



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	21-050
Appellant:	Clive Johnson
Respondent (Assessment Manager):	Rick Drew of Burnett Country Certifiers Pty Ltd
Co-respondent (Concurrence Agency):	Bundaberg Regional Council
Site Address:	17 Coolanblue Avenue, Innes Park Qld 4570 and described as Lot 20 on RP129430 – 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:	10 December 2021 at 10.30 am
Place of hearing:	The subject site
Tribunal:	John O'Dwyer – Chair David Job – Member
Present:	Clive Johnson – Appellant Cara Cole, Richard Jenner – Bundaberg Regional Council (Council) representatives

Decision:

1. The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) replaces the original part Refusal refusing the carport with an Approval of the carport subject to the following conditions:
 - A. The carport is to be constructed with carport posts on the north side located 900 mm from the northern boundary to be clear of a possible future sewer line, in the location shown on the plan being the Gladstone Drafting GD1795 Sheet A03.01 Revision 1 dated 13.08.21 annotated by the Appellant to showing a maximum carport height of 2900mm as submitted to the Tribunal on 17 June 2022.
 - B. Any additional conditions imposed by the Assessment Manager to ensure compliance with the *Building Act 1975* (BA).

Background

2. The subject land is an irregularly shaped lot with a frontage to Coolanblue Avenue to the west, Vesta Street to the south, an unnamed esplanade to the east and Lot 21 on

- RP129430 containing a dwelling to the north. It rises steeply up from the coastline to Coolanblue Avenue. It contains a large tree just inside the Coolanblue Avenue frontage that existed during the period when the surrounding area was used for agriculture.
3. On the western side of Coolanblue Avenue, the land containing dwellings at 18-20 Coolanblue Avenue rises steeply up from Coolanblue Avenue, such that a person standing at the front of those dwellings would be looking down onto the gutter on the front of the dwelling on the subject site, and thus down onto any future car port.
 4. A building application was lodged on 21 July 2021 and the Assessment Manager issued a Confirmation Notice on 23 July 2021 advising the application was referred to Council on a design and siting basis.
 5. A deck is proposed on the eastern frontage of the dwelling overlooking the esplanade and Hervey Bay. This deck was approved by Council subject to conditions and was not the subject of this Appeal and the decision does not further consider this part of the original application.
 6. A double car port is proposed in the north-west corner of the subject site in front of a former garage that has been converted to a bedroom. The double carport was refused by the Assessment Manager on 21 September 2021 on the direction of Council as the concurrence agency.
 7. An Information Request was made on 9 August 2021 and was responded to by the Appellant.
 8. On 20 August 2021, Council issued its Concurrence Agency decision notice including a part refusal applying to the carport and an approval in relation to the eastern deck subject to conditions.
 9. On 7 September 2021 the Assessment Manager issued a Notice of Refusal for the carport.
 10. On 10 September 2021 the Appellant lodged the appeal with the Registry.

Jurisdiction

11. 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 on the direction of the Referral Agency.
12. The appeal was made in time, thus enlivening the Tribunal's jurisdiction.

Decision framework

13. 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.
14. 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.
15. 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.

16. 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.
17. 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

18. 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 10 September 2021, comprising the following documents:

Form 10 - Notice of Appeal dated 10 September 2021 and expanded Grounds of Appeal

Assessment Managers Decision Notice – Refusal – DA4862/21 dated 7 September 2021 including a copy of Council's Referral Notice – Concurrence Agency dated 20 August 2021 requiring refusal of the carport and including Reasons for refusal of the carport and conditions and advice for the approved deck on the eastern frontage and the plans and elevations of the car port and deck.

Letter dated 20 August 2021 from Council to the Appellant, providing a copy of Council's Referral Notice – Concurrence Agency dated 20 August 2021 requiring refusal of the carport and including Reasons for refusal of the carport and conditions and advice for the approved deck and a set of the plans stamped approved but showing the car port as being refused.

Email dated 19 August 2021 from Council to the Appellant providing a link to the Department's guidance on lodging appeals against development decisions.

Information Request by letter dated 9 August 2021 from Council to the Appellant.

