



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	21-053
Appellant:	Lyle & Co Pty Ltd Trading as Spartan Sheds on behalf of owner Iain Stewart
Assessment Manager:	Wal Kenney Procert Building Solutions Pty Ltd
Concurrence Agency: (if applicable)	Bundaberg Regional Council
Site Address:	3 Colonial Court Winfield QLD 4670 and described as Lot 46 on SP192935 – the subject site

Appeal

Appeal under section 229 and sections 1(2)(a) and (2)(g) 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 building work associated with a dwelling house (Class 10a car port and deck).

Date and time of hearing:	9 December 2021 at 2.30pm
Place of hearing:	The hearing commenced at the subject site for a site inspection and advices from the parties about the site, the hearing was then adjourned and later that afternoon resumed at Bundaberg Regional Council (Council) offices.
Tribunal:	John O'Dwyer – Chair David Job – Member
Present:	Shauna Hough of Spartan Sheds – Appellant Iain Stewart Owner – attended the site inspection only Richard Jenner and Cara Cole – Council representatives

Decision:

1. The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) confirms the decision of the Assessment Manager on the advice of Bundaberg Regional Council as a concurrence agency, to refuse the application.

Background

2. The subject land is an irregularly shaped lot at 3 Colonial Court, Winfield with a frontage to Colonial Court to the west, and a secondary frontage to Rocky Point Esplanade (where there is no road access) and then Baffle Creek to the east and is abutted by residential lots to the north and south each with a dwelling. The dwelling on the subject site and those on the adjoining sites all focus on the view across Rocky Point Esplanade to Baffle Creek. The irregular shape is caused by a truncation at the south-east corner to provide for the head of Colonial Court.

3. The subject site contains a dwelling set back from Rocky Point Esplanade and a workshop and existing carport set back from Colonial Court. Between the dwelling and the workshop is a transpiration bed to treat sewage from the site.
4. A second carport is proposed adjacent to and east of the existing carport. If approved, part of the additional carport would be within the road setback and the length of the structures fronting Colonial Court, thus triggering the referral of the application to Council for preliminary approval under the Bundaberg Regional Council Planning Scheme and its Amenity and Aesthetics Policy (A & A Policy), and with the Queensland Development Code Mandatory Part 1.2 (QDC MP1.2).
5. On 12 December 2020, the appellant lodged an application with the assessment manager for a development approval for building work – Class 10a building – carport.
6. On 9 April 2021, the appellant applied to Council for a pre-application referral agency response from Council for Amenity and Aesthetics and Design and Siting (Carport).
On 19 April 2021, Council issued an information request to the appellant seeking a response against Council's A & A Policy Table 5.2, PO1 as the proposed carport with the existing shed exceeds a maximum horizontal dimension of 12 metres and the combined floor area of outbuildings exceeds 90 m²; and against QDC MP1.2 P1 as the carport is located within the 6 metre setback.
7. On 14 May 2021, the appellant responded to the information request.
8. On 31 May 2021, Council issued its Referral Notice – Pre-Application Response to the appellant. The notice advised the assessment manager that the development must be refused.
9. On 9 August 2021, the assessment manager issued its Decision Notice to refuse the application on the grounds as set out in the directed refusal.
10. On 3 September 2021, as a result of the refusal, this appeal was lodged.

Jurisdiction

11. The original development permit dated 13 June 2007 for the existing workshop and carport development was signed a relative of one of the Tribunal Members. That approval has been given effect in that the approved workshop and carport have been erected. That approval has no relationship to the current appeal which relates to a separate application seeking to erect a carport over the area set aside for a Reprovision Area in the plumbing approval for the separate dwelling on the site. The parties agreed there was no conflict of interest in the matter and there was no objection to the Tribunal continuing as constituted.
12. This Tribunal has jurisdiction to hear this appeal under the PA section 229(1)(a)(i) and Schedule 1, sections 1(2)(a) and 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
13. This appeal was lodged within the statutory time limit, thus enlivening the Tribunal's jurisdiction.

Decision framework

14. This is an appeal against a refusal of part of a development application, and the onus rests on the Appellant to establish that the appeal should be upheld.
15. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Assessment Manager 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 did not expressly rely on in refusing the application and matters raised at the hearing by any party.
16. 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.
17. In this appeal, the Tribunal considered the appeal documentation, the Bundaberg Regional Council Planning Scheme 2015, the PA and the submissions by the parties at the hearing.
18. In this appeal, the Tribunal considers the appellant has NOT satisfied the onus to demonstrate the appeal should be upheld.

