



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal Number:</b>	19-042
<b>Appellant:</b>	Jessica Reynolds, Urban Planners Queensland
<b>Respondent (Assessment Manager):</b>	Luke Neller, Project BA
<b>Co-respondent (Concurrence Agency):</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	13 Jacaranda Drive, Mooloolaba and described as Lot 54 on RP 94393 – the subject site

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### **Appeal**

Appeal under Section 229 (1)(a)(i) and of Schedule 1, section 1, table 1 item 1(a) of the *Planning Act 2016*, (PA), against the decision of the respondent Assessment Manager (Mr Luke Neller of Project BA), as directed by Sunshine Coast Regional Council – (SCRC) as a concurrence agency; for refusal of a Preliminary Approval for Building works (Design and Siting and compliance with Sunshine Coast Planning Scheme 2019) on the basis that the proposal does not comply with the Performance Outcome 2 of the Dwelling House Code.

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<b>Date and time of hearing:</b>	31 October 2019 at 11.00am
<b>Place of hearing:</b>	The subject site (13 Jacaranda Drive, Mooloolaba)
<b>Tribunal:</b>	Adjunct Professor Victor Feros – Chair Ms. Sarah Foley – Member
<b>Present:</b>	<u>For the Appellant:</u> Ms. Jessica Reynolds, Urban Planners Qld – Appellant Mr. Christopher Watson – Property Owner  <u>For the Respondent:</u> Mr. Steven Tucker – Co-ordinator, Building Regulation – Sunshine Coast Regional Council representative  <u>Assessment Manager:</u> Mr. Luke Neller, Certifier, Project BA

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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 Respondent with another decision, namely that the Development Application be approved in accordance with the Respondent (SCRC)'s draft conditions package issued Thursday 19 December, 2019.

The development proposed in the Development Application for two (2) driveways/crossovers, providing access to a proposed double carport and a separate driveway is to be amended to comprise a single driveway/crossover providing access to a single covered carport, adjacent to 15 Jacaranda Drive, so providing rear-site access, (depicted in the attached sketch plan and hereinafter called 'the Amended Proposal'). The extent of additional, allowable covered access to the front entry portico is also noted on the Amended Proposal.

Further, and in accordance with the Respondent's consideration of the Amended Proposal, as set out in an email dated 19 December 2019 from Mr Chamberlain of SCRC to the registrar:

- The carport is not to exceed a maximum height of 3.6 m above natural ground level.
- The carport roof and structure must have non-reflective finished surfaces and in colours that blend in with the existing dwelling or nearby landscape.
- The carport must remain completely open at all times and not be enclosed or partly enclosed with walls, screens, lattice, shutters or the like with the exception of the side boundary block fire wall.
- The carport must not have a roller door (or similar door) constructed on the entry to the carport.

### **Background:**

1. The subject site is a 531 sq metre parcel of land in Mooloolaba and is developed as a house.
2. A previous Building Approval was issued to remove an internal garage which has since been converted to residential use.
3. A previous refusal was issued for a carport to be constructed within the front setback.
4. An Application (the subject Application) was made by the Appellant on 13 August 2019 to the Assessment Manager, Luke Neller of Project BA, for a Preliminary Approval for a double carport.
5. Sunshine Coast Regional Council, as Referral Agency, directed refusal of the Application, on the basis the proposal does not comply with the Performance Outcome 2 of the Dwelling House Code.

*Specifically, PO2 notes that:*

*"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."*

6. An Appeal was lodged with the Development Tribunals on 2 September 2019.
7. At the Tribunal Hearing, on 31 October 2019, it was advised that the second crossover on site was not a legally approved crossover. Further, Photographs were tabled in the meeting on behalf of the Respondent confirm its existence 2010 but with no record of it having approved.

## **Jurisdiction:**

The Tribunal has jurisdiction for this Appeal under the *Planning Act 2016* (PA) section 229(1)(a)(i) and schedule 1, section 1(1), table 1, item 1(a). The pre-condition in section 1(2) of schedule 1 for the application of table 1 to a development tribunal is satisfied in this instance as section 1(2)(g) of schedule 1 applies as the application relates to the Building Act, being an application for a Development Permit for Building Works (Dwelling House – Carport).

