



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	19-055
Appellant:	George Slee and Danielle Balfour
Respondent (Assessment Manager):	Albert Sememzin of DBR Building Certification
Concurrence Agency: (if applicable)	Sunshine Coast Regional Council (SCRC)
Site Address:	6 Thunderbird Drive, Bokarina and described as Lot 30 on Plan B96013 – the subject site

Appeal

Appeal under section 229 and item 1(a) of table 1 of section 1 of schedule 1 of the *Planning Act 2016* (PA) against the decision of the Assessment Manager to refuse the part of a development application for construction of a carport on residential premises.

Date and time of hearing:	10.45 am On 2 March 2020
Place of hearing:	The subject site.
Tribunal:	Chair - John O'Dwyer Member - Jane Grimmond, Architect
Present:	APPELLANT - Danielle Balfour representing the Appellants George Slee and Danielle Balfour RESPONDENT – Peter Chamberlain and Mitch Swieso representing SCRC, the Concurrence Agency for the development application

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the PA **replaces** the decision of the Assessment Manager with a decision to approve the part of the application for construction of a carport on the subject site subject to the following conditions:

- (a) Development of the carport is to be generally in accordance with Tony James Building Design Drawings SCRN12696 Site Plan Drawing WD-01 Rev B and SCRN12696 Floor Plan, Elevations, Sections and Details Drawing WD-02 Rev B.
- (b) Rainwater falling on the carport roof is to be collected and directed to the existing stormwater system, or to an alternative point of discharge approved by Sunshine Coast Regional Council.
- (c) The front and sides of the carport are to remain open.

Note: This approval does not address the patio shown on those drawings, that was approved in the initial decision on the application.

Background:

1. The Appellants applied for approval for a patio at the rear of the property and a carport at the front of the property. The Assessment Manager referred the application to SCRC as a concurrence agency as the part of the application for the patio and the carport did not comply with the design and siting provisions of the Planning Regulation 2017 (PR) schedule 9, part 3, division 2, Table 3, in that the carport and patio were proposed to be located 450mm from the side boundary in lieu of the 1.5m required under Acceptable Solution A2 of the Queensland Development Code Part MP1.3 (MP1.3)QDC.
2. SCRC as the concurrence agency advised in relation to a part approval, that it had no requirements in relation to the setback of less than 1.5m for the existing garage and patio for a combined length of more than 9m or in relation to the 450mm setback of the patio from the side boundary.
3. SCRC as the concurrence agency directed in relation to a part refusal, that the balance of the application being the part of the application for the carport was refused for the following reason:

The 400mm setback from the outermost projection of the carport to the road/property boundary.

4. The reasons for the refusal were:

The 400mm setback from the outermost projection of the carport to the road/property boundary does not satisfy the requirements of the SCPS 2014 Dwelling house code Performance Outcomes PO2 (b)and (d).

PO2 (b) Do not dominate the streetscape.

The surrounding streetscape comprises traditional sized residential dwellings with open landscaped front yards and buildings set back between 4.5m-6m from the road/property boundary. The proposed carport is set well forward of any other buildings within the streetscape resulting (in) the structure dominating the surrounding streetscape. The proposed carport is considered to dominate the streetscape.

PO2(d) Not maintain the visual continuity and pattern of buildings and landscape elements within the street.

Thunderbird Drive predominantly consists of traditional sized residential dwellings which are generally setback 4.5m-6m from the road/property boundary. A carport with a front setback of 400mm would be inconsistent with the pattern of buildings within the street. As such the proposal does not comply with SCPS2014 – Dwelling House Code PO2(d).

Jurisdiction:

5. The Tribunal has determined that it has jurisdiction to hear this appeal under the PA schedule 1, section 1(2)(g) and table 1, item 1(a). The jurisdiction was not raised at the appeal hearing.

Decision Framework:

6. 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.

7. 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.
8. 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.
9. 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:

10. 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 16 December 2019.
 - B. Development Application lodged with the Assessment Manager in August 2019
 - C. The letter of support from Ms B. M. Keogh the neighbour at 6 Thunderbird Drive, dated 28 September 2019
 - D. The letter of support from Mr R W J Hale the neighbour at 10 Thunderbird Drive, dated 17 September 2019
 - E. Referral of the development application to SCRC as a concurrence agency, undated
 - F. The Concurrence Agency Response 17 October 2019
 - G. The Decision Notice from DBR Building Certification dated 3 December 2019 approving the part of the application for the patio and refusing the part of the application for the carport as directed by SCRC as the concurrence agency.

