



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	22-007
Appellant:	Amy and Ngaio Barnston
Respondent: (Assessment Manager)	Trevor Gerhardt of Sunshine Coast Building Approvals
Co-Respondent: (Concurrence Agency)	Sunshine Coast Regional Council
Site Address:	2 Redwood Court Landsborough Queensland 4550 Lot 2 RP 850835 – the subject site

Appeal

Appeal under Section 229 and Schedule 1, Table 1, Item 1 (a) of the Planning Act 2016 against the Sunshine Coast Regional Council as the Referral Agency direction that the Carrying Out of Building Work Application (CAR21/1017 dated 16/02/2022) be refused.

Sunshine Coast Council required that the proposed Building Work Application for a carport be refused for the reasons contained in the Sunshine Coast Planning Scheme 2014 (SCPS):

The proposal does not meet performance outcome PO2 (d) of the Dwelling house code:

PO2 (d) - maintain the visual continuity and pattern of buildings and landscape elements within the street

Date and time of hearing:	Tuesday 21 June 2022 at 10.00 am
Place of hearing:	The subject site
Tribunal:	Henk Mulder – Chair Markus Pye – Member
Present:	Amy Barnston, Ngaio Barnston (Appellant) Trevor Gerhardt (for Sunshine Coast Building Approvals, Applicant's Agent) Marc Cornell (Sunshine Coast Regional Council, Respondent) Mitchell Schwieso (Sunshine Coast Regional Council, Respondent)

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 a development application for building works.

Material Considered

1. The material considered in arriving at this decision comprises:
 1. 'Form 10 – Notice of Appeal/ Application for Declaration', being the grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 8 March 2022.
 2. Planning Regulation 2017 (PR)
 3. Planning Act 2016. (PA)
 4. Sunshine Coast Planning Scheme 2014 (SCPS)
 5. Dwelling house code (DHC) SCPS
 6. Building Act 1975 (BA)
 7. Verbal representations at the Tribunal hearing on 21 June 2022.
 8. Information provided by Council via email dated 22 June 2022 to the Registrar.
 9. Information provided by Sunshine Coast Building Approvals, for the appellant, via email dated 23 June 2022 to the Registrar.
 10. Tribunal decisions contained in Appeals numbered 19-003; 20-024; 20-028; 20-003; 21-007; 21-010; 21-031

Background

The Subject Site

2. The subject site is a rectangular block with an area of 701 square metres and a 17.4 metre frontage to Redwood Court, where the carport is shown on level land in the appeal lodgement documents.
3. A single storey dwelling is set back approximately 6.0 metres from the street frontage, with the carport located in front of that part of the dwelling that is set back approximately 8.75 metres from the street frontage, with the land rising slightly from the street.
4. The subject site is located in a cul-de-sac street, with single storey residences generally set back between 4.5 metres and 6.0 metres. Sites at 5, 7, 12, and 16 Redwood Court contain structures that are within the 6.0 metre boundary setback which include carports and sail structures. Council advise that only the structure at 5 Redwood Court is considered by Council to be lawful.

The Proposal

5. The carport the subject of the application is described as being to the front of the residence with a setback to the front boundary of 3.20 metres and to the side boundary of 0.20 metres. The carport is indicated as being a double bay width at 7.0 metres, comprising a flat roofed structure, 6.0 metres deep, with structural posts at the sides and rear, and partly hanging over the roof of the dwelling.
6. The carport proposed has been constructed on the subject site at the time of the hearing. It has a setback of approximately 2.5 metres to the outer most projection (OMP) at the fascia, from the street boundary, based on a measurement at the hearing.

The Application and refusal direction

7. On the 13 December 2021 Sunshine Coast Building Approvals made a Request for Concurrence Agency Response (Building Work) with Council, as a referral agency for a Development.
8. On the 16 February 2022, the Sunshine Coast Council directed refusal of this Building Application (CAR21/1017) for a carport, based on non-compliance with the DHC.

Council directs REFUSAL of CAR21/1017 for:

- 3.2m setback from outer most projection of the carport to the road/property boundary in lieu of 6.0m

For the reasons identified below:

1. The proposal does not meet performance outcome PO2 (d) of the DHC:

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 Redwood Court 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 generally being maintained.

It is noted that two unlawfully established structures exist within the street that encroach within 6.0m of the front boundary (12 & 16 Redwood Ct). Council considers the carport proposed 3.2m from the front boundary to be inconsistent with the setback pattern of the street. The proposed carport would 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)

Appeal Jurisdiction

9. This is an Appeal under Section 229 and Schedule 1, Table1, Item 1 (a) of the Planning Act 2016 against the Sunshine Coast Regional Council as the Referral Agency direction that the Carrying Out of Building Work Application (CAR21/1017 dated 16/02/2022) be refused.

