



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

**Appeal Number:** 19-015

**Appellant:** Gavin L Smith and Theresa C Smith

**Respondent:** Bradley Geaney, Pacific BCQ  
**(Assessment Manager)**

**Co-Respondent:** Sunshine Coast Regional Council

(if applicable)

**Site Address:** 20 Parkway Drive Mooloolaba and described as Lot 39 on RP94393 –  
("the subject site")

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### **Appeal**

Appeal made under the Planning Act 2016 (PA), section 229(1)(a)(i) and Schedule 1, Sections 1(1) and 1(2)(g) and Table 1, Item 1(a) against the assessment manager's refusal of the Appellant's Development Application for Building Works (a Carport structure).

The refusal was based on the Concurrence Agency direction issued by Sunshine Coast Regional Council that the proposal conflicts with the requirements of Performance Outcome PO(2)(d) under the Dwelling House Code contained in the Sunshine Coast Planning Scheme 2014.

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**Date and time of hearing:** 26 August 2019 at 2:00pm

**Place of hearing:** The subject site

**Tribunal:** Adjunct Professor Victor Feros – Chair  
Carol Dowd – Member

**Present:** Theresa Smith – Appellant  
Peter Chamberlain – Senior Building Certifier, Sunshine Coast Regional Council  
Bradley Geaney – Building Certifier, Pacific BCQ  
Don Grehan – Pacific BCQ, Building Certifier Representative

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## 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 subject to the following conditions, deemed to satisfy Performance Outcome PO(2)(d) of the Sunshine Coast Planning Scheme 2014, Chapter 9.3.6 Dwelling House Code:

1. The proposed carport shall be accessed via the existing driveway and gateway;
2. The existing high rendered block wall front boundary fence shall remain in place;
3. The existing landscaping, including the dwarf palms, between the proposed carport structure and the existing front boundary fence shall remain in place or be replaced with like species;
4. No building alteration is permitted to the proposed structure other than that required to facilitate carport access.

This decision does not prevent the assessment manager from imposing additional appropriate conditions as the assessment manager sees fit, provided they are not inconsistent with the above conditions.

## Background:

1. The subject site is a residential allotment located at 20 Parkway Drive Mooloolaba. The site is located mid length along the street with direct street access. The site is 531m<sup>2</sup> in area and is a regular rectangular in shape.
2. The building work subject to the Appeal is an existing patio proposed to be converted to a carport located near the front of the site.
3. No building development permit was obtained for the construction of the patio.
4. On 13 December 2018, a letter was sent by Carol Popple, Building Compliance Officer, Sunshine Coast Regional Council advising Mr GL Smith that Council had no record of any building development permit having been issued for the building works or of any Council consent having issued for the reduced boundary setback.
5. Subsequently, on 5 February 2019, a Request for Concurrence Agency response was submitted to Council by Pacific BCQ.
6. On 6 March 2019, Council issued a Refusal Referral Agency Response, directing the assessment manager to refuse the Application. Council advised refusal as follows:

*“Carport with a set-back of 1.360m from the front property in lieu of the dwelling House Code prescribed 6.0m minimum setback,”* the documented reason for refusal being:

*Dwelling House Code PO2(d) ‘maintain the visual continuity and pattern of buildings and landscape elements within the street’. The visual continuity and pattern of the street comprises of predominantly dwellings approximately 6m from the road frontage with continuity of the built form generally being maintained. As the carport is set forward of the general line of the buildings in the street, Council considers that the carport does not maintain the visual continuity and pattern of the buildings within the street. As such the carport does not comply with the Performance Outcomes of the Dwelling House Code.”*

7. On 13 March 2019, Pacific BCQ issued a Decision Notice Approval (in part). Condition 21 of this approval notes:

*The proposed development shall be carried out in accordance with Referral Agency Advice (Concurrence), reference No: CAR19/0047 dated 06/03/2019 issued by SUNSHINE COAST COUNCIL the response, including the direction for the assessment manager to refuse the application, is attached to the approval documents.*

8. A hearing was conducted at the subject site at 2pm on 26 August 2019.

### **Jurisdiction:**

The Tribunal has made the determination under Schedule 1, section 1(1), Table 1, Item 1 of the *Planning Act 2016*. Under section 1(2) of Schedule 1, Table 1 applies to a tribunal, only where the matter involves one of the things mentioned in paragraphs (a) to (l) of that section. In this instance, paragraph (g) applies as the matter relates to the *Building Act 1975*.

### **Decision Framework:**

It is noted that:

- The onus rests on the Appellant to establish that the Appeal should be upheld (s253(2) of the PA);
- 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 (section 253(4) of the PA);
- The Tribunal may nevertheless (but need not) consider other evidence present by a party with leave of the tribunal or any information provided under Section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings);
- The Tribunal is required to decide the Appeal in one of the ways mentioned in section 254(2) of the PA, however, the tribunal must not make a change, other than a minor change, to a development application (section 254(3) of the PA).