Sunshine Coast Planning Scheme 2014 (SCPS 2014) and the QDC MP1.2

11. The applicable part of SCPS 2014 is the Dwelling House Code and the relevant parts of the code are set out below. Key elements are set out **in bold**.

9.3.6.2 Purpose and overall outcomes

(1) 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.**

Performance Outcome		Acceptable Outcome	
PO 2 Garages, Carports and Sheds	(a) preserve the amenity of adjacent land and dwelling houses; (b) do not dominate the streetscape;	AO2.1	Where located on a lot in a residential zone, a garage, carport or shed:-

	(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.		(a) is setback at least 6 metres from any road frontage; (b) does not exceed a height of 3.6metres; Note—AO2.1(a) alternative provision to QDC.
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12. Acceptable Outcome 2.1 Where located on a lot in a residential zone, a garage, carport or shed: (a) is setback at least 6 metres from any road frontage;

The proposed carport is NOT setback at least 6 metres from any road frontage and therefore does not comply with this Acceptable Outcome (proposed setback is 400mm from front boundary).

13. QDC MP1.2 ELEMENT 1 – DESIGN & SITING OF *BUILDINGS AND STRUCTURES* includes the following:

Performance Criteria		Acceptable Solutions	
P1	Buildings and Structures The location of a building or structure facilitates an acceptable streetscape, appropriate for – (a) the bulk of the building or structure; and (b) the road boundary setbacks of neighbouring buildings or structures; and (c) the outlook and views of neighbouring residents; and (d) nuisance and safety to the public.	A1	a)-For a detached dwelling, garage or a carport the minimum road setback is – (i) 6m; or
P2	<i>Buildings and structures –</i> (a) provide adequate daylight and ventilation to <i>habitable</i> rooms; and (b) allow adequate light and ventilation to <i>habitable</i> rooms of <i>buildings</i> on adjoining <i>lots</i> . (c) do not adversely impact on the amenity and privacy of residents on adjoining <i>lots</i> .	A2	(a) The side and rear boundary clearance for a part of the <i>building</i> or <i>structure</i> is – (i) where the height of that part is 4.5m or less - 1.5m; and (d) Subject to A2(c), class 10a buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where – (i) the <i>height</i> of a part within the boundary clearance is not more than 4.5m and has a <i>mean height</i> of not more than 3.5m; and (ii) the total length of all buildings or parts, of any class, within the boundary clearance is not more than 9m along any one boundary; and (iii) the class 10a <i>buildings</i> or parts within the boundary

			clearance are located no closer than 1.5m to a required <i>window</i> in a <i>habitable</i> room of an adjoining dwelling.
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14. Acceptable Solutions A1 Minimum road setback

The carport may be located in front of the dwelling provided it is setback 6m from the road frontage

The proposed carport does not comply with A1 as the road setback is less than 6 metres.

15. Acceptable Solutions A2 Side setbacks

The carport may be within 1.5m setback providing it is not more than 4.5m high and total length of all buildings *of any class* is not more *than 9m along any one boundary*.

The proposed carport does not comply with A2 as the total length of new carport, existing garage and proposed patio = 20.06m from the site plan WD01- Rev B by Tony James Building Design.

The total length of the existing garage (6.06m), patio (7.00m) and proposed carport (6.00m) is 20.06m as per site plan.

16. Under QDC MP1.2 A2(c) the proposed Patio would need to be 1.5m from boundary to avoid non-compliance with 9m overall length along boundary limit. However, SCRC has granted a dispensation for the proposed patio location in its concurrence agency response

17. The adjoining landowners on both sides of the subject site have provided written evidence that they have no particular concerns with the proposed development.

The Hearing:

18. The critical issue is the SCRC policy regarding the 6m frontage setback requirement.

19. The Respondent advised that SCRC consistently applies this policy and that one other carport built prior to the current SCPS 2014 (set back approximately 3m from the frontage) in the street would not create a basis for arguing there is a pattern of carports that would allow a built to frontage carport. Elsewhere, SCRC is allowing carports in a street where there are other legal carports, under the policy. Therefore, under the policy it would not be possible for a landowner to obtain approval for a carport within the 6m setback within Thunderbird Drive.

20. The Respondent argued there is no landscaping on site to protect visual amenity and the carport would dominate the streetscape.

21. There was discussion at the hearing about extending the garage forward and widening it to a two car garage, but there were amenity impacts on neighbours, impacts and services and functional and cost issues for the Appellants.

