



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	<b>19-040</b>
<b>Appellant:</b>	Dion Cosgrave
<b>Respondent (Assessment Manager):</b>	Luke Neller c/-Project BA
<b>Co-respondent (Concurrence Agency):</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	60 Parkway Dr Mooloolaba and described as Lot 162 on RP 189781 – the subject site

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### **Appeal**

Appeal made under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the refusal of a preliminary development application for building works associated with a carport constructed without a development approval. Sunshine Coast Regional Council as the concurrence agency directed the assessment manager to refuse the application stating it did not satisfy the siting requirements of the Sunshine Coast Planning Scheme's Dwelling House Code.

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<b>Date and time of hearing:</b>	22 October 2019 at 12.00 noon
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Debbie Johnson – Chair Jane Grimmond - Member
<b>Present:</b>	Dion Cosgrave – Appellant and property owner Luke Neller Project BA – Assessment Manager/Agent Lillian Trichel Project BA – Assessment Manager representative Peter Camberlain- Council representative Cr John Connelly Sunshine Coast Regional Council – Appellant support

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) replaces the assessment manager's decision, as directed by the concurrence agency, with a decision approving the existing siting of the carport with the following conditions:

1. Replace the panel-lift door from solid to horizontal slat, backed with clear Perspex, to match the white powder coated aluminum fence panels adjacent to the carport columns.
2. Reduce the slat panel door height from 2450mm to the same height as the recessed block fencing panels. Clear Perspex could be added for security in the gap between the top of the rail and underside of the soffit.

3. Provide native species planting, between the carport and side boundary fence adjoining the laneway that will at maturity, screen the carport structure.
4. Prior to any works commencing, the appellant is to obtain a development approval for building works for the assessable building works.

The conditions mentioned above are to be referred to and checked by the assessment manager, prior to the issue of the final inspection certificate.

**Background:**

1. The appellant explained that he had purchased the subject site in 2008 from vendors who were divorcing at that time and therefore motivated to sell. The vendors were undertaking renovations and extensions which were almost complete. The works included a complete reroof, conversion of the existing double garage to provide additional bedroom and living areas and a new double bay carport erected over the existing driveway, between the original garage and the street frontage. It was part of their contractual arrangement that these works were to be completed before the sale was finalised. The appellant was unaware at this time, that these works had not been approved and had otherwise assumed the work to have been lawfully carried out.
2. On 22 January 2019, following a written complaint, Council wrote to the appellant advising him that these works appear to have been undertaken without the required development approval for building works.
3. On 28 February 2019, Council representatives met with the appellant on site.
4. On 4 March 2019, Council wrote to the appellant advising that he must either obtain a building development permit retrospectively or demolish and remove the building works. The appellant was further advised that the carport structure had been constructed within the required 6m setback from the road frontage and would need Council's consent to vary the siting provisions, before a building approval could be issued by a building certifier.
5. The appellant engaged Sunshine Coast Inspection Services as their building certifier and lodged a development application for retrospective building works.
6. On 20 June 2019, Sunshine Coast Inspection Services lodged a 'Request for Concurrence Agency Response (Building Work)' including supporting written argument with Council on behalf of the appellant.
7. On 11 July 2019, Council provided the concurrency agency response to the assessment manager, and directed that the application be refused.
8. On 12 July 2019, Sunshine Coast Inspection Services, approved all 'as constructed' building works which were the subject of the building application, with the exception of the carport structure which required Council's approval for siting. Ref: BA Permit No 190718.
9. The appellant subsequently engaged Luke Neller of Project BA to lodge a development approval for preliminary building works, specifically for the design and siting of the carport. The intention was to move ahead with an appeal to have the siting of the carport reconsidered. The owner's Authority to Act, appointing Mr Neller's firm Project BA as representatives to act on his behalf, is dated 16 August 2019.

10. On 28 August 2019, Mr Neller issued the Preliminary Approval Decision Notice of Refusal to the appellant.
11. On 28 August 2019, the appellant lodged an appeal with the Registrar and nominated Project BA as his agent.

