



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	21-062
Appellant:	Graeme Leslie Ferguson
Respondent:	City of Gold Coast Council (Council)
Site Address:	22 Joan Street, Southport, Lot 95 on RP 87939 – the subject site

Appeal

Appeal under section 229, section 1 of Schedule 1 and item 1 of Table 1 of the *Planning Act 2016* (PA) against the refusal of a development application for a carport. City of Gold Coast Council as the Referral Agency, directed the Assessment Manager to refuse the application by Response Notice RAA/2021/1371 dated 13 September 2021, stating six reasons related to siting and inadequate dimensions.

Date and time of hearing:	Tuesday 22 March 2022, 10:00 to 11:00am
Place of hearing:	The subject site – 22 Joan Street, Southport
Tribunal:	Victoria Jones – Chair Jane Grimmond – Member Dayv Carter – Member
Present:	Graeme Ferguson – Appellant Wiremu Cherrington – Council representative Shane Weterings – Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) sets aside the decision of the Referral Agency and approves the application for a carport in accordance with RW Creative drawings – site plan, floor plan, elevations, issued 29 June 2021.

Please be advised that you may elect to lodge an appeal/declaration about this matter in the Planning and Environment Court (the Court). The Court appeal period starts again from the date you receive this Decision Notice which should be attached to the Court appeal lodgement documentation.

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>

Background

Subject site and surrounds

1. The subject site has a front boundary width of 15 m and a total area of 506sqm. It supports a detached two-storey dwelling with an integrated double garage that projects forward of the standard 6m setback to 4.50m¹. Appurtenant to the garage is a concreted apron as wide as the door, which narrows to a single crossing on the street. The front boundary has a 1.3m high fence, with alloy slats above a rendered concrete base and piers, which enables visibility of the front entrance and garden that is shaded by a mature Tuckeroo and palm trees.
2. On adjoining residential properties:
 - to the south, there is a carport on the side and front boundaries, with a garage door abutting the street;
 - to the north, a standalone carport has been erected within the front setback. It appears that an original single garage has been converted to a habitable room.
3. The grassed nature strip in front of the subject site is approximately 4m wide. This side of Joan Street has no footpath. The opposite side of the street has a concrete footpath. The southern end of Joan Street terminates with a local recreation reserve. Vehicle traffic in Joan Street is low and pedestrian activity is infrequent.
4. Attachment 1 shows photographs of the subject site and general character of Joan Street. Some properties have traditional garden setbacks and there are numerous high fences, gatehouses, garages and carports built front to boundaries. A new house under construction at 32 Joan Street reflects the circumstance on the subject site, with an approved front setback of 4.496m.

Description of proposed carport

5. The purpose of the proposed carport is to provide weather protection for cars that are parked on the driveway apron.
6. The design of the proposed carport has open sides with narrow, powder-coated steel posts, colourbond split-gable roof consistent with the materials and shape of the existing house.
7. Dimensions and siting of the proposed carport:
 - Roof span – 6m wide by 4.1m long
 - Roof height – 2.6m to underside of perimeter beams, 3.824m to highest edge of top sheet
 - Setback from front (western) boundary – 0.150m in line with piers of the existing front fence
 - Setback from side (southern) boundary – 0.5m
 - Length of driveway from front boundary to recessed garage door – 4.74m

Council reasons for refusal

8. The Response Notice RAA/2021/1371 stating the following reasons for refusal of the application:
 - The proposed development is for a carport, and therefore has a characterisation of its intended purpose, being for on-site vehicle parking.
 - The proposed carport does not satisfy the minimum 5.4 metre length dimension required to satisfy the relevant Australian standards referenced within RO12 of the Transport code [noted as an alternate provision to the dimensions referenced within Queensland Development Code Part MP1 .2 A8(iii)].
 - Per the City of Gold Coast's consistent approach to assessing the amenity impacts of such buildings, any carport that does not provide a minimum of 5.4 metres to accommodate on-site car parking is not supported due to the potential for vehicles to overhang into the road reserve.

¹ 4.5m building setback relaxation, in lieu of standard 6m setback approved by Council 2001

- Through the characterisation of its intended purpose, the carport will encourage the parking and overhang of vehicles within the road reserve area, presenting amenity impacts to adjoining dwellings and the streetscape. In particular, the overhang of vehicles presents an amenity and safety concern for neighbouring dwellings when attempting to exit their property, by blocking sight lines.
- In addition, it cannot be ensured that the existing garage parking areas will be retained and used for that purpose, therefore resulting in a potential shortfall in the required car parking spaces for the dwelling.
- As the proposed carport cannot sufficiently accommodate vehicle parking in accordance with the relevant dimensions, the proposed development cannot be considered to sufficiently ensure the protection of neighbouring and streetscape amenity, nor ensure the provision of on-site car parking to meet Performance outcome PO1.