Decision Framework:

10. Pursuant to section 253 (2) of the Planning Act, generally the appellant must establish the appeal should be upheld.
11. Pursuant to section 253 (4) of the Planning Act 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.
12. The Tribunal can decide the appeal in one of the ways mentioned in section 254(2) of the Planning Act.
13. 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.
14. The Tribunal members are also satisfied that the necessity to not require any higher order development application for Council to be the Assessment Manager assists the view that the application as appealed is correctly made.

Main Issues Raised By the Parties to the Appeal

Applicant

The Applicant raises the following issues in their appeal, at the hearing:

15. A re-iteration of issues contained in 'Document A' of the Lodgement documents

- The property owners require the carport to provide covered car parking to their vehicles.
- The property does not have a suitable side access or an alternative location other than at the front of the property and within the front boundary setbacks due to the location of the existing dwelling and swimming pool.
- The carport used a colour scheme and materials which blends into the property and neighbouring properties.
- The carport enhances the look of the street with design and finishes and does not dominate the streetscape, an adequate area suitable for landscapes adjacent to the road frontage is maintained and the visual continuity and pattern of building and landscape elements is maintained.
- The property owner is happy to provide additional landscaping to soften the streetscape and enhance the landscape elements of the property.
- The carport location leaves sufficient front yard space on the site which is suitable for landscaping adjacent to the road.
- The double carport could not be located to the side of the existing dwelling.
- The property has two large SUV vehicles which require a double carport.
- Landsborough and Beerwah areas do receive more frequently than other areas very high level of dangerous weather conditions which includes super-cells of hail, wind and cyclonic storms which damage buildings and brings down trees.

16. The carport can be readily seen as constructed to not diminish the streetscape, and to be materially ineffectual within the streetscape by virtue of its 'flat' structure in contrast with gables, ridges etc. used in similar structures.

17. A house is permitted to 4.5 metres from the front boundary setback in the SCPS, despite a carport required to be setback 6.0 metres. Accordingly the carport is merely 1.30 metre of difference to a house setback.

18. The street pattern is made up of structures within the front boundary setback, and the proposal forms a part of any discernible pattern. This is visible at the street addresses of no 5; no 12; and no 24 Redwood Court

19. Street corners with side streets can be seen to have significantly reduced front boundary setbacks to structures and dwellings, albeit in the side street.

20. Reference is made to earlier Tribunal decisions contained in Appeals numbered 19-003; 20-003; 20-024; 20-028; 21-007, 21-010 and 21-031. Copies of these documents were not sought by the Tribunal via the Registrar as they are readily available online.

21. The Tribunal has noted relevant considerations in these Appeals as they provide guidance for the relationship between the PA, PR and BA, particularly Appeal 19-003 paragraphs 46-62. These Appeals serve to clarify issues in relation to building assessment as provisions for qualitative or performance outcomes - PO's, in the local Planning Scheme.

22. The decisions taken in these Appeals also relate to the front boundary setbacks, propriety with the street conditions, and the carport as a part of landscaping, as well as less relevant issues for this proposal of height and materials.

23. The applicant sought to confirm that Council had attended the site in order to form their decision. The applicant refers to a number of earlier hearings, in promoting the streetscape as defined in

the SCPS as not being reliable as a satellite image review but rather requiring site inspection in a referral application decision. The applicant then emphasised the conditions on site and in the streetscape in regard to a visual continuity and pattern of buildings and landscape elements within the street as being a part of any of these elements.

24. The applicant considers the qualitative assessment PO2 (d) of the DHC is so broad as to render meaningful interpretation selectively unavailable.
25. The applicant is readily able to establish greater landscaping than currently exists, with the remaining frontage to the side to the interior, albeit well grown at present, but also directly to the front corners of the carport.
26. Alternative siting for any carport was not presented in any information from Council or the applicant, however at the hearing it was evident the owner had little regard to utilising the space to the side boundary and beyond the front boundary setback, on the basis it would be tandem parking, and impact their utilisation of the pool to the back yard.
27. During a collective viewing of the streetscape the applicant described the variety of setbacks apparent including boundary encroachments at no 5; no 12, and no 24 Redwood court, as well as the variety of conditions. The proposed carport was described as discrete and complementary.

Council

28. Council as the respondent accepted the role as a referral agency for the application, and considered the proposed structure in regard to a front boundary encroachment.
29. Council undertook a review of the application and with specific regard to PO2 of the DHC. Council found the proposed carport to be in compliance with the following criteria:
 - a) preserve the amenity of adjacent land and dwelling houses;
 - b) do not dominate the streetscape and;
 - c) maintain an adequate area suitable for landscapes adjacent to the road frontage;
30. Council based their decision for a direction to refuse the application as the proposal for the carport did not comply with the last criteria:
 - d) maintain the visual continuity and pattern of buildings and landscape elements within the street.
31. The definition of the term 'streetscape' was clarified as inclusive of the whole of the street, and exclusive of surrounding streets.
32. The review undertaken by Council established that there was one lawful encroachment to the boundary setback at no 5 Redwood Court, whereas all other references of existing encroachments in the street were either not addressed to Redwood Court, or an unlawful encroachment, that is, without record as having gained any approval under the SCPS.
33. Council did not consider that boundary encroachments in the following circumstances as as having any weight in a decision about that streetscape:
 - outside the streetscape - being the length of Redwood Court, or
 - unlawful structures.
34. During a collective viewing of the streetscape the respondent described the landscaping and the visual prominence of the main residence as the main features in the streetscape. These main features were made visible with a consistent 4.5 metre - 6.0 metre setback to the front boundary.

