



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-068
Appellant:	Paul Anthony Cash
Respondent (Assessment manager):	Veen Lyall-Wilson
Co-respondent (Concurrence agency):	Sunshine Coast Regional Council
Site address:	67 Burnside Road, Burnside Qld 4564 described as Lot 96 on SP209305 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the refusal of a Development Application for approval of Building Works being additions to a dwelling for a double width carport to be built within the road setback area. The decision followed a referral agency response by the Sunshine Coast Regional Council, directing refusal of the application. Council referenced their assessment and advice against the Sunshine Coast Planning Scheme 2014 – Dwelling House Code.

Date and time of hearing:	10.00am, 9 February 2024
Place of hearing:	The subject site
Tribunal:	Debbie Johnson - Chair Catherine Brouwer - Member
Present:	Paul Cash - Appellant Alice Hanigan - Council representative Zana Larikka - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the Assessment Manager to refuse the development application for building works assessable against the planning scheme.

Background

1. The subject site has a site area of 691sq/m. The property is rectangular in shape with an approximate frontage width of 20m facing southwest onto Burnside Rd. The land rises noticeably from the street to the existing dwelling, with the slope being slightly more pronounced on the southern side where the driveway is situated.

2. The site boasts a very tidy garden and a single storey brick veneer dwelling with a tiled Dutch gable roof. It was built in 2008 or thereabouts. The entry to this home addresses the street frontage. Adjacent to the entry area is a double width garage that incorporates an open laundry, exercise equipment and storage areas. While the site is fenced with timber palings along the side boundary, the street frontage is treated differently with a decidedly open, powder coated aluminium fencing that is approximately 1.2m high.
3. Residential properties either side of the subject site are similarly well presented, with well-kept gardens. They appear to have been built in, or around the same period as the appellant's property. Directly across Burnside Rd, the neighbouring lands are open and semi-rural in appearance. Minimal residential development is evident at this stage however, given this land is currently zoned Emerging Community, it will likely change in the foreseeable future. For now, these 'rural' properties provide a stunning outlook from the subject site. Burnside Road has street trees regularly planted in pairs along this locality, a mown grass verge with a central pathway on the subject site side, and an all grassed verge on the opposite side.
4. Overall, the approach to this location and the site itself, provides a favourable impression. This is due to the openness, the landscape treatment of Burnside Road and the obvious care taken in tending private gardens.
5. The tribunal was informed that the appellant had determined to renovate and extend their home having purchased it around ten years earlier. A key objective was the need to provide a double width carport onsite to cater for their vehicles, and that it has a higher clearance than the existing garage.
6. The appellant engaged the services of Coastal Patios. The final design illustrates a double width carport within the 6m street setback and a covered walkway from the carport to the existing entry of their dwelling.
7. On 3 November 2023, the appellant's building certifier submitted a Request for a Referral Agency Response under Schedule 9, Part 3, Division 2, Table 3 of the Planning Regulation 2017, to the Sunshine Coast Regional Council for proposed building work within the prescribed setback requirements.
8. On 17 November 2023, Council issued a Referral Agency Response directing the assessment manager to refuse the application for the reasons stated in their response.
9. On 24 November 2023, the assessment manager issued a decision notice refusing the carrying out of building works. The decision stated the following reason:

*Sunshine Coast Council Decision Notice (Refusal) for CAR23/0759
(Sunshine Coast Council Reasons for Refusal are outlined in their Decision Notice).*
10. On 4 December 2023, the appellant stated his grounds for appeal and completed and submitted the Form 10 – Notice of Appeal to the Registrar.

Jurisdiction

11. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
12. Schedule 1 of PA, section 1(2) however states table 1 may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section. Subsection (g) of section 1(2) states:

a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission.

13. The tribunal is satisfied that the application lodged with the assessment manager and the referral of the development application to Council satisfies that requirement, being, a development application for approval of building works under the section 33 of the *Building Act 1975*, which allows alternative provisions to QDC boundary clearance and site cover provisions for particular buildings.
14. That application was subsequently refused by the assessment manager as directed by Council as the referral agency. Table 1 item 1(a) in schedule 1 of the PA sets out that for a development application an appeal may be made to a tribunal against the refusal or all or part of the development application.
15. The refusal directed by Council and made by the Assessment Manager have enlivened the jurisdiction of the Tribunal.

