



Development Tribunal – Decision

Appeal Number: 22-042

Appellant: Mr John and Mrs Anastasia Nixon

**Respondent
(Assessment Manager):** John Dunn

**Co-respondent
(Concurrence agency):** Noosa Shire Council

Site Address: 7 Daybreak Court, Castaways Beach Qld 4567, and described as Lot 35 on MCH5400

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, section 1, table 1, item 1(a) of the Planning Act 2016 (PA) against the assessment manager's decision to refuse the application. The refusal was made after receiving the advice of the concurrence agency, Noosa Shire Council, which refused its concurrence to the variation of the building setbacks to extensions to an existing dwelling house.

Date & time of hearing: 5 October 2022 at 1:00pm

Place of hearing: The subject site

Tribunal: Ms Julie Edwards – Chair
Mr Andrew Veres – Member

Present: Mr & Mrs Nixon
Mr Pat Ferris – JDBA Certifiers acting as agent for the appellants under s 248(b)
Mr Brad Geaney – representing Noosa Shire Council, the co-respondent and concurrence agency
Robert Patterson – designer, for Mr & Mrs Nixon

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(b) of the PA, changes the decision to—

- approve the preliminary approval for building works but only with respect to a rear covered outdoor space and
 - refuse the preliminary approval for building works with respect to the carport.
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Background

1. The subject site is a residential allotment comprising approximately 695 sq m in a short cul de sac of single dwelling houses. The site has a single storey dwelling house and rear yard pool and is about 20 years old. At the front of the house is an attached double garage, setback approximately 7.6m to 11.4m, currently used to store bicycles for Mr Nixon's bicycle tour business. The two vehicles owned by the Nixons are stored on the front driveway. They have owned the premises for 12 months.
2. The Nixons had plans drawn up by Robert Patterson Design for extensions to the front and rear of the existing house involving -
 - a double carport at the front of the house, directly in front of the existing double garage and
 - an extension at the rear of the house for a larger covered outdoor patio (referred to by Council as the 'alfresco').
3. The plans were presented to JDBA Certifiers for approval. Given that both the front and rear additions breached certain requirements of the planning scheme, the certifier referred the application to the local government for its concurrence approval with a request for alternative siting provisions to apply.
4. Noosa Shire Council considered the request for variations with respect to the planning scheme and, on 22 June 2022, refused its concurrence on the following grounds –
 - *"It has been considered that the alfresco is proposed to be in a location that has the potential to impact the amenity of the adjoining land users. It is further suggested that providing a greater rear boundary setback will not adversely impact the amenity of the users of the subject site.*
 - *It has been considered that the design and location of the alfresco is at a location that does not provide adequate distance from adjoining land users.*
 - *It has been considered that the design and location of the proposed carport provides an insufficient road boundary setback and is not consistent with the predominant character of the streetscape.*
 - *It is Council's view that the predominant character of the streetscape consists of buildings and structures providing a considerably greater road boundary setback than that of the proposed carport. Additionally, the proposed carport provides for an exceedingly dominant structure within the road boundary setback."*
5. As a result of the refusal of the concurrence agency, JDBA Certifiers refused the application on or around 5 August 2022.
6. On 17 August 2022, the Notice of Appeal was lodged with the Registrar.

Material considered

7. The material considered in arriving at this decision comprises:
 - (a) Form 10 – Notice of Appeal, including the grounds for appeal.
 - (b) Correspondence from the Council as concurrence agency, and plans of the proposed extensions stamped by Council and attached to their Concurrence Agency decision.

- (c) Supplementary information supplied by Noosa Shire Council regarding three carport approvals in the surrounding area. This included advice that the two carports approved forward of the 6m building line, under the previous planning scheme, were approved on the basis of open carports with no garage doors to be fitted.
- (d) Copy of signed letters of support of adjoining rear neighbours with properties at 18 and 20 Wavecrest Drive, as well as neighbouring 9 Daybreak Court, along the northern property boundary.

