John Punshon – Member
<b>Present:</b>	Tracey Watson – Appellant Tracey Douglas – Council representative Mitchell Schwieso – Council representative Stewart Magill – Building Certifier - Pure Build Approvals Jon Day – Pure Build Approvals

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA), **replaces** the original Refusal with an Approval subject to the following conditions:

- A. The development application is approved subject to the development being generally in accordance with the plans submitted with the application provided the carport maintains a minimum setback of 400mm from the front boundary.
- B. The carport roof is to be a hip roof no more than 3.6m high above ground level.
- C. Landscaping comprised of at least two trees or shrubs with a normal height of at least 3m be planted behind the front fence in the raised landscape area to the west of the driveway to break up the visibility of the carport from the west.

- D. Any additional conditions attached to the building approval by the building certifier to address the requirements of the Building Act 1975.

## Background

1. The subject site is a rectangular parcel of land located on the southern side of Victor Street with a frontage of 15 metres and a depth of 40 metres. The site contains a dwelling towards the rear of the lot, a pool in front of the dwelling and a double garage and storeroom between the pool and the frontage with a compliant setback; with a driveway footpath and a landscaped area in the frontage setback. There is a public right of way on the west side of the land that is for drainage and sewerage purposes. The land is in the Medium Density Residential Zone in the Mooloolaba - Alexandra Headland Local Area Plan.
2. The owners wish to use the existing garage for storage space as there is insufficient storage space within the dwelling and have applied to construct a carport over the existing driveway to cover vehicles parked outside the garage.
3. The adjoining properties to the sides and rear contain detached dwellings including the property across the right of way. The dwelling two lots to the east at 17 Victor Street contains a tall gate structure in the middle of a tall solid front fence. The two dwellings to the west across the right of way (23 and 25 Victor Street) have carport structures built to the front of the sites. Elsewhere in the street there is a mix of detached dwellings with high fences, low fences and no fences and multi-storey unit developments with low fences
4. The Appellants applied on 22 September 2020 to the Assessment Manager for a development approval to construct a double carport in the northern part of the site (Class 10A). The proposed double carport is proposed to be set back 400mm from the front boundary with a depth of approximately 5.6 m and a width of approximately 7.5 m with side setbacks of 1.7 m from the east side boundary and 5.5 m from the west side boundary.
5. On 28 September an application for a siting variation was lodged with Sunshine Coast Regional Council (Council) as a concurrence agency for building work for design and siting under the *Planning Regulation 2017*, schedule 9, part 3, division 2, table 3. The application was accompanied by architectural drawings, a justification letter from the Assessment Manager and letters of consent from the adjoining neighbours.
6. Between 7 October 2020 and 28 October 2020 there was correspondence between the parties over the carport not complying with the Scheme and the character of the street, with Council offering a partial refund if the application was withdrawn by 4 November 2020, otherwise a refusal would be issued.
7. On 10 November 2020, Council issued its Concurrence Agency response directing that the application be refused for the following reasons:
  - 1 The proposal does not meet:

*Dwelling House Code – Performance Outcome PO2(d) – maintain the visual continuity and pattern of buildings and landscape elements within the street.*

    - (a) The visual continuity and pattern of ‘the street’ (Victor Street) predominantly comprises of dwelling houses setback approximately 4.5m – 6.0m from the road frontage with the continuity of the built form being maintained. The carport proposed 400mm from the front boundary (Victor Street frontage) would be inconsistent with the pattern of buildings within the street. The proposed carport would not maintain the visual continuity and pattern of buildings within the street in accordance with the Sunshine Coast Planning Scheme 2014 – Dwelling House Code, Performance Outcome PO2(d)
  - 2 There is sufficient area on the lot to relocate car accommodation to an area that will comply with the requirements of the Planning scheme.

