



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number: 22-024

Appellant: Patrick Allen
Judi Allen

**Respondent/
Assessment manager:** Luke Owen-Jones of EarthCert Building Approvals

**Co-respondent/
Concurrence agency:** Noosa Shire Council

Site Address: 44 Neptune Cct Noosaville, in the State of Queensland, 4566 and described as Lot 534 on RP 863245 – the subject site

Appeal

This is an appeal under Section 229 and Schedule 1, Table1, Item 1(a) of the Planning Act 2016 against the Assessment Manager's decision to refuse the proposed Building Work Application for a carport at the direction of the Co-respondent/Concurrence agency, Noosa Shire Council, (**Council**) on the basis that the proposed development does not comply with the following performance criteria in the Noosa Plan 2020:

Noosa Plan 2020 – Low Density Residential Zone Code
PO9 Buildings and structures are designed and sited to:
f) be consistent with the predominant character of the streetscape

Date and time of hearing: Friday 19 August at 9.30 am

Place of hearing: The subject site

Tribunal: Henk Mulder - Chair
Mark Westaway - Member

Present:

Appellant

Patrick Allen – Applicant

Judi Allen – Applicant

Respondent/Assessment manager

Luke Owen-Jones - EarthCert

Co-respondent/Concurrence agency

Matt Adamson – Noosa Shire Council

Brad Geaney – Noosa Shire Council

Decision:

1. For the reasons set out below, the Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the Planning Act 2016 (PA2016) **confirms** the decision to refuse the application.

Background

2. The subject site is a rectangular lot with an area of just over 600 square metres of essentially flat land with a road frontage to Neptune Circuit of approximately 18.6 metres.
3. The subject site is located in a Circuit, that is, a street loop for traffic which has a single point for entry and egress to provide vehicular access for 43 houses.
4. A double storey dwelling exists nominally at the centre of the block and is set back 6.0 metres from the street frontage.
5. An open carport extension, the subject of the Appeal, is proposed to this existing dwelling, integrating the existing roof style and pitch. The setback from the street boundary is proposed to be 110mm. The setback from the nearest side boundary is 1.5 metres, to the West.
6. In extending the ridge of the proposed carport from the point of juncture with the residence, a height of 4.0 metres above natural ground level is set out in the drawings for the top of the ridge at the setback to the street boundary, with the eaves shown as 2.05 metres above natural ground level.

Jurisdiction

7. Schedule 1 of the PA states the matters that may be appealed to the Tribunal.
8. Section 1(1) of Schedule 1 of the PA provides that Table 1 states the matters that may be appealed to a tribunal. However, pursuant to section 1(2) of Schedule 1 of the PA, Table 1 only applies to a tribunal if the matter involves one of a list of matters set out in sub-section (2).
9. Section 1(2)(a) of Schedule 1 of the PA, relevantly refers to “the refusal, or deemed refusal of a development application, for - (i) “a material change of use for a classified building;”
10. A “classified building” is defined in Schedule 2 of the PA to mean a “class 1 building”.

11. The Building Code of Australia defines a “class 1 building” to include a single dwelling, being a detached house.
12. In circumstances where the Decision Notice was dated 24 May 2022 and received on 25 May 2022, this appeal was to be filed on or before 22 May 2022. This was satisfied.
13. Accordingly, the Tribunal is satisfied that it has the jurisdiction to hear this appeal.

Decision framework

14. The Decision Notice was received by the Appellant on 25 May 2022. At that time, the PA was in force.
15. The Appellant filed a Form 10 – Notice of Appeal on 31 May 2022.
16. The appeal is a PA appeal, commenced after 3 July 2017 under section 229 of the PA. As such, the appeal is to be heard and determined under the PA.
17. This is an appeal by the Appellant, the recipient of the Decision Notice and accordingly, the Appellant must establish that the appeal should be upheld, per Section 253(2) of the PA.
18. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Council, which decided to direct the refusal of the application, the Decision Notice the subject of this appeal per Section 253(4) of the PA.
19. The Tribunal may (but need not) consider other evidence presented by a party with leave of the Tribunal per Section 253(5)(a) of the PA.
20. The PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding and the Tribunal may seek the views of any person per Section 249 of the PA.
21. The Tribunal may consider other information that the Registrar asks a person to give to the Tribunal per Section 253 and section 246 of the PA.
22. The Tribunal is required to decide this appeal in one of the following relevant ways set out in section 254(2) of the PA:
 - (a) *confirming the decision; or*
 - (b) *changing the decision; or*
 - (c) *replacing the decision with another decision; or*
 - (d) *setting the decision aside and ordering the person who made the decision to remake the decision by a stated time; or*
 - (e) *for a deemed refusal of an application:*
 - (i) *ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or*
 - (ii) *deciding the application.*

Material Considered

45. The material considered in arriving at this decision comprises:
 - (a) A ‘Form 10 – Appeal Notice’, with grounds for appeal and correspondence accompanying the appeal lodged with the Development Tribunals Registrar on 31 May 2022 (Form 10).

- (b) The Appellant's written submissions provided by email dated 21 July 2022, in response to the Directions (Appellant's Submissions).
- (c) The Council's written submissions provided by email dated 1 August 2022, in response to the Directions (Council's Submissions).
- (d) The Council's response to a direction at the Hearing for supply of the Information Request from Council as the Referral Agency dated 26 April 2022 - (Information Request), as provided by email dated 22 August 2022.
- (e) Noosa Plan 2020 (Noosa Plan).
- (f) Planning Act 2016 (PA).
- (g) Planning Regulation 2017 (PR).
- (h) Queensland Development Code (QDC).