**Jurisdiction:**

12. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
13. Schedule 1 of PA, section 1(2) however states table 1 may apply to a tribunal if the matter involves one of the circumstances set out in paragraphs 1(2)(a) to (l). Paragraph (g) of this section states: “a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission”.
14. The tribunal is satisfied that the development application made to Council satisfies that requirement being, a development application for building works approval under the section 33 Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings of the Building Act 1975.
15. That application was subsequently refused by the assessment manager as directed by council as the concurrence agency. Table 1 item 1(a) in Schedule 1 of the PA states that for a development application an appeal may be made to a tribunal against the refusal or all or part of the development application.

**Decision Framework:**

16. Section 246 of the PA provides as follows (omitting the examples contained in the section):
  - (1) The registrar may, at any time, ask a person to give the registrar any information that the Registrar reasonably requires for the proceedings.
  - (2) The person must give the information to the registrar within 10 business days after the registrar asks for the information.
17. Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:
  - (2) Generally, the appellant must establish the appeal should be upheld.
  - (4) The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.
  - (5) However, the tribunal may, but need not, consider—
    - (a) other evidence presented by a party to the appeal with leave of the tribunal; or
    - (b) any information provided under section 246 [not relevant for this appeal].

18. Section 254 of the PA deals with how this appeal may be decided and the first three subsections of that subsection are as follows:

- (1) This section applies to an appeal to a tribunal against a decision.
- (2) 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;
- (3) However, the tribunal must not make a change, other than a minor change, to a development application.

**Material Considered:**

19. The material considered in arriving at this decision comprises:

- I. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 28 August 2019.
- II. Correspondence from the Council to the appellant dated 4 March 2019, advising the appellant to:-
  1. Obtain a building development permit; or
  2. Demolish and remove the building works.
- III. Building Design Drawings dated 5 April 2019, illustrating Site and Location Plan, Floor, Roof, Slab and Footing Plan, Elevations, Section Details and 3D Views of the constructed development which is the subject of this appeal and including all existing approved structures on the subject site.
- IV. Council's Request for Concurrence Agency Response (Building Work) including supporting written argument from Sunshine Coast Inspection Services the assessment manager (at that time) dated 20 June 2019.
- V. Referral Agency Response issued by council to Sunshine Coast Inspection Services, the assessment manager on 11 July 2019.
- VI. Owner's Authority to Act dated 16 August 2019, appointing the assessment manager's firm, Project BA, as his representative for the appeal.
- VII. Preliminary Approval Decision Notice of Refusal issued by Project BA, the assessment manager on 28 August 2019.
- VIII. Grounds for Appeal dated 28 August 2019 , written submission supporting the appeal as prepared by Project BA
- IX. DA Form 2 Building work details as completed by the appellant however this copy of document is not dated or signed.

- X. Detailed written submission to Council by the property owner in support of the application to approve the reduced setback for the carport as built on the subject site. The submission includes numerous photographic examples of similar structures nearby.
- XI. Signed letters of support for the development as constructed by residents at:
  - 54 Parkway Drive;
  - 55 Parkway Drive;
  - 56 Parkway Drive;
  - 57 Parkway Drive;
  - 58 Parkway Drive;
  - 62 Parkway Drive; and
  - 37 Ocean View Ave, corner of Parkway Drive.
- XII. Planning and Development Online information for the subject site
- XIII. Email exchange between the Acting Manager of Development Tribunals and the Assessment Manager dated 20 December 2019, clarifying the process whereby Luke Neller of Project BA was engaged by the appellant.
- XIV. The Planning Act 2016 (PA)
- XV. The Planning Regulation 2017 (PR)
- XVI. The Development Application Rules 2017
- XVII. The Building Act 1975 (BA)
- XVIII. The Building Regulation 2006 (BR)
- XIX. The Queensland Development Code (QDC) Part MP 1.2
- XX. The Sunshine Coast Planning Scheme 2014
- XXI. The National Construction Code 2019 (NCC)

**Findings of Fact:**

20. The subject site and adjoining single storey residential properties are long established and while there is little evidence of contemporary building activity in the area, the homes and gardens are attractive and well maintained. The subject site features a rendered concrete block fence line that has been well articulated through the use of colour and alignment to enhance the opportunity to provide landscape and street appeal.
21. The 694sq/m site is regular in shape with minimal fall to the street across the site. The site is separated from the nearest neighbour to the east by a wide pedestrian pathway that runs the entire length of the site.

