



## Development Tribunal – Decision Notice

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### *Planning Act 2016, section 255*

<b>Appeal Number:</b>	<b>20-028</b>
<b>Appellant:</b>	Shaine Randall and Billy Seller
<b>Respondent (Assessment Manager):</b>	Neil Lockett
<b>Co-respondent (Concurrence Agency):</b>	Sunshine Coast Regional Council
<b>Site Address:</b>	102 Nambour Mapleton Road, Nambour QLD 4560 and described as Lot 1 on RP203759 – the subject site

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### **Appeal**

Appeal under section 229 and item 1 of table 1 of section 1 of schedule 1 of the *Planning Act 2016* (PA) against the decision to refuse a preliminary approval for a class 10a carport, being building works assessable against the planning scheme (works associated with a dwelling house).

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<b>Date and time of hearing:</b>	11 December 2020 at 1.00 pm
<b>Place of hearing:</b>	The subject site.
<b>Tribunal:</b>	John O'Dwyer– Chair attending by Skype with the agreement of the Parties Chris Finch - Member
<b>Present:</b>	Shaine Randall, Steve Randall Craig Sanger Appellant and advisors Trevor Gerhardt representing the Assessment Manager Leanne Simpson, Mitchell Swieso - Council representatives

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) **replaces** the decision of the Assessment Manager with a preliminary approval subject to the conditions as set out below:

- A. The carport is to be set back 1.2 metres from the road frontage.
- B. The carport is to have a skillion roof to reduce its visibility.
- C. The Appellant is to provide and maintain a minimum of three native plants spaced in front of the first two panels of the brick front fence to the east of the proposed driveway. The native plants are to be species common to the area being bushy in nature and have a design height of at least 3.5 metres and diameter of at least 2.0 metres at full growth to provide visual screening of the carport from the east.

AND such other conditions, not inconsistent with the above, as might be imposed by the Assessment Manager to address the requirements of the *Building Act 1975* and the Building Regulation 2006.

### **Background:**

1. The Appellants applied in 2020 to the Assessment Manager for a preliminary approval to construct a double carport set back 1.2 metres from the road frontage at a new position on the site to replace an existing garage and driveway access.
2. The site viewing showed the Appellants have constructed a new flat concrete carparking area with space for two cars further up the slope from the existing driveway. This will avoid vehicles scraping across the edge of the driveway. The Appellants propose to erect the carport over this flat area and will remove the fence in front of this area and rebuild the fence across the former driveway using the removed bricks. A new gate will then be installed in the new opening and a new driveway crossover will need to be constructed. It will need approval from the Department of Transport and Main Roads. The Appellants requested this approval of the carport to provide weather protection for their vehicles and people entering and leaving vehicles.
3. The Appellants explained that access to the previous garage was damaging their vehicles due to the change in angle of the drive. As a result, they converted the garage to part of the dwelling during renovations. The Appellants and their representative indicated that they considered that the carport would not adversely affect the visual continuity or pattern of the street.
4. The Appellants provided two options for the carport, one with a gable at the end nearest the frontage and one with a skillion roof.
5. In August 2020, the Assessment Manager referred the application to Sunshine Coast Regional Council (Council) as a concurrence agency for the application, in relation to the design and siting of the carport under the *Planning Regulation 2017* schedule 9, part 3, division 2, table 3.
6. On 11 September 2020, Council issued its referral agency response directing the Assessment Manager to refuse the application:

“1200mm setback from outer most projection of the carport to the road/property boundary”

Reason for the Refusal:

“1 The proposal does not meet:

PO2(d) – maintain the visual continuity and pattern of and landscape " within the street.”

- The visual continuity and pattern of Nambour – Mapleton Road, Nambour predominantly comprises of dwellings set back 4.5m – 6.0m from the road frontage with continuity of the built form generally being maintained. Council considers the carport proposed 1200mm from the front boundary to be inconsistent with the pattern of buildings within the street. Council therefore considers that this carport does not maintain the visual continuity and pattern of buildings within the street.