22. The Appellant argued that:

- a) They have two cars and a jet ski on a trailer that all won't fit in the single garage and on site in the existing driveway and so they are forced to park at least one vehicle on street.
- b) The jet ski is parked in the garage, and there is insufficient space to tandem park the Appellants two cars in the existing driveway and so they are seeking a double carport on site.

- c) Not every house in Thunderbird Drive is identical – different ages, some with carports and some with garages.
- d) They are seeking to improve the streetscape in line with recently renovated homes in the area.
- e) Street parking is limited during Kawana Waters State College (located on the west side of Nicklin Way opposite Thunderbird Drive) school pickup and drop off times, therefore limiting the Appellants access to their house and their ability to obtain on-street parking in front of their property.
- f) Quad Park Sports Complex event day parking limits on-street parking for residents as there is no limitation on parking within Thunderbird Drive, disadvantaging residents in Thunderbird Drive, whereas there are parking restrictions on the opposite side of Nicklin Way.
- g) Quad Park located opposite Thunderbird Drive on the west side of Nicklin Way, the Entertainment Quarter and Sports Precinct increase the volume of external traffic parking in the part of Bokarina east of Nicklin Way, and Thunderbird Drive gets filled first because it has immediate access to Nicklin Way through the traffic lights.
- h) Elsewhere in Bokarina carports have been approved.
- i) As the first home owners in Thunderbird Drive to request approval for a built to frontage carport, they are being disadvantaged by SCRC refusal which is unreasonable.
- j) Given recent weather events (heavy rain and hail), a carport is practical and protects residents assets from the weather.
- k) The carport will not dominate the already varied streetscape.
- l) Neighbours support the carport.
- m) It does not breach any other SCRC controls
- n) There has been a crime rate increase and having a car parked on the subject site gives better security that a car parked somewhere nearby on the street.

Findings of Fact

- 23. Thunderbird Drive is the main access point into the central part of Bokarina, with traffic light control at Nicklin Way facilitating access into and egress from the suburb. The road is narrow with an approximately 6m wide two-way through road and a 2.7m wide parking lane on each side. There is a cycle way symbol on the pavement across the through lane and parking area on each side. There is a footpath approximately 4.5m wide on the north side and 3.5m wide on the south side in front of the subject land. The street functions as a collector-distributor road, not a local residential street.
- 24. The control of parking around Quad Park to the west of Nicklin Way opposite Thunderbird Drive and the lack of parking along Nicklin Way encourages patrons attending events at Quad Park to park to the east of Nicklin Way resulting in external parking occurring in Thunderbird Drive due to its accessibility to Nicklin Way and its proximity to Quad Park.
- 25. Similarly, Thunderbird Drive is used for school pick up and drop off associated with Kawana State College.
- 26. These factors make it difficult for residents of Thunderbird Drive to use Thunderbird Drive for on-street parking for significant periods, particularly during business hours.

Reasons for the Decision:

Thunderbird Drive Character

- 27. Thunderbird Drive is characterized by older style houses (1970-1980) while the surrounding streets show renovations and upgrades to existing housing stock. The resultant streetscapes show different fencing types along the boundary and double garages with a single roller/panel door which may or may not be set back 6m.

28. At the East end of Thunderbird Drive on the south side is a Community Centre housing a Church with limited on-site parking. The proximity to Number 6 is relatively distant, so Sunday overflow parking may not reach as far as the Appellant's dwelling. However with a large function, this overflow parking may occur outside the Appellant's house.
29. At the West end (south side) a small retail development generates more traffic than single residential development. Due to the proximity to Number 6, it is considered likely that retail traffic may impact on the Appellant's residence.
30. Thunderbird Drive is part of the Sunshine Coast cycleway network with a cycleway in each direction.
31. Nicklin Way is the major thoroughfare connecting beach suburbs from Caloundra to the south and Kawana Waters to the north. This road is 4 lanes wide and controlled at the intersection of Thunderbird Drive by traffic lights. On the west side of Nicklin Way there is little provision for parking, due to narrow shoulders and a bus stop south of Thunderbird Drive, and short term parking outside the police station just north of Thunderbird Drive. In the south-bound part of Nicklin Way, there is limited marked parking bays on the east side of Nicklin Way north of the turn lane and south of Thunderbird Drive. It is not surprising that people seek parking in side streets, particularly in Thunderbird Drive, with its traffic lights controlled access to Nicklin Way.
32. Thunderbird Drive is the only feeder road along Nicklin Way providing access to the residential streets and the beach between Wyandra Road and Beach Drive. As such, the volume of traffic is considerably more at any time of day or night than would be experienced by other local streets in Bokarina.
33. The actual street configuration is quite difficult to navigate in a vehicle due to the narrow through lane width, the roundabouts and somewhat confusing road signage. With cars parked on both sides of the street, vision of driveways is restricted and access to driveways may not be immediately apparent. This situation creates a potential for motor vehicle accidents as drivers are easily distracted, particularly during school pick-up and drop-off times. In this period drivers are looking for and moving in and out of parking spaces, cyclists are using the road and children are moving about. The drivers are not expecting movements into and out of driveways.