Material Considered

9. The material considered in arriving at this decision comprises:

- 'Form 10 – Appeal Notice', lodged with the Tribunals Registrar on or about 28 October 2021, including grounds for appeal and documentation:
 - RW Creative drawings – site plan, floor plan, elevations, issued 29 June 2021
 - Photographs of the subject site and proposed carport design style
 - Response Notice – Referral Agency – refusal RAA/2021/1371
- Existing house site plan, 10 May 2001 (GCCC relaxations PA 21/02117, DA 21/ 01518), and council records associated with approval of side and front setback relaxations
- Photographs of the subject site and neighbourhood taken by Tribunal referees during the site inspection on 22 March 2022 (Attachment 1)
- Comments by the appellant and council representatives at the hearing
- Council submission presented at the hearing to explain how the application was assessed (background, jurisdiction, 14 summary points, photographs of vehicles parked on the driveway)
- Points raised by the appellant submitted via email to the Registrar on 29 March 2022
- City of Gold Coast City Plan Version 8, 1.5 Building work regulated under the City Plan, 6.2.1 Low density residential code
- Planning Act 2016 (PA)
- Planning Regulation 2017 (PR)
- Development Assessment (DA) Rules 2020
- Building Act 1975 (BA)
- Building Regulation 2006 (BR)
- Queensland Development Code (QDC) Part MP 1.2
- Driveway Safety Design Guidelines, Australian Government, 2014
- Australian Guide to Road Design, Part 6A: Paths for Walking and Cycling and Part 6B: Roadside Environment, Austroads, 2021
- AS/NZS 2890.1:2004 Parking facilities, Part 1: Off-street parking

Findings of Fact

The Tribunal makes the following findings of fact:

Issue in dispute

10. The proposed side setback of 0.5m in lieu of the standard 1.5m was not disputed. Nor was the principle of erecting an open carport within the front setback to the street boundary. Council's refusal was based on the carport covering a car parking space that fails to satisfy the minimum 5.4 metre length dimension in accordance with the relevant Australian standards referenced within RO12 of the Transport code [noted as an alternate provision to the dimensions referenced within Queensland Development Code Part MP1 .2 A8(iii)].

11. The Council also claimed it cannot be ensured that the existing garage parking areas will be retained and used for that purpose, therefore resulting in a potential shortfall in the required car parking spaces for the dwelling. The Tribunal considered this ground to be ultra vires, as is assessment of the matter in relation to the Transport Code for car parking, because the existing garage satisfies car parking provisions, and the proposed carport does not constitute a material change of use.
12. The Appellant claimed that the purpose of the carport is to provide weather protection and it will not change or influence the way this space is currently used. There is also the availability of on-street parking without time limits directly in front of the subject property, where longer vehicles may be parked.
13. The essential issue in dispute came down to whether construction of the proposed, shorter than standard carport, will exacerbate the probability of parking on the driveway with vehicles overhanging beyond the front boundary, causing an amenity and safety concern for neighbouring dwellings by blocking sightlines when attempting to exit their property.

The planning framework

14. The application sought to erect a carport which is assessable development that required referral to Council and assessment in respect Planning Regulation 2017, Schedule 9, Division 2, Table 3 – Design and siting (front and side boundary clearances for a class 10a carport within the 6m street frontage setback area).
15. Gold Coast City Plan 2016, Section 1.5 Building work regulated under the City Plan necessitates assessment in respect to Queensland Development Code (QDC) alternative provisions in relation to boundary clearances assessable within the relevant zone code.²
16. Gold Coast City Plan 2016: v8, Part 6.2.1 Low density residential zone code assessment benchmarks, Table 6.2.1-2 Setbacks. The proposal does not comply with the Acceptable Outcome of 6m front and 1.5m minimum side setbacks, accordingly, assessment rests on the specified Performance Outcomes (PO1) for setbacks being:
 - (a) assist in the protection of adjacent amenity;
 - (b) allow for access around the building;
 - (c) contribute to streetscape character; and
 - (d) allow for on-site parking.