Information Response from the Appellant undated.

Confirmation Notice dated 23 July 2021 to the Appellant confirming the building application was properly made and that there was a requirement for a referral to Council for design and siting.

Form 2 Building Work Details dated 21 July 2021

- 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 (Amenity policy)
- D. Queensland Development Code MP1.2 *Design and Siting Standard for Single Detached Housing – on Lots 450 m² and over.* (MP1.2)
- E. Department of Resources – Queensland Globe mapping;
- F. The Planning Act 2016 (PA);
- G. The Planning Regulation 2017 (PR);
- H. The Development Assessment Rules 2017;
- I. The Building Act 1975 (BA);
- J. The Building Regulation 2006 (BR); and
- K. The verbal submissions made by the parties at the hearing and during the site inspection as referred to in the body of the decision.
- L. Email Trail – Tribunal Registry forwarded Tribunal Direction to Appellant dated 6 June 2022 seeking amended plans. Appellant lodged amended plans with Tribunal

on 7 June 2022. The Tribunal Registry forwarded the amended plans to Council for comment on 8 June 2022. Council provided comments on the amended plans on 15 June 2022 raising its concerns as expressed at the hearing and raising additional concerns that the height of the structure created an additional trigger that had not been assessed by Council in relation to the original application. Council also raised its concern that this was the only structure within 6 metres of the frontage north of Vesta Street, and this only arises from the closing in of the previous garage. The Council in its response tabulated the changes from the original plans. The Appellant responded to Council's advice on 16 June 2022 in two emails. The first provided a comparison of the original and amended plans, and the second corrected the Council's tabulation of changes, showing the change in width from 7000mm to 7200mm was the inclusion of the gutter, that the height was 2900mm an increase of 52mm and less than 3000mm the basis for the additional trigger and that the length was still 5000mm. The Registry forwarded the two emails from the Appellant to Council for further comment on 17 June 2022. The Council responded on 21 June acknowledging the Appellant's statement of dimensions was correct and reiterating its opposition to the approval of the development. The Appellant was provided with a copy of the Council response of 21 June 2022 as a matter of fairness but was not asked to respond further as the Tribunal considered it was most unlikely that a further round of comments would affect the positions of the parties or change the Tribunal's considerations

- 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 The carport would have a minor visual impact on the views from dwellings on the western side of Coolanblue Avenue as those properties are elevated above the subject site, and the carport will be seen largely against the existing dwelling due to its low profile with a skillion roof supported on posts and being inside a property with a 1.8m high boundary fence.
- 22 Properties to the north and south have a view focussed on the ocean not on adjoining dwellings and so will not have their view affected by the carport.
- 23 There are carport structures within the 6 metre setback at No 3, No 7 and No 13 Coolanblue Avenue that have a similar or greater impact than will be expected from the proposed carport.
- 24 There are similar premises with high fences at No 1, No 5, No 13, No 15, No 21 and No 27 Coolanblue Avenue that with the subject site create a prevailing character on the eastern side of Coolanblue Avenue that is one of a mix of high and low fences with vegetation and structures close to and set back from the frontages. This is in contrast to the western side of Coolanblue which is dominated by dwellings set back from the frontage and with side fences and low structures forward of the building line.
- 25 There is no clear prevailing character on the eastern side of Coolanblue Avenue, but there is a consistent prevailing character on the western side of Coolanblue Avenue.
- 26 From the Amenity Policy, the intended character is one of dwellings and structures set back from frontages. The western side of Coolanblue Avenue meets this intended character. The eastern side of Coolanblue Avenue does not.
- 27 There are structures extending close to or to the southern frontage on Vesta Avenue either side of Coolanblue Avenue.
- 28 The carport structure at No 7 Coolanblue Avenue dominates the view of that site from the road because of its extensive roof structure.
- 29 The carport at No 13 Coolanblue Avenue fits within the view of the dwelling due to its narrow silhouette resulting from its skillion roof design.