- 3 Current parking requirements at the subject premises comply with the acceptable outcomes (AO8) of the Dwelling House code in which undercover parking can be achieved in the existing carport at least one additional space on the driveway. Therefore there is no shortfall of parking spaces in accordance with the Sunshine Coast Planning Scheme 2014 to justify a setback relaxation that will be detrimental to the prevailing streetscape.
8. Between November 2020 and February 2021, the Appellants sought legal and town planning advice and the building certifier was collecting evidence of precedents.
9. On 1 February 2021, the Assessment Manager issued the Decision Notice – Refusal as directed by Council as the referral agency.
10. On 23 February 2021, the Appellants lodged the appeal against the decision of the Assessment Manager.

### **Jurisdiction**

11. This Tribunal has jurisdiction to hear this 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 Appellant against the refusal of the development application by the Assessment Manager on the direction of the Referral Agency.
12. The appeal was made in time, thus enlivening the Tribunal's jurisdiction.

### **Decision framework**

13. This is an appeal against a refusal of a development application, the onus rests on the Appellant to establish that the appeal should be upheld.
14. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Assessment Manager and Concurrence Agency who made the decision appealed against (PA section 253(4)) and for an appeal about a development application, this may mean addressing matters which an assessment manager or concurrence agency did not expressly rely on in refusing or directing refusal of the application respectively and matters raised at the hearing by any party.
15. Under the PA section 254, 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.
16. In this appeal, the Tribunal considers the appellant has satisfied the onus to demonstrate the appeal should be upheld. Therefore, the Tribunal has determined to replace the decision of the Assessment Manager as set out above for the reasons set out below.

### **Material Considered**

17. 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 Tribunals Registrar on 23 February 2021, comprising the following documents:

Form 10 - Notice of Appeal dated 23 February 2021

Cover Letter dated 23 February 2021 from Pure Building Approvals to the Registrar, providing background to the decision and Grounds for Appeal

Drawings dated 18 September 2020 by Kunkel Building Design detailing the design of the carport

Adjoining Owner's Consent form dated 1 September 2020 from Lisa and David Holmes at 19 Victor Street

Adjoining Owner's Consent form dated 8 September 2020 from Ross Cathy (Writing unclear) at 23 Victor Street

Letter dated 28 September 2020 from Pure Building Approvals to Council requesting a Concurrence Agency Response for the carport.

Email trail comprising:

Email dated 7 October 2020 from Mitchell Schwieso at Council to Gus Shulz at Pure Building Approvals advising the application had been assessed and that Council considered the carport did not satisfy the requirements of Performance Criteria PO2 of the Dwelling House Code as it did not maintain the visual continuity and pattern of buildings within the street; and that Council could not support the carport.

Email dated 8 October 2020 from Gus Shulz at Pure Building Approvals to Mitchell Schwieso at Council providing examples of other structures other than fences built to the frontage at 17, 23 and 25 Victor Street and a dwelling within 2m of the frontage at 29 Victor Street

Email dated 9 October 2020 from Mitchell Schwieso at Council to Gus Shulz at Pure Building Approvals advising Council had reviewed the pattern of buildings and landscape elements within the street and do not support the carport 400mm from the front boundary. Council acknowledged the carports at 23 and 25 Victor Street as the most comparable examples and advised the carport at 23 Victor Street had been approved in 2017 and the carport at 25 Victor Street had been erected in 2001 without referral to Council. The email advised the carport was considered to be inconsistent with the overall and desired pattern of buildings and structures within the street being 4.5m – 6.0m from the road property boundaries. The email also noted that the subject site has existing compliant car parking and the potential to achieve compliant parking alternatives in accordance with the relevant design and siting provisions

Referral Agency Response dated 10 November 2020 recommending refusal of the application.

Decision Notice – Refusal dated 1 February 2021, based on Council's recommendation.