## **Decision Framework:**

It is noted that:

- The onus rests with the Appellant to establish that the Appeal should be upheld (s.253(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 (s.253(4) of the PA);
- The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the Tribunal or any information provided under s.246 of the PA (pursuant to which the Registrar may require information for tribunal proceedings); and
- The Tribunal is required to decide the Appeal in one of the ways mentioned in s.254(2) of the PA, however the Tribunal must not make a change other than a minor change to a development application (s.254(3) of the PA);
- The Tribunal considered the extent and nature of the revised design illustrated in the amended drawings, and is satisfied that they reflected a 'minor change' to the original proposal (in terms of section 254(3) of the PA) for the following reasons:
  - The amended proposal will not result in a substantially different development as it will not:
    - a) involve a new use - as the use remains the same;
    - b) cause referral to additional agencies;
    - c) dramatically change the built form in terms of scale, bulk and appearance or change the extant pattern of the street;
    - d) change the ability of the proposed development to operate as intended;
    - e) remove a component that is integral to the operation of the development;
    - f) significantly impact on traffic flow and the transport network, such as increasing traffic to the site;
    - g) introduce new impacts or increase the severity of known impacts;
    - h) remove an incentive or offset component that would have balanced a negative impact of the development; or
    - i) impact on infrastructure provisions.
  - The Tribunal considers that the proposed carport structure in the "Amended Proposal," of the size and scale proposed, positioned at the side of the house, will be consistent with and contribute to:
    - a) preserving the amenity of adjacent land and dwelling houses;
    - b) Being single width, does not dominate the streetscape;

- c) maintains 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.” as prescribed under the Performance Outcomes and Acceptable Solutions of the Sunshine Coast Regional Plan.

### **Material Considered:**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 02 September 2019.
2. Queensland Planning Act 2016
3. Sunshine Coast Planning Scheme 2019
4. Queensland Development Code. MP1.2. and relevant alternative provisions
5. Sunshine Coast Council Concurrence Agency Response.
6. Plans referenced Project No. 2019008 Drawings WD-01 to WD-08
7. Photographs tabled by SCRC in the Tribunal hearing showing previous garage and unapproved existing carport with second crossover.
8. Oral submissions by the Appellant and Owner at the hearing.
9. Oral submissions by the Council's representative and Building Certifier at the hearing.
10. Site visit observations of the built and natural environment of and around the location of the subject site including traditional landscaping and the pattern of off-street parking.
11. Submission in favour of the proposal by neighbour, provided by the Owner, namely Brain Costello, 11 Jacaranda Drive, Mooloolaba, letter dated 17 May 2019.
12. Submission from Urban Planners Queensland with Alternative Solution submitted 13 December 2019
13. Submission from SCRC with Draft Conditions Package submitted 19 December 2019

### **Findings of Fact:**

1. An Application was made by the Appellant on 13 to Assessment Manager, Luke Neller of Project BA for a Preliminary Approval for a double carport.
2. A Development Permit for Building Works (Dwelling House – Carport) was applied for, for assessment of the proposed building works with the assessment provisions limited to:
  - Design and Siting (QDC MP1.2 and relevant alternative provisions); and
  - Sunshine Coast Planning Scheme 2019 – Dwelling House Code.

3. Sunshine Coast Regional Council as concurrence agency advised that the Performance Outcomes of P02 of the Dwelling House Code could not be achieved, and directed the assessment manager to **refuse** the application.
4. The preliminary approval was Refused on 27/08/2019 by Mr Neller of Project BA as directed by Sunshine Coast Regional Council as a concurrence agency.
5. A Development Tribunal Hearing was held on 31 October 2019 at 11.00am at the subject site (13 Jacaranda Drive, Mooloolaba)
6. No issues between the Appellant and Respondent were resolved at the hearing.
7. An “Amended proposal” was made to the Appellant, by the Tribunal, to which the SCRC has attached Draft conditions outlined as above.

### **Reasons for Decision:**

The tribunal considers that:

1. Both the Appellant and the Respondent provided evidence regarding their respective interpretation of the planning instrument, the SCRC Planning Scheme for the Dwelling House code, P02; as applied to the proposed Double Carport at 13 Jacaranda Drive, Mooloolaba. The plans as presented, disclosed that the double garage frontage, in addition to a single carport at the side of the house, (Two crossovers) would have had an adverse impact upon the existing pattern of the streetscape at this locality.
2. The Appellant had not considered that there was an extant second crossover which had no SCRC approval. The addition of a double garage would create an adverse impact on the streetscape at this locality and would not comply with the Performance Outcome for the SCRC planning scheme.
3. Following further consultations between the parties, plans were amended and resubmitted to the Respondent. In response, the Respondent, on 19 December, 2019, issued a draft conditions package for the consideration of the Tribunal, which the Tribunal accepts and approves with the inclusion of some conditions requested by the SCRC.
4. The proposed amendments as submitted are accepted as a “minor change” to the Application, with reference to Schedule 2 of the Act, as the change does not result in substantially different development and would not cause the inclusion of prohibited development in the Application, or referral to a referral agency.

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**Professor Victor Feros OAM BA MUS MPIA (Life Fellow) CMILT LGTP (Q)**  
**Development Tribunal Chair**  
**Date: 29 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 parties.

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)**