Reasons for the Decision

- 30 The Appellant's responses to the information request and grounds of appeal address the issues under consideration. The Tribunal accepts a skillion roof sloping down from south to north across the driveway is consistent with Council's aims expressed in the Amenity policy.
- 31 At the hearing an alternative was proposed with a skillion roof sloping down from the frontage to the dwelling to minimise the visual impact of the carport. The Appellant agreed to consider this but decided to remain with the original design, and the Appellant agreed to move the carport slightly southwards to avoid a possible future sewer line and with the southern posts in line with the edge of the front door. This solution will reduce the impact of the carport.
- 32 The purported amended plans and information provided by the Appellant on 8 June 2022 were the original plans and showed the height of the carport as 3300mm at its highest point and a length of 7200mm. This 3300mm dimension resulted in a response from Council that this would create an additional trigger as the height was over 3000mm.
- 33 The Appellant then resubmitted the original plans annotated to show a maximum height of 2900mm. The Tribunal has reviewed the plans and considers this annotated dimension reflects the scaled dimension as shown on the drawings.
- 34 The dimensions on the carport were shown as 7000mm on the original drawing and calculated to be 7200mm by the appellant when submitting the amended plans. This additional dimension was the width of the guttering. This additional 200mm can be ignored as MP1-2 defines the outermost projection as to the fascia, excluding rainwater fittings.
- 35 The following reasons are based on this annotated plan Gladstone Drafting GD1795 Sheet A03.01 Revision 1 dated 13.08.21.
- 36 The revised carport design will meet MP1.2 P1 in that the location of the carport will facilitate an acceptable streetscape:
- in that the bulk of the carport will have a limited profile and largely be in front of the dwelling
 - as there are other dwellings with carports to, or close to, the frontage on the eastern side of the southern end of Coolanblue Avenue
 - as there are other dwellings with high fences on the frontage on the eastern side of the southern end of Coolanblue Avenue
 - as the carport will not impact on the views or outlooks of neighbouring residents as the properties on the eastern side of Coolanblue Avenue face over the esplanade out to Hervey Bay and those on the western side of Coolanblue Avenue are at a higher elevation and residents can see around or over the dwelling on the subject site to Hervey Bay and the carport will be below the focus of their views and largely be in front of the dwelling
 - there will be no change to the nuisance and safety to the public, as the existing high fence will remain.
- 37 The revised carport design will meet the Amenity Policy Table 5.1 in that:
- it will have only a minor impact on the dwelling's presentation to the street as that is already heavily impacted by the existing tree and the 1.8 metre high fence along the frontage
 - it will not have an extreme adverse impact on the prevailing or intended character of the streetscape of Coolanblue Avenue as it will fit into the prevailing streetscape on the eastern side of Coolanblue that exists from No 1 to No 21 Coolanblue Avenue and there is very little likelihood that this area will ever change to meet the intended character of open front yards with buildings and structures set back 6 metres
 - it will not be the dominant built form due to the revised skillion roof being set behind a 1.8 m high fence
 - there will be no change to the risk to the public by reducing sight lines of vehicles manoeuvring on and off the site, as the existing high fence will remain.

- 38 The 1.8 metres high fence and dwelling are and will remain the dominant built form as seen from the street. The existing tree will screen the view of the carport from the south and will form a dominant backdrop that will dominate the view from the north.
- 39 While Coolanblue Avenue is an important access to Innes Park Beach Reserve, the development of the carport on the subject site will not significantly impact on the ocean vistas of the travellers, as the high fence and tree in front of the dwelling will still dominate the view as they pass the subject site.
- 40 The subject site is within the area where there is a mix of premises with high fences and with carport structures less than 6 metres from the frontage and so will not change the character of the southern part of Coolanblue Avenue that extends from No 1 to No 21 Coolanblue Avenue.
- 41 The Appellant advised there is a proposed sewer along the north side of the property. The carport posts are to be located to be clear of the proposed sewer line.
- 42 For these reasons the Tribunal considers the Appellant has met the onus of demonstrating the appeal should be upheld.

John O'Dwyer

Development Tribunal Chair

Date: 26 July 2022

Appeal Rights

Schedule 1, Table 2, item 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
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au