2 The existing car parking provided on the site achieves the requirements of the Dwelling House Code, therefore council can see no reason to depart from the planning scheme for this proposal.”

7. On 16 September 2020, the Assessment Manager issued a decision notice refusing the application for the carport as directed by Council.
8. On 12 October 2020, the Appellants lodged this appeal with the Development Tribunal Registry against the decision to refuse the carport.
9. The Chairperson, Mr John O’Dwyer fell ill on the morning of the appeal hearing. Rather than delay the hearing, he arranged for the Development Tribunal Registry to seek the agreement of the parties to the Chairperson attending by Skype. That agreement was obtained from the parties and the appeal proceeded on that basis. The Tribunal Member Mr Chris Finch provided the Chairperson with a view of the salient parts of the property and the streetscape via phone camera in the presence of the parties.

#### **Jurisdiction:**

10. This Tribunal has jurisdiction to hear this appeal under the PA section 229(1)(a)(i) and Schedule 1, sections 1(1)(b) 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.
11. The appeal was made in time, thus enlivening the Tribunal’s jurisdiction.

#### **Decision Framework:**

12. This is an appeal against a decision in relation to a development application for a preliminary approval and so the onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA).
13. 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). The tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

#### **Material Considered:**

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 12 October 2020. This includes:
  - Referral Agency Response from Council dated 11 September 2020, directing refusal of the carport
  - Preliminary Approval Decision Notice dated 16 September 2020 refusing the application for the carport.
  - Document CAR20/0321 Grounds for Appeal attached to Form 10 setting out the reasons for the Appeal.

- B. The *Planning Act 2016* (PA)
- C. The Planning Regulation 2017
- D. The *Building Act 1975* (BA)
- E. The Building Regulation 2006
- F. The Sunshine Coast Planning Scheme 2014 – Dwelling House Code
- G. Queensland Development Code Mandatory Part 1.2 – Design and Siting Standard for Single Detached Housing - on Lots 450m<sup>2</sup> and over (QDC MP-1.2)
- H. Copy of Appeal 19-003 tendered at the Appeal by the Assessment Manager’s representative and subsequently forwarded to the parties by the Tribunal Registry.
- I. Verbal Submissions from Mr Gerhardt on behalf of the Appellants at the hearing
- J. Verbal Submissions from the Council representatives at the hearing
- K. Verbal Submissions directly from the Appellants and advisors at the hearing

### **Findings of Fact:**

14. The subject land is a regularly shaped lot, steeply sloping across and down to the north-east from Nambour Mapleton Road in Nambour. The site is located on a short straight stretch of Nambour – Mapleton Road – a State-controlled road. The site contains a primary dwelling, a secondary dwelling and a swimming pool from west to east across the frontage all largely hidden behind a tall brick front fence that is stepped down to the east across the frontage.
15. The high point of the site is at the south west corner of the site falling approximately 3.5 metres down to the east along the frontage and falling approximately 13 metres across the site to the low point at the north-east corner of the site.
16. The primary dwelling had a single car garage in the south-east corner of the dwelling with a short, steep driveway up to the road frontage which then dropped slightly down across the footpath to the crossing of the kerb. There was significant evidence of the bottom of cars having scraped across the highpoint in the driveway due to the steep change in angle of the driveway across the front boundary of the site.
17. The Appellants have been renovating the primary dwelling and the former single garage has been closed and converted into part of the dwelling leaving no covered car parking on site.
18. The subject site is zoned Low Density Residential under the Sunshine Coast Planning Scheme 2014 and a carport is subject to the Dwelling House Code in this zone.
19. The 1.2 metres setback to road frontage of the proposed double carport does not comply with the Acceptable Outcome AO2.1 of the Dwelling House Code which is an alternative provision to QDC MP1.2 and is the applicable assessment benchmark for initial consideration by Council, as Performance Outcome PO2 is not identified as an alternative provision to QDC MP1.2.
20. As the development is not accepted development under AO2.1, the Dwelling House Code PO2 and QDC MP1.2 become the relevant assessment benchmarks for the carport.