Findings of fact

8. The Tribunal makes the following findings of fact:

- (a) The Noosa Planning Scheme 2020, as confirmed by Mr Geaney, requires a 1m setback from the rear boundary to any building or structure and that the building/structure be located within a building envelope described on Plan Drawing 202202, Revision 3, dated 27 May 2022, by Mr Robert Patterson Design.

Specifically, Table 6.3.1.3, Performance Outcome PO9 states in relevant sections (on which the refusal was based):

Setbacks

PO9

Buildings and structures are designed and sited to:

- a) provide a high level of amenity to users of the subject site and adjoining premises, including provision of visual and acoustic privacy and access to sunlight;

b)

- c) provide adequate distance from adjoining land uses;

.....

- f) be consistent with the predominant character of the streetscape

.....

Acceptable Outcome AO9.2 allows a choice on lots of 550m², or greater, for rear setbacks:-

- i. 3 metres setback up to 4.5 metres in height: and 6 metres setback between 4.5 metres and 8 metres height: or
- ii. no part of the building protrudes beyond a projection line that rises from 1.8 metres above the ground at the property boundary to a point 8 metres in height 6 metres in from the property boundary, providing that no building or structure is setback less than 1 metre from the boundary, as shown in Figure 6.3.1.4.

- (b) The Noosa Planning Scheme 2020 requires a 6m front setback to all dwellings (including garages and carports). Specifically, Performance Outcome PO9 (see above) and Acceptable Outcome A09.1 states:-

Buildings and structures have a setback of 6 metres from the road frontage, provided that the setback to one frontage may be reduced to 4.5 metres where the lot:

- i. Has frontage to more than one road; and

- ii. Is less than 600m² in area; or
- iii. Is less than 15 metres in width.

The subject site is more than 600m² and has a width exceeding 15m. Therefore, the required front setback is 6m.

- (c) Acceptable Outcome 9.4 provides for alternative setback, insofar as they comply with the Queensland Development Code. However, this does not assist this particular circumstance.
- (d) The cul-de-sac is an unusual design, being comprised of three distinct parts: the entrance throat, a short stub leading south serving four houses and a slightly longer stub leading north serving seven houses. The subject site is in the longer northern stub.
- (e) The front boundary of the site is not straight in the normal manner but is shaped around the line of the cul-de-sac, being indented into the allotment.
- (f) There are only a few examples of carports constructed to the front boundaries of properties in the Castaways Beach area. Of particular note were properties at –
 - 3 Crusoe Court,
 - 22 Wavecrest Drive, and
 - 57 Wavecrest Drive.

The Council has advised that these were approved under the previous planning scheme and were mostly approved without garage doors, to appear as open structures.

Additionally, there were examples of permanent shade structures, forward of the building line noted at several locations, including directly opposite the subject site at 14 Daybreak Court. The last has a setback of approximately 4m from the front boundary. The council has advised that this is not an approved structure.

- (g) The carport is proposed to comprise an extension of the main ridgeline of the dwelling towards the front boundary with a high gable end and solid appearance from the street. The carport is to have an open grill style of garage door to the front opening. The height to the ridge is 4.9m and the opening will have a clearance of 2.8m.
- (h) Due to the indented shape of the front property alignment, the carport will have a setback of 5.1m ranging down to 1.2m.
- (i) None of the dwelling houses in the cul-de-sac have permanent buildings or structures noticeably forward of the front building line, with the exception of the unapproved shade structure at No. 14.

Reasons for the decision

Rear extension

- 9. With regard to the rear extension / alfresco, evidence was submitted by Mr Pat Ferris that the extension would not restrict views or light to adjoining residences.