Material Considered

19. The following is a list of the material considered by the Tribunal
- A. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 3 September 2021, comprising the following documents:
 - Form 10 - Notice of Appeal dated 3 September 2021 and expanded Grounds of Appeal
 - 3 Colonial Court Winfield unsigned drainage plan not to scale ref no 20051502 showing a requirement for a disposal area of 46 m2 located between the dwelling and the workshop.
 - Email dated 31 May 2021 from Council to the appellant, providing a copy of Council's Referral Notice – Pre-Application Response dated 31 May 2021 requiring refusal of the carport and including Reasons for refusal of the carport.
 - Assessment Manager's Decision Notice – Refusal – DA3926-20 dated 9 August 2021 including a copy of Council's Reasons for refusal of the carport.
 - Appellant's Response to Council's Concurrence Agency – Amenity and Aesthetics & Design and Siting assessment criteria table, as submitted with the application.
 - Site Plan
 - Elevations
 - Floor Plan
 - Five photos of nearby structures
 - Two photos of the site with a car showing the proposed carport location
 - Council information request dated 19 April 2021
 - Council A&A Policy
 - Emails dated 19 April 2021 covering Council Information Request and dated 19 May 2021 covering the appellant's information response
 - B. Bundaberg Regional Council Planning Scheme 2015
 - C. Council's Amenity and Aesthetics and Building Work Involving Removal or Rebuilding Policy adopted on 31 October 2017 (A & A Policy)
 - D. Queensland Development Code MP1.2 Design and Siting Standard for Single Detached Housing – on Lots 450 m2 and over. (QDC MP1.2)
 - E. The Planning Act 2016 (PA)
 - F. The Planning Regulation 2017 (PR)
 - G. The Development Assessment Rules 2017
 - H. The Building Act 1975 (BA)

- I. The Building Regulation 2006 (BR)
 - J Development Permit for existing shed and carport dated 13 June 2007
 - K Direction issued by email to the Parties on 15 December 2021
 - L Response to the direction by email dated 16 December 2021 from Council providing a copy of its file showing the plumbing and drainage Compliance Permit dated 9 November 2005
 - M Responses to the direction from the appellant by email dated 27 January 2021 and again on 4 February 2022 each seeking a week's extension to the time for a response. Agreements were given by the Tribunal to extensions to 4 February 2022 and then to 18 February 2022, advising no extension would be given after that date
 - N. The verbal submissions made by the parties at the hearing and during the site inspection as referred to in the body of the decision.
20. 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

- 21. At the hearing Council showed their file containing a copy of the approved drainage plan for the subject site. It showed a requirement for an alternate disposal area where the carport is proposed to be located. The Tribunal has accepted this is the current plumbing and drainage approval for the subject site.
- 22. In the absence of evidence to the contrary, the Tribunal cannot approve a structure in an area designated as an alternate disposal area.
- 23. The appellant has been given an opportunity to seek professional advice that could be used to seek an amendment of the plumbing and drainage approval. The appellant has not submitted evidence of such advice to the Tribunal.

Reasons for the Decision

- 24. During the inspection, Council advised that the carport was proposed to be located in an area required to be kept aside as an alternate disposal area. As indicated in para 22 above, at the hearing Council showed its copy of the plumbing and drainage permit to the Tribunal.
- 25. As a result, on 15 December 2021, the Tribunal Registry issued a direction
 - to Bundaberg City Council to provide within 5 business days, a copy of the approved drainage plan to the Tribunal; and
 - to the appellant to provide by 4.00 pm on 28 January 2022:
 - A plan showing the existing disposal area dimensions and the area's offsets from side boundaries and existing buildings
 - A preliminary design for an alternative wastewater disposal system that would meet the requirements of the *Plumbing and Drainage Act 2018* which may enable the Tribunal to consider the location of the car port in relation to the Colonial Court frontage. The preliminary design is to be certified by a qualified person that the design would be compliant with the *Plumbing and Drainage Act 2018*.
 - The appellant may be required to liaise with the Local Authority plumbing & drainage department to seek an amended design approval for any proposed changes to the on-site wastewater system.
- 26. Council responded to the direction and provided a copy of the Compliance Permit which stated: "This application has been approved on the information supplied to council by the applicant".

27. This information included a report prepared for Ray Bobbermen Constructions by Leddy Sergiacomi & Associates Pty Ltd titled "*Wastewater Treatment and Disposal – Revision 1 dated 3 November 2005, for Lot 46 Colonial Court Winfield*". This report included drawing 15333-E01 Rev A Sheet 1 of 2 that showed an ETA Bed System with a 100% Reprovision Area, noting that Option A requiring an area of 46 m² was approved.
28. As the appellant has not responded to the Tribunal's direction, the Tribunal has no basis on which to consider upholding the appeal and approving any structure over the Reprovision Area.
29. The Reprovision Area occupies the space proposed for the carport. The Tribunal has to ensure this approval can continue unaffected by any decision of the Tribunal.
30. Accordingly, the Appeal has to be denied.

John O'Dwyer

Development Tribunal Chair

Date: 4 August 2022

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 Energy and Public Works
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