



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	50-18
Appellants:	Simon Charles Hennessy and Rosemary Jane Brown
Respondent (Assessment Manager):	Luke Owen-Jones
Co-respondent (Concurrence Agency): (if applicable)	Noosa Shire Council
Site Address:	45 Shorehaven Drive, Noosaville, and described as Lot 255 on RP856183 – the subject site

Appeal

Appeal under Section 229 and Item 1(a) of Table 1, Schedule 1 of the *Planning Act 2016* against the refusal of a development application for building works being construction of a carport on residential premises.

The decision notice issued by the Assessment Manager stated the reason for the refusal was that “the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria of the Noosa Plan Building Works Code:

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

The visual continuity and pattern of buildings within the street will not be maintained as the proposed carport is inconsistent to the current building patterns within the street as there are no carports within the front boundary setbacks of Shorehaven Drive and will therefore not maintain visual continuity and is recommended for refusal by Council.”

Date and time of hearing:	22 March 2019, 2:30pm
Place of hearing:	The subject site
Tribunal:	Linda Tait– Chair John O’Dwyer – Member Andrew Parker - Member
Present:	Simon Charles Hennessy and Rosemary Jane Brown – Appellants Lester Friend – Appellants’ Builder Ian Wayth – Noosa Shire Council – Building Certifier

Decision:

In accordance with the *Planning Act 2016* (PA) Section 254(2)(d), the Development Tribunal sets aside the decision made by Luke Owen-Jones of EarthCert Building Approvals on 30 October 2018. The Development Tribunal orders that Mr Owen-Jones remake the decision by 24 May 2019 reflecting the tribunal’s finding that the proposed carport as designed complies with

Noosa Plan Building Works Code Specific Outcome O1(d) “maintain the visual continuity and pattern of buildings and landscape elements within the street”.

Background

The subject lot is a near rectangular lot with a frontage of approximately 20m to Shorehaven Drive. The existing building has a garage on the western part of the frontage. Access to the lot is constrained by a traffic island directly in front of the garage that is part of a traffic calming device. Verbal evidence tendered at the hearing by the Appellant’s Builder (and not disputed by Council) indicated the traffic island was established during construction of the dwelling on the site. There is now a rendered wall and established landscaping in front of the garage and access is obtained from a driveway located in the middle of the frontage of the site.

Mr Luke Owen-Jones of EarthCert Building Approvals referred application (RAB18/0166) to Noosa Council for a carport, being a class 10a building within the front boundary setback at 45 Shorehaven Drive, Noosaville, more formally known as Lot 255 RP856183. The proposed carport is a slimline design, light-coloured to match the house, to be located between the rendered front wall and the existing garage.

On 22 August 2018, Noosa Council issued an Information Request in relation to the lodged application. Based on the grounds of appeal document, the Information Request sought “a design that maintains the visual continuity and pattern of buildings within the street” and “provide amended plans that show the above changes”.

The Information Request item reflects Noosa Plan Building Works Code Specific Outcome O1(d) “maintain the visual continuity and pattern of buildings and landscape elements within the street”.

No formal Information Request Response was provided. At the hearing, the Appellant Ms Brown advised that she thought the existing design already addressed the assessment benchmark. The Respondent advised that “the Information Request asked for a different design, but in reality, any design in that setback wouldn’t have been accepted”.

The Referral Agency Response advised the completion of assessment occurred on 30 October 2018 directing the assessment manager to refuse the application.

On 7 November 2018, Mr Owen-Jones of EarthCert Building Approvals issued the decision notice advising refusal of the proposed development.

On 28 November 2018, a Development Tribunal appeal was lodged.

On 14 February 2019, a Tribunal was established and a hearing held on site on 22 March 2019.

Jurisdiction

The Development Tribunal has jurisdiction as this is an appeal under Section 229 and Item 1(a) of Table 1, Schedule 1 of the PA against the refusal of a development application for construction of a carport on residential premises.

The application was not subject to Impact Assessment and did not involve a variation approval.

Decision framework

With reference to 253(2), the Appellants lodged the Form 10 appeal request within the 20 business days appeal period.

It is noted that:

- the onus rests on the Appellants to establish that the appeal should be upheld (s. 253(2) of the PA),
- 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 (s. 253(4) of the PA),

- the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings),
- the tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA, and
- the tribunal's decision takes the place of the decision appealed against (s.254(4) of the PA).

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 28 November 2018.