### **Material Considered:**

The material considered in this Hearing included:

1. Sunshine Coast Council letter dated 3 December 2018 addressed to Mr GL Smith;
2. Reply email dated 21 December 2018 12:14pm from Carol Popple to Theresa Smith;
3. Email dated 21 December 2018 9:20am from Theresa Smith to Carol Popple;
4. Email dated 10 January 2019 8:18am from Theresa Smith to Carol Popple;
5. Reply email dated 10 January 2019 9:05am from Carol Popple to Theresa Smith;
6. Email dated 15 January 2019 12:03pm from Theresa Smith to Carol Popple;
7. Letter dated 21 January 2019 from Beverley Nunan;
8. Letter dated 21 January 2019 from Ben Pearce;
9. Email dated 30 January 2019 1:21pm from Carol Popple to Theresa Smith;
10. Email dated 1 February 2019 5:15pm from Theresa Smith to Carol Popple;
11. Email dated 4 February 2019 3:22pm from Carol Popple to Theresa Smith;
12. Email dated 5 February 2019 2:25pm from Theresa Smith to Carol Popple;

13. Pacific BCQ development Application Confirmation Notice dated 5 February 2019;
14. Pacific BCQ Request for Concurrence Agency Response dated 5 February 2019;
15. Email dated 6 February 2019 to and from Vince Whitburn to Bradley Geaney and vice versa;
16. Sunshine Coast Council Refusal Referral Agency Response dated 6 March 2019;
17. The Decision Notice Approval (in part) dated 13 March 2019 prepared by Pacific BCQ;
18. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 13 March 2019

Other material considered included:

- DA Form 2 Building work details;
- Development Services Request for Concurrence Agency Response (Building Work);
- Chapter 9.3.6, Dwelling House Code, Sunshine Coast Planning Scheme 2014;
- Queensland Development Code MP1.2;
- The Planning Act 2016 (PA);
- The Planning Regulation 2017 (PR);
- The Building Act 1975 (BA);
- The Building Regulation 2006 (BR);
- The Sustainable Planning Act 2009 (SPA)

## **Findings of Fact**

*The Tribunal makes the following findings of fact:*

1. The Tribunal has assessed the structure and site, and has found that:
  - the proposed carport would not be accessed directly from the front boundary but to the side, using the existing crossover,
  - the carport would not dominate the frontage,
  - further, the existing high rendered block wall front boundary fence would remain intact which complements the architectural design, and has a softening effect upon the residence,
  - additionally, the existing landscaping between the proposed carport structure and the existing boundary fence, dominated by dwarf palms, established since the mid 1980's, which softens the visual effect of the structure, would remain intact;
  - overall, there will be no material change or other alteration to the manner in which the residence and the proposed (existing patio) structure presents to the immediate streetscape.
2. The Application was properly referred to Council as a Concurrence Agency under Schedule 9, Table 3 of the PR.
3. The items for consideration under the Concurrence Agency referral were the setback to the road boundary under Performance Outcome PO(2)(d), Chapter 9.3.6 of the Sunshine Coast Planning Scheme, Dwelling House Code.
4. The reason for refusal stated in the Concurrence Agency Advice was as follows:

*“Dwelling House Code PO2(d) ‘maintain the visual continuity and pattern of buildings and landscape elements within the street’. The visual continuity and pattern of the street comprises of predominantly dwellings approximately 6m from the road frontage with continuity of the built form generally being maintained. As the carport is set forward of the general line of the buildings in the street, Council considers that the carport does not maintain the visual continuity and pattern of the buildings within the street. As such the carport does not comply with the Performance Outcomes of the Dwelling House Code.”*

5. It is determined by the Tribunal that the proposed carport, which is proposed to be constructed by converting the existing patio, will be located forward of the main building line behind landscaping and high boundary rendered block wall fencing, maintains visual continuity in the streetscape.
6. Overall the structure satisfies the Performance Outcome PO(2)(d), and the Tribunal will accordingly replace the decision issued on 13 March 2019 by Pacific BCQ.

#### **Reasons for the Decision:**

1. The Tribunal has considered all the information provided and confirms that the proposed carport is assessable against the requirements of the Sunshine Coast Planning Scheme Dwelling House Code.
2. The carport structure when assessed against PO(2) of the Scheme satisfies the performance criteria of PO(2)(d) of the Dwelling House Code provided that:
  - a) The proposed carport shall be accessed via the existing driveway and gateway;
  - b) The existing high rendered block wall front boundary fence shall remain in place;
  - c) The existing landscaping, including the dwarf palms, between the proposed carport structure and the existing front boundary fence shall remain in place or be replaced with like species;
  - d) No building alteration is permitted to the proposed structure other than that required to facilitate carport access.
3. Accordingly, having regard to Performance Outcome PO(2)(d) of the Dwelling House Code, it is determined that there is compliance with *“maintain(ing) the usual continuity and pattern of building and landscape elements with the Street”*, notwithstanding that, with reference to Acceptable Outcome (a), that the carport is not *“setback at least 6 metres from any road frontage”*, the setback being 1.36m (noting that the Application is referable to seeking a retrospective approval for a structure since constructed).

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**Adjunct Professor Victor Feros, Chairman**

**Date:**

**Development Tribunal Chair**

**Date: 27 September 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**

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