Decision framework

16. Section 246 of the PA provides as follows (omitting the examples contained in the section):
 - (1) *The registrar may, at any time, ask a person to give the registrar any information that the Registrar reasonably requires for the proceedings.*
 - (2) *The person must give the information to the registrar within 10 business days after the registrar asks for the information.*
17. Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:
 - (2) *Generally, the appellant must establish the appeal should be upheld.*
 - (4) *The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.*
 - (5) *However, the tribunal may, but need not, consider— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.*
18. Section 254 of the PA deals with how an appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal (not relevant here) and are as follows:
 - (1) *This section applies to an appeal to a tribunal against a decision.*
 - (2) *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; or*
 - (e) *[not relevant].*
 - (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*

Material considered

19. The material considered in arriving at this decision comprises:
 - a. Proposed building works plans prepared by Coastal Patios for the appellant. There are no identifying drawing numbers or dates provided on these drawings. These drawings were provided by the Sunshine Coast Regional Council representatives following the hearing.
 - b. Referral Agency Response for CAR23/0759 dated 17 November 2023, directing the assessment manager to refuse the development application for building works.
 - c. Decision Notice - Refusal issued by the assessment manager being Veen Lyall-Wilson of Pronto Building Approvals reference number 231202, dated 24 November 2023.
 - d. Form 10 – Appeal Notice and other documents including the appellant’s written grounds for appeal, photographs and Coastal Patio drawings, lodged with the Tribunals Registrar on 7 December 2023.
 - e. Google maps and street view images.
 - f. Nearmaps satellite images from 2010 to current date.
 - g. Core Logic RP Data Online
 - h. The Planning Act 2016 (PA).
 - i. The Planning Regulation 2017 (PR).
 - j. The Development Application Rules.
 - k. The Building Act 1975 (BA).
 - l. The Building Regulation 2021 (BR).
 - m. The Queensland Development Code (QDC) Part MP 1.2.
 - n. The Sunshine Coast Regional Council’s Development.i.
 - o. The Sunshine Coast Regional Council Planning Scheme 2014.
 - p. The National Construction Code 2019 (NCC).
 - q. The verbal submissions made by the parties at the hearing and during the site inspection.

Findings of fact

20. The hearing for the appeal was held at the appellant’s home and therefore at the subject site, on 9 February 2024. The existing residence provides a double garage that is incorporated within the walls of the single storey dwelling. The road boundary setback, measured from the garage fascia, being the outermost projection at that point, is approximately 8m. There is a fall of perhaps 1m down the length of the concrete driveway that provides access to the garage, from the road.
21. The tribunal was informed that the appellants required two additional covered car parking spaces, and that the existing garage was not suited to their needs, due to its limited size. Further we were advised, that the existing garage and laundry was now largely used for storage and recreational purposes, and that widening the garage to the boundary was considered too high a cost.
22. At the hearing the appellant reiterated justification for the allowance of a new double width carport to be built within the front setback area. Weather protection for their vehicles was a priority and the appellant explained that the proposal would have a negligible impact on views and would in fact enhance the streetscape. This was further evidenced by the submission of written endorsement from four adjoining or nearby property owners.
23. The appellant had gathered and submitted photographic evidence of other properties in neighbouring streets that appeared to have reduced building line setbacks demonstrating this might set a precedence.

24. The Council representatives advised that examples or cases in other streets were not considered applicable as the relevant provisions are to maintain the streetscape or pattern of houses on this street, and in this vicinity. Council raised that a carport setback, height and visibility is to be consistent in the street, and in this street they see the majority of setbacks are 4.5 metres or greater or compliant with the 6m setback.
25. Coastal Patio's building design plans are conceptual, not a construction issue. Dimensions vary, depending on which drawing is referred to however the carport is effectively 6.6m wide and 5.6m deep, being designed to overlap or 'flyover' the eaves of the existing roofline. The edge of the carport roof is designed to align with and sit 105mm inside the side boundary fence, that separates the subject site from their southern neighbour.
26. The maximum height of the structure is not clear, however given the dimensions shown to the underside of the roof line it would appear to be less than 3m high when measured at the entry to the driveway. Given the slope down the driveway, it would measure higher than this along the front of the carport facing the street while also under 3m height.
27. The carport design is a contemporary light weight colour bonded steel structure, with a low level, 2 degree, pitch. By contrast, the existing dwelling features a clearly pitched roof of dark concrete tiles.
28. Council's referral agency response directed the assessment manager to refuse the building application based on their assessment against the Sunshine Coast Planning Scheme 2014 – Dwelling House Code. Council specifically referenced Performance Outcome PO2(d) that states:

Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.

29. Council found and stated in part:

The visual continuity and overall pattern of Burnside Road comprises of a consistent compliant front setback for dwellings with carports, garages and sheds predominately setback 6m, and the continuity of the built form generally being maintained.

Located at 3m from the front boundary, the proposed carport is inconsistent with the front setback pattern of the street and would not maintain the visual continuity and pattern of buildings and landscape elements within the street

and:

The existing dwelling has covered carparking spaces and sufficient room on the driveway for two additional vehicles which exceeds the requirements for parking in the Dwelling House code.