Those documents included:

- Current Title Search
 - Site Photos (streetscape and aerial)
 - Proposed Carport Plans prepared by Collins Buildings Design (A101, A102, A103, A104, A105, A106)
 - Additional information on behalf of the applicant dated 29 November 2018
 - Grounds of Appeal
 - Referral Agency Response prepared by Noosa Council - Ref RAB18/0166
 - Decision Notice Refusal prepared by Luke Owen Jones, EarthCert Building Approvals
 - Form 10 received 28 November 2018
 - Tax Invoice / Receipt – fee payment 03/12/2018
 - Notice of Appeal dated 4 December 2018 on former Sustainable Planning Act form
 - Copy email dated 11 February 2019 from the Acting Manager Development Tribunals to the Acting Registrar of the Development Tribunals re format of decision notice.
 - Approval for Establishing a Tribunal completed 18 February 2019.
2. Statements of support from Ray and Lisa Brown, owners of 47 Shorehaven Drive, and Bruce and Janet McCleary, tenants of 43 Shorehaven Drive, being emails provided by the Appellants via email to the Registrar on 22 March 2019, (and tabled at the hearing).
 3. Observations about the built form, road configuration and streetscape around the location of the subject site which were made during the hearing with the parties present.
 4. The Planning Act 2016 (PA)
 5. The Planning Regulation 2017 (PR)
 6. The Development Assessment Rules (DAR)
 7. The Building Act 1975 (BA)
 8. The Building Regulation 2006 (BR)
 9. The Queensland Development Code (QDC) Part MP 1.2

10. The Noosa Plan

Findings of Fact

The Tribunal makes the following findings of fact:

1. The Noosa Plan identifies the subject site as in the Noosaville Detached Housing Zone. The land is subject to the Natural Hazards Overlay (Flood, Acid Sulfate Soils and Bushfire), and the Glossy Black Cockatoo sightings mapping. Shorehaven Drive is mapped as a Major Road.
2. The Appellants sought to erect a class 10a carport within the street frontage setback area.
3. The proposed carport required lodgement of an application for Building Approval with a Building Certifier. Being Building Work not Associated with a Material Change of Use, the carport proposal was assessable in relation to the Noosa Plan Building Works Code. As the carport was proposed to be located within the front setback, the application triggered referral to the Co-respondent (Council) as a Concurrence Agency.
4. As detailed in the Background section above, an application was duly made with the Building Certifier and referred to the Co-respondent (Council) as Concurrence Agency. Council sought additional information through an Information Request. No response was provided and Council issued a decision advising the refusal of the proposed development on the grounds of non-compliance with the Building Works Code "Maintain the visual continuity and pattern of buildings and landscape elements within the street". The Building Certifier proceeded to issue a refusal on this basis and the Appellants lodged an appeal. The above actions were undertaken in accordance with the relevant timeframes.
5. The carport is to provide shelter for resident vehicles on site.
6. The reason for this is that access to the existing garage is limited by a traffic island directly in front of the double garage. Accordingly, the driveway is offset from the garage. A rendered fence and established landscaping is located within the property frontage between the traffic island and the garage. The turning circles needed to drive a vehicle into the garage from the driveway means that it is impossible to then drive a second vehicle into the garage. Therefore a second car has to be left in front of the garage.
7. The proposed carport is intended to be attached to the garage just below the gutter and extend out with a 2 degree slope towards to the rendered fence.
8. The carport is illustrated as having a slimline design and the Appellant Ms Brown gave evidence (with the tribunal's leave) that it was to be in a colour to match the house.
9. The proposal plans show the carport to be setback 1800mm from the western side fence and 1885mm from the front boundary. The design allows for the retention of the established trees adjacent to the western fence and the landscaping along the frontage.
10. Based on comparative measurements taken on site at the hearing, the location of the carport behind the existing fence and established landscaping will mean that there would be limited visibility of the proposed carport from the west and front. The highest opportunity for visibility is from the east.
11. There are no houses directly opposite the subject site. The area is characterised by high rendered front walls and gatehouse entrance structures at the front boundaries of many properties.
12. The Appellants identified 2 examples of car ports in the locality. This was acknowledged by the Respondent, although he advised that they were likely approved during the time that Council was amalgamated.

13. The Appellants provided two emails of support from the adjoining owner and adjoining tenant respectively.
14. The key matter identified in the Concurrence Agency Decision was non-compliance with the Building Works Code. The quoted extract was taken from Noosa Plan Building Works Code Specific Outcome O1(d) “maintain the visual continuity and pattern of buildings and landscape elements within the street”.
15. Mr Wayth from the Council advised during the hearing that despite the Information Request, no alternative design within the front setback would have been approved.
16. Mr Wayth from the Council also advised that the carport was a “very good design” and confirmed that other than the identified matter, Specific Outcome O1(d), that there were no other non-compliance concerns with the proposed development.

Reasons for the Decision

1. The application and appeal have been undertaken in accordance with the relevant legislative timeframes.
2. The Tribunal has focused on the identified assessment benchmark Building Works Code Specific Outcome O1(d).
3. It states “Buildings and other structure are appropriately designed and sited to –“... “d) maintain the visual continuity and pattern of buildings and landscape elements within the street”.
4. The area is characterised by high rendered front walls and gatehouse entrance structures at the front boundaries of many properties, that is, there are numerous examples of class 10a structures and wall type fences occurring within the front setback of properties along Shorehaven Drive in proximity to the subject land. This represents the pattern of building and landscape elements within the street.
5. Moreover, as the proposed carport is of a slimline design, is to be located behind a front wall, is intended to be colour matched to the house and will be designed to maintain existing vegetation, it will have limited visual impact to the existing streetscape of Shorehaven drive.
6. In this context, the tribunal is satisfied that the proposed carport complies with Building Works Code Specific Outcome O1(d).

Linda Tait
Development Tribunal Chair
Date: 18 April 2019

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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