



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-016
Appellant:	Shayn Clark and Carly Clark
Assessment Manager:	Sunshine Coast Building Approvals (SCBA)
Concurrence Agency:	Sunshine Coast Council (SCC)
Site Address:	20 Kalana Road, Aroona and described as Lot 364 on RP176518 – the subject site

Appeal

Appeal made under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the refusal of a preliminary development application for building works associated with a carport constructed without a development approval. Sunshine Coast Council as the Concurrence Agency directed the Assessment Manager to refuse the application stating it did not satisfy the siting requirements of the Sunshine Coast Planning Scheme's Dwelling House Code.

Date and time of hearing	10.30am, 28 July 2022
Place of hearing:	On site
Tribunal:	Jane Grimmond – Chair Tory Jones – Member
Present:	Shayn Clark – Owner and Appellant Carly Clark – Owner and Appellant Trevor Gerhardt – SCBA - Assessment Manager Mitch Schwieso – SCC representative Kelly Taylor – SCC representative Other - Angus McKinnon – observer on behalf of the Appellant

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) Deciding appeals to tribunal, confirms the decision of Sunshine Coast Council to refuse the development application for building works to construct a Class 10a structure for a carport.

Background

Subject site and surrounds

1. The subject site is rectilinear. It has a frontage of approximately 17.8m metres and a total area of 535 square metres. The natural ground level slopes from front to rear. Structures on the site include:
 - a single-storey detached dwelling with standard front and side setbacks;
 - an enclosed shed towards the rear, built at 398mm from the western side boundary;

- an in-ground pool; and
 - a carport on an elevated concrete slab, set to the front and western side boundaries which is the subject of this appeal. This is partially enclosed by a tall Colorbond fence on the western boundary, a thin metal privacy screen on the southern edge above the pool, and a wall and solid roller door facing the street.
2. Historical aerial imagery online indicates that space appurtenant to the enclosed garage was previously used for car parking. This has been converted to a covered outdoor entertainment area and in front of that, at the same level, a pool was installed (with SCC approval on 6 June 2020). Construction of the pool entailed excavation of the sloping ground, retaining walls and a tall Colorbond side fence that extends beyond the pool enclosure area to the street boundary.
 3. Consequently, the residual space available for parking vehicles on-site was constrained to the north-west corner. To moderate the resultant steep slope between the edge of the pool and the front boundary, a retained, elevated concrete terrace, 6.4m deep and 5.6m wide, to accommodate two vehicles, was made, level with ground at the street frontage. The concrete floor slab was poured, incorporating carport posts. The skillion roof which forms the carport, and front wall and roller door, were installed without any form of approval. A thin metal screen for pool privacy has been installed on the southern, interior edge of the carport. The eastern, side edge of the slab has no fence or handrail.
 4. No documentation has been provided to verify that the carport slab and retaining block walls comply with structural engineering standards, or that the downpipe which drains rainwater from the carport roof to an underground drain, is within the property boundary.
 5. To show the location of the carport, the appeal documents included a marked-up aerial photograph without scale or precise dimensions. Prior to the hearing, the Tribunal requested a scaled site plan showing dimensions of the carport from the front and side boundary. SCBA informed that “no property land survey has been done, but the front and side boundary walls appear to be close to the boundaries.” Drawings submitted after the hearing, in response to the Tribunal’s request for verification of dimensions of the structure and siting, indicate that the north-western post is set within the corner survey peg, and that the highest point of the garage roof is 3m above the floor slab. It is noted however, that with respect to natural ground level on the adjacent site, the roof edge projects at least two concrete blocks (approximately 38cm) higher.
 6. Kalana Road is wide and mainly straight, with long sightlines. It has side lanes for vehicle parking. The subject carport at number 20 is visually prominent because it is at a section where the road slopes up and curves. Some properties have front fences, but the streetscape is characterised by open front gardens and single-storey detached houses with windows facing the road. Typically, garages are integrated with and/or setback further than the houses. Some properties have carports projecting forward. Where this occurs, the structures are mostly open, lightweight and set back from front and/or side boundaries.

Material Considered

7. Material considered in arriving at this decision comprises:
 - SCC Show Cause Notice, 11 January 2022
 - SCC Concurrence Agency response CAR22/0084, 11 March 2022
 - SCBA Decision Notice 22039, 11 April 2022
 - Form 10 – Appeal Notice, 28 April 2022
 - KSC drawings 20-KL-DWG001 Site Plan, 20-KL-DWG002 Plan and Elevation Views
 - Photographs of 66 Kalana Road and surrounding properties with carports built within the front boundary setback, tabled by Appellant
 - Responses to Tribunal requests for further information:
 - Dimensioned drawings and photos - Site Plan of Carport: Top View; West Side Boundary; Underside of Roof Section; Street Elevation

- Neighbours consent form with signatures from residents of 18 and 24 Kalana Road
- SCC Planning Assessment Coordinator email, 18 July 2022
- Development Tribunal Decision Notices referenced by the Appellant, 19-003, 21-031
- Aerial photograph from SCC website of site prior to installation of pool, showing a a concrete driveway with vehicle parking space
- Planning Act 2016
- Planning Regulation 2017
- Development Assessment Rules
- Building Act 1975
- Building Regulation 2006
- Queensland Development Code Part MP 1.2
- Sunshine Coast Planning Scheme 2014
- Australian Standard 2890.1-2004 Parking facilities – Off-street car parking.