22. The carport structure is 5.8m deep and 7.2m wide and is constructed in the south eastern corner of the site, 370mm inside the road boundary and 1m inside the eastern property boundary. The carport features a shallow pitched skillion roof that replicates the existing fall over the driveway and is less than 3.6m in height. The carport is effectively open however there is a panel lift door fitted to the face of the structure, rather than a gate, in line with the concrete block fence for security purposes.
23. Given the size and position of the existing pool and the dwelling which is now lawfully approved, it is not possible to provide onsite covered car parking without a siting relaxation being given. There is no other area available on this site.
24. The initial building certifier, in issuing BA Permit No 190718, which approved the reclassification of the original Class 10 double garage and approved that structure as part of the Class 1, effectively removed any option to provide onsite car parking except within the 6m road setback area.
25. Relevant to the subject building development application, the council's jurisdiction is limited to its Referral Agency functions under Section 33 of the *Building Act 1975* in relation to assessing whether the proposed building or structure complies with the quantifiable standards under the planning scheme in respect of boundary clearances.
26. The *Building Regulation 2006* in Part 3, nominates the Queensland Development Code, as setting out the standard siting requirements for buildings and structures, except where the planning scheme identifies an alternative siting provision.

#### **Sunshine Coast Planning Scheme 2014**

27. A dwelling house is a defined use in Schedule 1 of the Sunshine Coast Planning Scheme 2014 which states: A residential use of premises for one household that contains a single dwelling. The use includes out-buildings and works normally associated with a dwelling house and may include a secondary dwelling. Therefore by definition, any building application for a carport is interpreted as a building application pertaining to a dwelling house.
28. The land is zoned low density residential and affected by the provisions of Precinct LDR1 which is a protected housing area zone precinct. Effectively this constrains the use of the land to the extent that a dual occupancy would not be supported.
29. Under Part 5, Material Change of Use tables of assessment, Table 5.5.1 states: within the Low Density Residential zone, a dwelling house is accepted development provided it meets the acceptable outcomes of the Dwelling house code. Where proposed development does not meet the acceptable outcomes for the use code, the development triggers a development application for building works which is code assessable.
30. Under Part 5 Building Works Tables of assessment, Table 5.7.1 states: building works (for all zones) is accepted development if the applicable use code (Dwelling House code in this instance) and the Transport and Parking code identifies acceptable outcomes applicable to accepted development.
31. Section 5.3.3 (2) of the Scheme, states: Accepted development that does not comply with one or more of the relevant acceptable outcomes in the relevant parts of the applicable code(s) becomes assessable development requiring code assessment unless otherwise specified. In this matter, development for a Dwelling House becomes

code assessable. The building works are subject to the provisions of the Dwelling house code, the Mooloolaba/ Alexandra Headland local plan code and the Transport and parking code.

32. Section 9.3.6.2 Purpose and overall outcomes of the Dwelling House Code states in part: 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.
33. Part 9.3.6.1 sets out the application of the Dwelling house Code provisions stating as follows: This code applies to accepted development and assessable development identified as requiring assessment against the Dwelling house code by the tables of assessment in Part 5. The acceptable outcomes in Table 9.3.6.3.1 are requirements for applicable accepted development. Where accepted development does not meet the prescribed acceptable outcomes, the development becomes assessable development and can be assessed against the corresponding performance outcomes. Council becomes the referral agency in this situation.
34. Table 9.3.6.3.1 sets out Performance outcomes and acceptable outcomes for the Dwelling House Code, the relevant assessment criteria are listed below:

Acceptable outcome AO2.1 states in part:

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

- i. is setback at least 6m from any road frontage;
- ii. does not exceed a height of 3.6m;

Note AO2.1 (a) is an alternative provision to the Queensland Development Code **(QDC)**

The corresponding performance outcome PO2 states:

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.

35. In this matter assessment must be considered against the performance outcomes set out in PO2 as the acceptable outcome provisions in AO2.1 are not being met. In addition, as is noted, AO2.1 (a) is an alternative provision to the Queensland Development Code, therefore no consideration can be given to setback provisions of the QDC.
36. In relation to the carport setbacks, the planning scheme provisions listed at AO2 and PO2 are largely enforced to ensure there is opportunity for landscape thereby preserving and enhancing the streetscape and the amenity for residents.
37. By providing written endorsement the immediate neighbours have clearly demonstrated support for the approval of the existing carport which has been there for more than 10 years.