10. Mr Pat Ferris also submitted a copy of a letter of support to the alfresco from both of the affected rear neighbours (two properties) at 18 and 20 Wavecrest Drive.
11. The extent of the infringement of the building envelope close to the rear boundary was agreed to be minimal.
12. Further, the rear fence comprises a solid wall about 1.6m high above the filled ground at the rear of the subject site, providing high level privacy between the adjoining dwellings.
13. While it is accepted from the evidence of Mr Geaney, who stated that the roofed area could be setback to comply, it was agreed that any impact on the adjoining neighbours from noise emanating from a source close to the rear boundary could equally occur in an unroofed paved outdoor area (ie without Council concurrence).
14. With regards to the letters of support from neighbours, Mr Geaney noted that the Council do not place a lot of weight on such as neighbours change over time. This view is acknowledged. Nevertheless, future purchasers will make their purchase decisions based on what exists around the property in which they have an interest.

Front carport extension

15. With regards to the front double carport, Mr Geaney noted that Council's focus was to ensure that the consistency of the streetscape is maintained, as required by PO9(f) (above). In addition to being well forward of the required front building line, he also noted that the proposed carport was a very dominant design.
16. Mr Geaney also stated in evidence that the Council has a relatively new planning scheme, Noosa Plan 2020. He advised that, while the previous plan allowed for 600mm eaves overhanging the required building setbacks, the current plan deliberately makes no such provision, underlining the importance to the scheme of maintaining the adopted setbacks.
17. In discussion on the design of the carport, including design options, the appellants noted that they needed the height to store their work vehicle with canoes on top. Thus, they objected to any dropping of the height of the ridgeline. They also noted that they wished to ensure the architectural style of the building was not changed with the extensions. In addition, they noted that they require the garage door for security.
18. Mr Nixon advised that the current double garage is used for the storage of bicycles used in his tourist-based business.
19. Mr Ferris noted that the site is a unique location within the cul-de-sac. He also noted that the buildings wrap around the head of the cul-de-sac and implied that the proposed carport would be seen against this backdrop in the line of sight from the entrance to this section of the cul-de-sac.
20. In summation, Mrs Nixon advised that they bought the house deliberately as a single storey home for their retirement years and that the proposed extensions were designed to continue the existing look of the house. Further, that they need the largely enclosed/secured carport to keep their vehicles safe and have designed the carport to blend into the street and will enhance this with new native landscaping, particularly on the southern side.

21. Viewing of the site from the entrance to the northern arm of the cul-de-sac reveals that
 - the carport will be in roughly the same alignment as the garage at No. 5,
 - it will not be viewable forward of the existing solid dividing fences with No. 5, but will be viewable above this dividing fence due to the fact that the road rises up on a gentle incline and the carport ridgeline is quite high,
 - the landscaping proposed on the south side of the carport will soften this and may, eventually, block some of the view of the carport above the dividing fence line, and
 - the carport roof will be viewed against the backdrop of housing and garages that range around the head of the cul-de-sac.
22. Viewing of the site from the opposite side of the cul-de-sac reveals that the carport will not appear to infringe obviously on the building setback as the front alignment of the subject site is stepped back into the allotment to follow the widened turning head of the cul-de-sac.
23. Nevertheless, visual inspection of the area appears to support the Council's view that it has been consistent in its approach to applying its planning scheme in respect of front boundary setbacks. No examples of approvals issued under the current planning scheme were placed into evidence by the appellant's planner/agent.
24. The minimal visual impact of the proposed carport within the cul-de-sac is insufficient reason to overturn the provisions of the planning scheme where it has been consistently applied across the local government area and, particularly, the local neighbourhood.
25. The proposal, as presented, is narrow in focus in consideration of the proposed design of the carport, particularly in respect of the minimal setback of 1.2m from the front boundary. Consideration should be given to other design options, such as using parts of the existing double garage to minimise the extent of the encroachment of the front building setback.

Julie Edwards
Development Tribunal Chair
Date: 2 November 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:

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Brisbane QLD 4001

Telephone: 1800 804 833

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