Findings of Fact

Issue in dispute:

8. The carport was brought to the attention of SCC by a complaint, and following receipt of a Show Cause Notice, the appellants lodged an application for Preliminary Approval for Building Works (CAR22/0084).
9. On 11 March 2022, SCC as Concurrence Agency, directed the Assessment Manager to refuse the application for:
 - 0m setback from outer most projection of the carport to the road/property boundary in lieu of 6.0m; and,
 - Carport and existing shed with a combined length of 13.4m within 1.5m of the north-western side boundary in lieu of 9.0m

For the reasons identified below:

- i. The proposal does not meet Sunshine Coast Planning Scheme, Dwelling house code, performance outcome PO2(a) – Garages, carports and sheds preserve the amenity of adjacent land and dwelling houses.

The carport is located 0m from the nearest side boundary (north-west), adjacent to the neighbour's front garden (grassed area) and in close proximity to the front habitable rooms of the neighbouring dwelling house. Insufficient information has been provided to demonstrate compliance with the performance criteria and no consultation with the adjoining landowners has been submitted. Based on the information provided, the proposed carport encroachment has the potential to adversely impact on the amenity of residents on the adjoining lot contrary to Sunshine Coast Planning Scheme 2014 – Dwelling House Code, Performance Outcome PO2(a).

- ii. The proposal does not meet Sunshine Coast Planning Scheme, Dwelling house code, Performance Outcome PO2(d) – Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street.

The visual continuity and overall pattern of Kalana Road comprises of dwellings approximately 4.5m – 6.0m from the road frontage with carports, garages and sheds predominantly setback 6.0m, and the continuity of the built form and open landscaped front yards generally being maintained. It is noted that numerous unlawfully established carport structures exist within the street that encroach within 6.0m of the front boundary (35, 67, 85 and 87 Kalana Road), however as they are unapproved, they are not considered in Council's assessment. The carport proposed 0m setback from the front boundary is inconsistent with the setback pattern of buildings and landscape elements within the street. The proposed

carport does not maintain the visual continuity and pattern of buildings and landscape elements within the street in accordance with the Sunshine Coast Planning Scheme 2014 – Dwelling House Code, Performance Outcome PO2(d).

- iii. The proposal does not meet Queensland Development Code MP1.2, Performance Criterion P2(c) – Buildings and structures do not adversely impact on the amenity and privacy of residents on adjoining lots.

The combined length of the proposed carport (6.4m) in addition to the existing 13m long shed (398mm from the north-western side boundary) is considered excessive and will be highly visible to the adjoining property to the north-west. As the two structures combine for more than 50% of the length of the allotment with a 0m side boundary setback to the new carport and 398mm setback to the existing shed, the proposed carport encroachment has the potential to adversely impact on the privacy and amenity of residents on the adjoining lot contrary to the Performance Criteria P2(c) of the Queensland Development Code MP1.2.

10. The Appellant submitted that:

- Off-street parking spaces are needed for weather protection, and to secure their vehicles from vandalism and that due to the location of the existing dwelling and existing swimming pool, the property does not have suitable alternative, accessible location for a double carport.
- The carport enhances the look of the street with design and finishes and does not dominate the streetscape. Its colour scheme and materials blend into the property and neighbouring properties. The structure does not impede the footpath or road traffic visibility. They are willing to provide additional landscaping to soften the streetscape.

11. A Neighbours' Consent Form has been signed by residents of numbers 18 and 24, but not 22 Kalana Road, whose amenity is considered by Council as being affected by the carport and the combined extent of structures built on and within 1.5m of the shared side boundary.

Precedents in local area

12. SCBA, as advocate for the Appellant, presented photographs of carports in the neighbourhood that project into the front setback. He also referenced previous Tribunal decisions 21-003 and 19-016, at Mooloolaba and Battery Hill, as having similar considerations in support of a change to the SCC refusal. None of these entailed identical circumstances. In most cases, approved carports are without garage doors, open on at least three sides, and setback partially from the front and/or side boundaries.

13. Along Kalana Road, there are 87 properties. SCC has noted awareness of unlawfully constructed carports at 35, 67, 85 and 87 Kalana Road, and that these did not bear on their assessment of the subject carport. SCC also noted that three open carports have been approved to project forward of houses into the front setback. In the council's opinion, those structures, as approved and by ratio, were not considered to represent an established pattern of building.