Car parking standards

17. As a guide for understanding the magnitude of departure from standard dimensions, it is useful to acknowledge relevant provisions that would apply to this situation if additional car parking were required for a material change of use and the Transport Code were formally applicable to this matter:
 - QDC A8(iii) notes that a double covered car parking space is to be provided at a length of 5m. The proposed carport roof length (4.1m) is 0.9m shorter than standard.
 - AS/NZS 2890.1:2004 standard for car space dimensions specifies 5.4m minimum length, and 5m for small cars. The driveway length available for vehicle parking (4.74m) is 0.26-0.66m shorter than standard.

² The subject site is located within the Low density residential zone of the City Plan 2016. It is noted that the site is within the Council's Targeted Growth Area and it is intended that the zone will be amended to the Low to Medium Density Residential Zone, Part 6.2.2 (pending ministerial approval).

Alternative solutions discussed at the hearing

18. Council representatives indicated that a shade structure in lieu of the roofed carport, or a standalone carport in the front garden could be acceptable solutions. The appellant indicated that he had explored and rejected such alternatives for the following reasons:
- Shade structure - inadequate protective cover, lesser material quality and durability, inconsistent with the architectural style of the house; and
 - Standalone carport in the front garden - manoeuvring difficulty, obstruction of the pathway to the front door of the house, and desire to retain the garden with mature shade trees in its current state.

Reasons for the Decision

19. Having regard to the applicable Performance Outcomes for setbacks, considerations must include:
- a. assist in the protection of adjacent amenity;
 - b. allow for access around the building;
 - c. contribute to streetscape character; and
 - d. allow for on-site parking.
20. The situation here was set in 2001 when the house and garage was approved:
- the use was and remains accepted development;
 - on-site car parking provision was and remains satisfied by the double garage;
 - the standard 6m front setback requirement was relaxed to 4.5m;
 - the standard 1.5m side setback requirement was relaxed to 0.2m for the southern wall of the garage.
21. Accordingly, access around the building and allowance for on-site parking are not relevant to consideration of the current matter. Siting assessment pertains only to protection of adjacent amenity, and contribution to streetscape character.

Streetscape character

22. The proposed carport is essentially a weather shelter for the driveway and any vehicles that are parked on it. It is open on all sides. Visually, it is proportioned and styled to compliment the house.
23. If the house and garage were built back 6m and the car parking space on the ground were 5.4m long, it could be expected that the council would allow a carport to the property boundary.
24. In Joan Street and the immediate neighbourhood there are many precedent high walls, gatehouses and garage structures on front boundaries that have eroded the traditional garden setbacks.
25. The Tribunal considers that the design and siting of the proposed carport will not be detrimental to streetscape character.

Adjacent amenity

26. The dispute therefore came down to what the Council identified as an amenity concern about tails of large or long vehicles potentially overhanging into the road reserve and blocking sightlines for neighbouring residents when attempting to exit their properties.
27. Over 20 years, residents have used the concreted driveway appurtenant to the garage door for additional off-street car parking. The proposed carport will not alter the use. It will serve as a shelter that provides weather protection for this space. It is open on four sides and supported by narrow steel posts. No part of the structure will project outside the property boundary.

28. The structure will abut a similar scenario on the neighbouring property to the south which has a double, semi-enclosed carport built to the side and front boundaries.
29. The Tribunal is satisfied that siting and design of the carport will not adversely impact on adjacent residential amenity, or impinge on sightlines any more than the current situation with no carport.

Road reserve safety

30. Any risk to safety from overhanging vehicles already exists with the current situation. To cover the space with a roof suspended by four posts and beams will not increase or consolidate such risk. In either event, the level of risk is negligible. Most small to medium cars would fit within the length available. Large cars and vans would overhang into the road reserve and may slightly block neighbours' visibility. Those could also park on the street. In this section of Joan Street, vehicle traffic movements are low and foot traffic is negligible – particularly on this eastern side of the street where no footpath exists. If the issue becomes a problem, the Council has the ability to take appropriate infringement action to ensure the road reserve remains clear of parked vehicles in accordance with Subordinate Local Law No.2 – Regulated Parking (and the associated Transport Operations (Road Use Management) Act 1995).

Conclusion

31. The Tribunal is satisfied that the proposal satisfies the relevant Performance Outcomes for setbacks of building works in the Low density residential zone.
32. Pursuant to section 254(2)(c) of the PA, the Tribunal:
- (a) sets aside the decision of the Referral Agency to refuse the carport application: and
 - (b) orders that the carport application is approved generally in accordance with plans by RW Creative, 29 June 2021 that were lodged with the application

Victoria Jones
Development Tribunal Chair
Date: 22 April 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