- B. Document titled Appeal 2 Victor Street – 01/06/21 tabled at the appeal by Pure Building Approvals;
- C. Sunshine Coast Planning Scheme 2014
- D. Google maps and street view images;
- E. Department of Resources – Queensland Globe mapping;
- F. Queensland Building and Construction Commission Licence Search;
- G. The Planning Act 2016 (PA);
- H. The Planning Regulation 2017 (PR);

- I. The Development Assessment Rules 2017;
- J. The Building Act 1975 (BA);
- K. The Building Regulation 2006 (BR);
- L. The Queensland Development Code (QDC) Part MP 1.2; and
- M. The verbal submissions made by the parties at the hearing and during the site inspection as referred to in the body of the decision.

The Tribunal in reaching this decision has considered all the above material but only identifies in this decision the material on which it has specifically relied to reach its decision.

## **Findings of Fact**

### ***The visual continuity and pattern of buildings and landscape elements within the street***

18. The Tribunal considered the submissions by the parties on visual continuity, patterns of buildings and landscape elements. After the hearing, Google Street Maps imagery was viewed – it was dated 2014. At that time Victor Street had visual continuity, and had a largely similar pattern of buildings and landscape elements particularly on the south side comprised of detached dwellings and one set of units all set back from the frontage with open front yards. However, by the time of the Appeal, this character had changed. The north side had not changed significantly, however the south side was fragmented into three sections
  - the eastern end where the streetscape was largely of high fenced yards
  - the central section which has remained largely unchanged since 2014
  - the western end, including the subject site, where high solid fences and structures within 6m of the frontage dominate the streetscape.
19. The Tribunal has determined there is no longer a visual continuity and pattern of buildings and landscape elements within Victor Street particularly on the south side of the street.

### ***Car Parking PO8 in Dwelling House Code***

20. The Tribunal accepts Council's submission that current parking requirements at the subject premises comply with the acceptable outcomes (AO8) of the Dwelling House code in which undercover parking can be achieved in the existing garage with at least one additional space on the driveway. Relevantly, AO8 provides:
  - On-site car parking is provided in accordance with the following:-
    - (a) for a lot exceeding 300m<sup>2</sup>—at least 2 (two) car parking spaces with at least one space capable of being covered; or
21. The issue of approving or refusing a carport is separate to the issue of the premises complying with the car parking requirements.

### ***Status of Carports***

22. At the hearing Council advised the carport at 23 Victor Street was approved by Council in 2017, and that the carport at 25 Victor Street was erected in 2001 and was not referred to Council and is considered an illegal structure. The Tribunal has accepted this advice.

## **Reasons for the Decision**

23. The Tribunal notes that the carport at 23 Victor Street has been approved by Council and that site has a high front fence; that there is a high fence on either side and along the frontage of the subject site at 21 Victor Street and a high gate structure in a high fence at

17 Victor Street. The properties at 27 and 29 Victor Street appear to have a frontage setback of less than 6m. Without considering the illegal structure at 25 Victor Street, and given the conclusion in paragraph 18 above that there is no single streetscape in Victor Street, the Tribunal considers the proposed carport would not adversely affect the visual continuity of the western end of Victor Street and would be consistent with the pattern of buildings and landscape elements in that part of Victor Street.

24. The Dwelling House Code - Access and Car Parking Element at AO8(a) requires at least one space capable of being covered. This section does not prevent and could be taken to encourage an owner to provide the two required spaces with cover. On that basis the carport is not inconsistent with AO8 of the Dwelling House Code.
25. The Appellant has requested the carport to protect any car in the driveway from damage by the weather - sun, rain, wind or hail damage. The Tribunal considers this is not an unreasonable expectation of an owner when a car is usually the second largest asset after the home. However, this was only given minor weight by the Tribunal.
26. For the above reasons, the Tribunal considers the Appellant has satisfied the onus to demonstrate the appeal should be upheld.

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**John O'Dwyer**

**Development Tribunal Chair**

**Date:** 23/06/2021

## **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](mailto:registrar@hpw.qld.gov.au)**