14. There was specific discussion about SCC approval of carports at 57 and 59 Kalana Road. An email exchange that took place a week prior to the hearing between the Assessment Manager and SCC Planning Assessment Coordinator, to clarify the council's position on these cases, was tabled. Those carports are 2.2m and 2.4m high, and both are set back 1.5m from the frontage. Further, the Planning Assessment Coordinator had written that *"In relation to the refusal for the proposal at 20 Kalana Road, there are a number of differences to the previous approvals... The subject proposal is for a carport with a 0m frontage setback. In terms of PO2(d) in relation to the existing pattern of buildings and structures within the street, Council's consideration includes the subject street, particularly in the vicinity of the proposal if the street is very long. In this case, Kalana Road has approximately 87 dwellings and the eastern end (near 20 Kalana Rd) consistently provides 4.5m – 6.0m front boundary setbacks to lawfully approved structures.*

Further, the reasons for refusal were not limited to PO2(d), but also included PO2(a) of the Dwelling house code and P2(c) of the Queensland Development Code due to the potential amenity impacts on the neighbouring premises because of the length of structures proposed within 1.5m of the side boundary.”

Planning framework

15. The application sought approval for a carport which is assessable development that required referral to SCC and assessment in respect to 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).
16. Sunshine Coast Planning Scheme 2016, Section 1.6 Building work regulated under the planning scheme - necessitates assessment in respect to Queensland Development Code and alternative provisions in relation to boundary clearance provisions assessable within planning scheme Section 9.3.6 Dwelling house code, in particular:
 - Dwelling house code, Performance Outcome PO2(a) – Garages, carports and sheds preserve the amenity of adjacent land and dwelling houses;
 - Dwelling house code Performance Outcome PO2(d) – Garages, carports and sheds maintain the visual continuity and pattern of buildings and landscape elements within the street; and
 - Queensland Development Code MP1.2, Performance Criterion P2(c) – Buildings and structures do not adversely impact on the amenity and privacy of residents on adjoining lots.

Reasons for the Decision

17. The Tribunal’s consideration of the carport focused on amenity impact on the adjacent residence at 22 Kalana Road, and visual impact on the streetscape.

Amenity impact on adjacent residence

18. From the front garden and street-facing windows of the adjacent property at 22 Kalana Road, the carport is visually prominent.
19. When considered in combination with the existing 13m long shed which is built close to the shared side boundary, the two structures encroach on the standard 1.5m side setback along 19.4m, which is greater than 60% of the 30m length of the allotment. To satisfy Performance Criterion P2C of the Queensland Development Code, no more than 9m total length of buildings can be constructed within the boundary clearance on any one boundary. In consideration of a proposal to exceed 9m, the responsible authority must be satisfied that the amenity and privacy of residents on adjoining lots is not adversely affected. Sunshine Coast Planning Scheme, Dwelling house code, performance outcome PO2(a) similarly intends to preserve the amenity of adjacent land and dwelling houses. No information has been presented to substantiate the perspective of the property owner of 22 Kalana Road. In this instance, the carport does not affect privacy, but having regard to ground level differentiation, solar access and aesthetics, residents of this adjoining property may feel some adverse effect.
20. The Tribunal considers that the amenity impact of encroaching upon the side boundary clearance alone, would not warrant refusal of the carport, however, in conjunction with encroachment into the front boundary clearance, and the visual impact of the carport on the streetscape, the imposition on the adjacent residence carries some weight.

Visual impact on streetscape

21. The Tribunal acknowledges that given the size and position of the existing dwelling, shed, covered outdoor entertaining area and pool, this north-west corner of the site remains the only available location for provision of two off-street car spaces, one of which is capable of being covered (in accordance with A08 of the Sunshine Coast Planning Scheme, Dwelling house code). And further, that the concrete terrace is adequately proportioned to accommodate two vehicles.
22. However, the design and construction of the carport fails to satisfy Performance Outcomes PO2(a) and PO2(d) of the Dwelling house code. It impacts on the visual amenity of the front yard of the adjacent residential property, and it significantly interrupts visual continuity and the pattern of buildings and landscape elements within the street.
23. The carport's skillion roof, its height above natural ground level, the roller door and its visible drum, and the fascia, make it appear bulky like a garage. It is the first of its kind in Kalana Road. No enclosed garages are situated like the subject structure with 0m setback from the front and side boundaries. Most carports, and certainly garages, are setback in line with their houses at least 4.5-6m from the street. Where carports do exist within the 6m front setback, they are typically open, slimline structures and/or setback noticeably from the street frontage.
24. The Tribunal believes that it is possible to design and construct a lower, slimline, open carport on the existing concrete slab, which may satisfy Performance Outcomes PO2(a) and PO2(d) of the Dwelling house code, but the current structure does not.

Safety

25. The Tribunal notes concern about two safety improvements that should be considered, whether or not, in the future, approval is gained to erect a carport roof over the car parking spaces:
 - i. A handrail or fence along the eastern side of the floor slab to prevent a person falling onto the steps that descend alongside it from the front pedestrian entry gate; and
 - ii. A vehicular barrier strong enough to prevent a vehicle rolling or accidentally driving forward onto the pool.

Jane Grimmond

Development Tribunal Chair

Date: 7 September 2022

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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