35. Council provided a document described as an internal practice note and general fact sheet which sought to explain criteria and objectives sought from garages, carports and sheds including their design and site planning.
36. The applicant registered their objection as not having the information available at the time of the application. The information was agreed to be sought via the Registrar, and for all parties to gain copies.
37. The applicant also sought to clarify that the ability to confirm whether any carport is a lawful structure is not available, or at least not readily available.

After the hearing

38. The general fact sheet was supplied to the registrar in Council's email of 22 June 2022. The applicant responded and developed their objection to this information in their email of 23 June 2022.

Findings of Fact

The Tribunal makes the following findings of fact:

39. The matter of road boundary setback in relation to a Class 10 building may be varied by a Planning Scheme subject to the provisions of Section 33 of the BA.
40. The proposed development requires design and siting assessment by Council as the referral agency for building work under Schedule 9, Part 3, Division 2, Table 3 of the PR.
41. The Tribunal considers that the road boundary setback of the carport requires an assessment of whether the carport complies with the PO 2(d) of the DHC:

Garages, Carports and Sheds

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

The 'Acceptable Outcome' AO 2.1 is provided in the DHC that *inter alia* states a setback of "...at least 6 metres from any road frontage." is sought.

42. The carport proposed has been constructed on the subject site at the time of the hearing. It has a setback of approximately 2.5 metres to the outer most projection (OMP) at the fascia, based on a measurement at the hearing from the boundary indicated by the extent of landscaping and line of fencing along the street.
43. The question for the proposal already having been constructed was raised with Council, as the Respondent, at the hearing. Attendants from Council affirmed they make their decision on the basis of the proposal, alone.
44. It is noted that in Appeal 19-003 an existing carport structure - and additional built works surrounding - had a reduced boundary setback and was confirmed as not requiring a higher order of development assessment with potentially Council as an assessment manager instead of SCBA as the assessment manager. This meant that the assessment provisions also fell to PO 2 in the SCPS.
45. The issue for this carport being the proposal at the subject site is an unlawful structure is not considered in this application, as it does not affect the type of application to be sought for boundary setback of a carport, and which can be assessed separately according to the relevant Act.

46. The Tribunal considers the application of PO 2(d) to be the salient issue for this proposal, at the subject site, that is, the proposed carport is to:

... maintain the visual continuity and pattern of buildings and landscape elements within the street.

47. The Tribunal sought submissions by the parties about visual continuity and patterns of buildings and landscape elements within the street.

48. The Tribunal found the streetscape extends the whole of the street. This includes built examples of structures and carports within the front boundary setback. Two are nearby with another two are at the other end of the street, effectively out of view from the subject site. These furthest examples are deemed unlawful structures.

49. The two nearby sites are opposite each other at the corner with the side streets. The site at the same side as the subject site has a large shed structure within a 6.0 metre boundary setback to Redwood Court. Its approval is affected by its status as a corner site where the advent of a separate street is available as an entry side.

50. The site opposite is also a low-set separate dwelling with the boundary setback to the side street reduced to potentially 1.50 metres. Its approval status is considered likely as a dwelling. The setback example is not a part of the streetscape of Redwood Court.

Reasons for the Decision

51. Redwood Court is made up of very few viable examples for similar structures that form any potential pattern of a reduced boundary setback to structures and landscape elements comparable to the structure proposed. Whilst one lawful example is nearby, it is distinct as a corner site with separate issues and solutions for its site use.

52. The Tribunal finds that applying unlawful structures as models for new work is untenable. The structures identified by Council as unlawful have not been considered as a part of any pattern of buildings and landscape elements.

53. The Tribunal considers that relying upon existing structures for new proposals should imply confirmation or clarification of such information as lawful structures.

54. The carport as proposed is distinct in that there are few similar built or landscape elements in the streetscape. The streetscape comprises elevations to residences setback in compliance with the DHC between 4.5 metres and 6.0 metres to a significant component of the streetscape. The lack of similar structures or elements in the streetscape reinforce the lack of visual continuity for a pattern of reduced boundary setback in the streetscape.

55. The Tribunal is not satisfied that the appellant has established that the appeal should be upheld. Performance Outcome PO2 has not been met in relation to the road boundary setback of the existing Class 10a carport. The proposed carport does not maintain the visual continuity and pattern of buildings and landscape elements within the street given the very low number of similar structures that lawfully exist in Redwood Court.

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