The Queensland Development Code (QDC)

30. QDC MP 1.2 applies to new building work for single detached dwellings, Class 1 and associated Class 10 buildings and structures on lots 450m² and over in area.
31. QDC Acceptable Solutions A1 and A2 outline the required building line setbacks from the road, side and rear boundary lines.

32. A1(a) states:

For a detached dwelling, garage or a carport the minimum road setback is –
(i) 6m;
...

33. A2(a) states:

The side and rear boundary clearance for a part of the building or structure is –
(i) *where the height of that part is 4.5m or less - 1.5m;*
...

34. A2 goes further to qualify exemptions and conditions pertaining to this requirement. The exemptions could apply to an open carport structure:

A2 (c) *Structures may be exempted from A2 (a) ... where –*
(i) *the structure is not a deck, patio, pergola, verandah, gazebo or the like other than one permitted under A2 (c) (v) [being primarily a horticultural structure];*
(ii) *the structure is not used for entertainment, recreational purposes or the like;*
(iii) *a screen, fence or retaining wall or a combination of screens, fences or retaining walls is not more than 2m in height.*
(...)

35. A2(d) refers to structures which could include an open carport and states:

Subject to A2(c), class 10a buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where –
(i) *the height of a part within the boundary clearance is not more than 4.5m and has a mean height 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*
(...)

36. However, despite the provisions outlined in the QDC, a local government may adopt alternative boundary clearances and site cover provisions for Class 1 and 10 buildings in their local planning scheme. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions.

37. In the Sunshine Coast Planning Scheme, Part 9.3.6 Dwelling House Code PO2, contains alternative siting provisions to those prescribed in the QDC.

38. 9.3.6.2 outlines the purpose and overall outcomes for the Dwelling House Code and states in part:

- (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.*
- (2) *The purpose of the Dwelling house code will be achieved through the following overall outcomes:-*
 - (a) *a dwelling house incorporates a high standard of design and makes a positive contribution to the streetscape character of the area in which it is located;*

- (b) *a dwelling house is sited and designed to protect the amenity and privacy of neighbouring residential premises;*
 - (c) *a dwelling house provides a high level of amenity to the residents of the dwelling house;*
 - (d) *a dwelling house is provided with an acceptable level of infrastructure and services;*
39. 9.3.6.3 outlines the relevant performance outcomes and acceptable outcomes for a Dwelling House and Table 9.3.6.3.1 sets out the requirements for accepted development and performance outcomes and acceptable outcomes for assessable development.

40. A02.1 being an acceptable outcome for Garages, Carports and Shed states in part:

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;*
- (b) *does not exceed a height of 3.6 metres;*

Note—A02.1(a) alternative provision to QDC.

41. PO2 provides the performance outcomes for Garages, carports and sheds. The performance outcomes must be demonstrated when the corresponding acceptable outcome is not met. In this instance where the appellant seeks to erect a carport within the 6m setback area they do not meet the acceptable measure set out under A02.1.

42. Therefore, it must be demonstrated that the proposed development does meet the performance criteria under PO2 which is listed below:

- (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.*

43. Council's referral agency response directed the assessment manager to refuse the building application based on their assessment against the Sunshine Coast Planning Scheme 2014 – Dwelling House Code. Council only referenced Performance Outcome PO2(d) that states:

Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.

44. Therefore, it is the responsibility of the Tribunal to determine if the visual continuity and pattern of buildings and landscape elements within this street could be maintained should the proposed carport be constructed. While the appellant has provided supporting documentation already outlined in this decision, the only matters that the Tribunal may lawfully take into consideration are those that address PO2(d).

Reasons for the decision

45. The tribunal finds that the predominant streetscape consists generally of established dwellings similar to the appellant's home on the subject site. There are no examples of existing carport structures with over 3m of the structure within the 6m street setback area, in the immediate vicinity of the subject site. The proposed double width carport is shown over the existing driveway which is the highest and therefore the most visually prominent of the house and site frontage, as seen from the footpaths and street in the vicinity.

46. Though there are street trees in Burnside Road, there are no shrubs or similar dense planting on the nature strip across the frontage to the subject site, and this is the pattern of landscape elements in this vicinity. Therefore, there is no direct screening afforded to the subject site, and the proposed carport would be noticeable from the street.
47. The Tribunal is of the opinion the proposed carport would not maintain the visual continuity and pattern of buildings and landscape elements within the Burnside Road in this vicinity.
48. The Tribunal finds that the proposed car port in the form proposed would conflict with PO2(d) of the Dwelling house code.

Debra Johnson
Development Tribunal Chair

Date: 18 April 2024

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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