38. Part 9 Developments: 9.1 Preliminary (2) of the Scheme states: Use Codes and other Development codes are specific to each planning scheme area. Thus, the Mooloolaba/Alexandra Headland local plan performance outcomes and acceptable outcomes are given precedence to the provisions of the Dwelling house code and the Transport and parking code in this matter. However there is only one specific reference to development in the low density zone development and it does not contradict and therefore does not override the outcomes sought in the Dwelling House Code or The Transport and Parking code pertaining to this matter. This is found under 7.2.20.3 (o).
39. Under 7.2.20.3(o) Purpose and overall outcomes for the local plan of Mooloolaba and Alexandra Headlands, the low density residential zone is to provide for traditional beachside residential character. This outcome is not overly evident in that part of Parkway Drive, which is the focus of our consideration. However, an understanding of what traditional beachside residential character might be is subjective.
40. Under AO8 Access and Parking within the Dwelling House Code, onsite car parking is to be provided for two cars (for lots greater in area than 300sq/m) with at least one of them capable of being covered.

### **The Queensland Development Code (QDC)**

41. The Dwelling House Code contains some alternate provisions to the QDC. The QDC Part MP1.2 is the standard for the Design and Siting requirements applicable to Class 1 Dwellings and Class 10 structures on residential sites over 450 m<sup>2</sup> in area. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions. In this instance the Dwelling House Code AO2.1 (a) provides some alternative siting provisions to the QDC A1 (a), therefore the 6m setback provisions (for a garage or a carport) of the Dwelling House Code apply to the proposed development.
42. In the context of the subject site within the Parkway Drive streetscape, there are two different carport views that affect the street character:

#### *View 1 - Carport door closed*

The existing panel lift garage door is a solid white coloured panel-lift door 2450mm high (according to elevations included in submission). When closed, the carport door appearance creates a solid rectilinear shape on the boundary. Although the site plan shows a 370mm setback, the visual appearance is that the building is located on the actual boundary with no setback.

#### *View 2 - Carport door open*

When the door is open, the carport creates a dark recess under the roof. The skillion roof slopes down towards the boundary (pitching point height of 2715mm noted on elevations) which reduces the scale of the carport at the pedestrian footpath.

43. Front Fence Design:

The subject site features two types of fencing along the road frontage boundary – neutral coloured rendered block panels of 2 different heights white aluminum powder coated slat panel fence and gate either side of the carport. This variety of perimeter fence treatment reduces the impact of the carport columns either side of the door. The location of the fence panels creates the opportunity for low shrubs and a central bush to be planted. The design also creates interest and allows natural ventilation through the slat panels.



44. Directly across the road from the subject site, the owners have constructed a rendered block wall painted dark blue with no variation in setback or steps in height. The resulting fence dominates the corner site and permits no interaction with the streetscape. However, this design of fence is permitted under the Sunshine Coast Planning Scheme.

**Reasons for the Decision:**

45. The carport was constructed and has been part of the streetscape for more than 10 years and there is no other alternative to provide compliant on-site covered car parking. The current location uses the vehicle crossover provided for the original garage. There is no residence immediately adjacent to the carport as a designated laneway splits this site from its neighbor. The laneway allows views deeper into the site than it would without the laneway space located on the side boundary.
46. Almost all of the immediate neighbours have been willing to provide written endorsements to support the approval of the existing carport. As this carport is the subject of an appeal, the neighbours could have used this opportunity to object to its form within their street. However, they have chosen to support the approval of this carport. Building line setbacks are largely imposed to provide opportunity for landscape and to preserve and enhance the streetscape for communities. The neighbouring residents, being the most affected in this instance, are also best positioned to judge the impact and in this case the outcome as the carport has stood for more than 10 years.
47. Given the carport is to be retrospectively approved, conditions are imposed to reinforce the existing patterns of building and landscape and enhance the visual appearance of the structure. These conditions are aimed at reducing the bulk of the carport at pedestrian scale on the street.

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**Debbie Johnson**

**Development Tribunal Chair**  
**Date: 3 January 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:

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)**