Quad Park events

34. The Event Quarter and Sports Precinct Masterplan covers the expansion of the entire precinct located to the west of Nicklin Way and opposite Thunderbird Drive Bokarina. Refer Master Planning – Ross Planning document titled “Kawana Sports Precinct” (entire site including Western Fields and Lake Kawana) previously Quad Park Corporation. Clause 3.4.2 Parking – Figure 3 ‘Surrounding Car Parking Capacity’ of this document does not deal with any Event Day parking on the east side of Nicklin Way. Therefore, it is reasonable to assume that the impact on Thunderbird Drive of increasing Event Day traffic will be considerable as it is non-ticketed (and thus free).
35. The Tribunal is aware that for other major sporting facilities development, the State Government has insisted on controlled parking in a 2 km radius of the venue.
36. There are proposals for the expansion of Quad Park and the number of events which will exacerbate this external parking impacting on the availability of on-street parking for residents of Thunderbird Way.

Assessment against Dwelling House Code

Purpose and overall outcomes

37. As indicated above, the proposed carport does not comply with elements of the SCPS2014 Dwelling House Code. However, the purpose and overall outcome of the Code require consideration of the balance between:

- a) comfort and amenity for occupants;
 - b) amenity and privacy of neighbouring residential premises; and
 - c) being compatible with the character and streetscape of the local area.
38. Allowing the appeal to enable the residents to have the carport would be consistent with the first element of the code purpose and overall outcome.
39. The proposed carport would have no impact on the amenity and privacy of neighbouring residential premises as there is usually a car parked in the driveway adjacent to the premises at 8 Thunderbird Drive and this will not change.
40. As indicated above, Thunderbird Way does not have a consistent streetscape and has a mixed character based on the mix of land uses along Thunderbird Way, and the effect of high side and front fences on some property boundaries. The Respondent argued the carport policy would apply to only consider the streetscape in Thunderbird Drive, but the Dwelling House Code refers to the character and streetscape of the local area not just the street.
41. Therefore, the tribunal considers an open sided carport will not have an adverse impact on the character and streetscape of the local area.
42. The Tribunal considers the establishment of the carport will not be incompatible with the character and streetscape of the local area, and the Appellants have argued there are other carports built to frontage in the nearby streets such as Honeysuckle Drive that form part of the local area, and the Tribunal has confirmed these carports do exist.

Other Matters

43. There was a discussion about extending the garage, but the Tribunal considers that a garage would have had an unacceptable impact on the visual amenity of neighbouring residents and on the streetscape and there were services issues that would need to have been overcome.
44. In addition, the appeal is about a carport and changing the application to a garage extending well into the 6m setback would not be a minor change that the Tribunal could consider.
45. Also, it would mean that the agreement of one neighbour would be lost as that agreement was specifically to the open carport as proposed.

Conclusions:

46. While SCRC carport policy seeks to avoid location of carports within 6m from the front boundary, there are several mitigating factors on this site.
- a) The planned expansion of Sunshine Coast Stadium and Event Quarter will impact heavily on the Appellant's on-street parking ability. At this stage, there appears to be no Event Day Traffic Management Plan that covers this street and protects the amenity of the residents.
 - b) Location of several adjacent activities, Kawana Waters State College, local retail centre, Uniting Church church and community centre and beach create more traffic and external parking than would normally be expected in a local residential street.
 - c) Thunderbird Drive's function as a collector-distributor off Nicklin Way creates traffic issues that are causing social and economic sustainability issues for the Appellant.
47. For these reasons, the Appeal should be upheld and the proposed carport should be approved.
48. The Tribunal considers the Appellant has satisfied the onus of justifying the appeal being upheld. The Decision Notice needs to be changed to approve the carport and to impose conditions relating to construction being in compliance with the plans as submitted,

ensuring the structure remains an open carport and managing stormwater drainage from the carport.

John O'Dwyer

Development Tribunal Chair

Date: 11 May 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:

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