21. The Assessment Manager requested from Council a Referral Agency Response (Building Work) in relation to design and siting of a carport on the subject land.
22. On 11 September 2020, Council issued its Referral Agency Response directing refusal of the application for the carport for the reasons set out in paragraph 6 above, that the proposed development did not comply with PO2 paragraph (d).
23. On 16 September 2020, the Assessment Manager issued a Decision refusing the application for a preliminary approval for the carport.

**Reasons for the Decision:**

24. The Tribunal has had regard to all the material presented during the Appeal and the submissions made during the hearing of the Appeal. However, only relevant parts of the material affecting the decision are specifically noted herein.
25. At the hearing, , the Assessment Manager as representative for the Appellants, drew the Tribunal's attention to Appeal 19-003 (the Brockwell Appeal) and requested the Tribunal to consider that appeal in general and in particular section 58 of the Reasons for the Decision as guidance in deciding this appeal. The Tribunal has noted the Findings of fact in paragraphs 41-44, 46-47 and 49-52 of the Brockwell Appeal and the Reasons for the Decision in paragraph 58 of that appeal as relevant considerations in reaching its decision in this case. These provisions set out the relationship between the PA and BA in relation to building assessment provisions under the QDC MP1.2 under the BA and in relation to alternative provisions to the QDC MP1.2 in Planning Scheme provisions.
26. AO2.1 of the Dwelling House Code is a quantifiable standard that is an alternative provision to the QDC MP 1.2. Where a development cannot comply with that quantifiable standard, the Referral Agency assessment defaults to consideration of the Performance Outcome for that Acceptable Outcome. In this case Council have relied on PO2(d) as the basis for its decision. The Tribunal accepts that this is the relevant provision of the Dwelling House Code against which to assess the appeal.
27. Council's referral agency response advised the visual continuity and pattern of Nambour – Mapleton Road, Nambour predominantly comprises of dwellings set back 4.5m – 6.0m from the road frontage with continuity of the built form generally being maintained.
28. The Tribunal noted that Nambour – Mapleton Road is a winding road with short straight sections each with their own streetscape character. The straight where the subject site is located is dominated by a low retaining wall on the southern side topped by screening vegetation and with a light industrial area at the western end, while the northern side is dominated by the brick front fence on the subject site and open properties with a mix of setbacks either side.
29. The Tribunal considered there was no visual continuity and pattern of buildings in this section of the street that would be affected by the carport and that a carport on the site would not intrude into the streetscape due to the dominant effect of the existing brick front fence.

30. Council also advised that the existing parking on the site complies with the requirements of the dwelling house code and could not see any reason to depart from the planning scheme requirements to approve this structure. The Tribunal does not accept this argument, as it is reasonable for a landowner to be able to change car parking location, layout and number of spaces on a site to meet changing circumstances. Also, in this case, the steep angle of the current driveway and narrow gate opening is inherently unsafe as the driver of a vehicle would have limited visibility coming onto the road, due to the steep drive and narrow gate. The proposed parking will have a wider gate with better visibility and the vehicle will be level when driving onto the road, a much safer outcome.
31. The appellants proposed two options for the roof line of the car port, a gable roof and a skillion roof. The Tribunal considers the skillion roof would be a better solution. From the west, the carport would be barely visible over the brick front fence. While the carport roofline would be more visible from the east, its appearance as a skillion roof would be sympathetic to the horizontal roofline of the secondary dwelling which is also visible from the east.
32. The Tribunal considers Performance Outcome PO2(d) has been satisfied in relation to the proposed carport.
33. As a result of the site viewing, the Tribunal is of the opinion that there should be some landscaping on the east side of the proposed carport site.
34. In the circumstances, the Tribunal has decided this appeal as set out under the heading 'Decision' on page 1.

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**John O'Dwyer**

**Development Tribunal Chair**  
**Date: 20 January 2021**

## **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)**