Findings of Fact

The Tribunal makes the following findings of fact:

46. A development application for a 10a building classification structure within the front boundary setback was undertaken by the Appellant with EarthCert Building Approvals as the Assessment Manager.
47. The application included the plans elevation, perspective and section shown on drawings 22-333 A100B; A300B, and A400B, by Steve Campbell Design, dated 4 February 2022 and revised 2 May 2022 in response to Council's information request below.
48. The Assessment Manager referred the siting variation for the structure to Council as the concurrency agency. Council established the Referral trigger as from PR Schedule 9, Division 2, Table 3 – Building work for design and siting.
49. Council made an Information Request on 26 April 2022 and set out the following:
 - Issue
 - It has been considered that further information is required for Council to continue the assessment of the proposed carport.
 - Information Required
 - 1. Please provide elevations that clearly identify the height from natural ground level of the proposed building work within the road boundary setback.
 - Issue
 - It has been considered that the proposed carport has an insufficient road boundary setback and is not consistent with the predominant character of the streetscape. Therefore, the carport is unlikely to be supported by Council.
 - Information Required
 - 2. Reconsider the design and location of the proposed carport. If a more compliant design can be achieved, submit amended plans for further consideration. Alternatively, you may request to withdraw the application.
50. Council made a Referral Agency Response in a letter dated 11 May 2022 directing the Assessment Manager to refuse the application for the reasons stated in this response. The Referral Agency decision and reasons were set out as follows:

The application is refused as the proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:

Noosa Plan 2020 – Low Density Residential Zone Code

PO9 Buildings and structures are designed and sited to:

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

It has been considered that the proposed carport is not appropriately designed and sited to be consistent with the predominant character of the streetscape. It is Council's view that the existing predominant character of the streetscape, with respect to the design and location of buildings, is represented by buildings and larger structures being setback at least 6.0 metres from the road frontage.

Furthermore, the design of the carport provides for an exceedingly dominant structure within the prescribed road boundary setback. As such, it is Council's view that the proposal will provide a negative contribution to the streetscape.

51. The Decision Notice from the Assessment Manager refusing the application as directed by Council was dated 24 May 2022.
52. The Owner as set out in the Decision Notice undertook an Appeal in accordance with Section 229 of the PA on 30 May 2022.
53. In the Form 10 Notice of Appeal section 5 the appellant indicated no Site Inspection was required.
54. Subsequently, the Tribunal sought to clarify the information provided in the Form 10 regarding three similar carport structures located within the street "... - all within 6.0 metres of the roadside kerb."
55. The Appellant and, belatedly, the Council provided written confirmation and agreement regarding the location and address for the three similar carport structures, being 4 Neptune Cct, 8 Neptune Cct and 54 Neptune Cct.
56. The Appellant, in the Appellant's Submissions also advised of an additional five properties in neighbouring or nearby streets with carports to the street, as well as permanent shade structures as de facto carports in Neptune Cct and a neighbouring street.
57. The Council, in its Submissions confirmed that both 4 and 8 Neptune Cct were approved as siting variations under the earlier Planning Scheme of the Noosa Plan 2006, in 2018 and 2016, respectively. The structure at 54 Neptune Cct was approved in 2014 against the QDC as an open carport based on the angle of the road boundary to the kerb, and which has subsequently been filled in at the sides without an identifiable approval.
58. The Council, in the Council's Submissions also conveyed that whilst the structure at 54 Neptune Cct has an effect on the streetscape, it did not form a basis for a predominant character to allow the site variation sought at the subject site.
59. With a change in the Appellant's Appeal application, a Site Inspection and Hearing was sought by the Appellant, and undertaken at the site.

The Hearing

60. The Council confirmed the issues as contained in the Council's Submissions, in that the existing carports gained approvals under a separate planning scheme and nonetheless did not establish a predominant characteristic of the street.
61. The nearby structure at 54 Neptune Cct which is visible from near the front of the subject site was noted by the Council as having a setback of 1.2 metres from the street boundary, in contrast with the 100mm proposed for the subject site.

62. The Council clarified the intent of the decision was to ensure the retention of an existing open landscaping to the street side of dwelling structures which are set back in compliance with planning scheme.
63. The Appellant was unclear about the nature of a 6.0 metre setback as sought from the property boundary in contrast to the kerb, however the site circumstances visually established a particularly wide verge or nature strip from the kerb to the boundary, contributing a significant component for the visual setback of the proposed structure.
64. The question for the application of the term predominant was discussed to the extent that there may be more than a single predominant feature in a setting, and that reviewing one characteristic in a streetscape need not exclude the effect of different characteristics in the streetscape which may readily modify a singular effect.
65. It was discussed with the Appellant that the nature of the street as a loop - being a Circuit - ensured every entry and egress of the street would directly confront properties recognised as having carport structures within the front boundary setback, and consequently form a significant visual effect for all the residents and their visitors.
66. The circumstances for existing landscaping in the nature strip near the subject site to the West was highlighted by the Appellant as materially affecting the street view of the property from a moving vehicle in such a way as to afford a line of sight that would demonstrably not have the proposed structure obstruct or diminish the view to nearby front yards, or the nature strip.

Reasons for the Decision

67. The Tribunal is satisfied that the Appellant cannot demonstrate that the proposal forms any predominant part of the character of the street, and has not established that the appeal should be upheld. The proposal would change the street aspect contrary to its residential area description with a readily visible prominence in the street.
68. The Tribunal considers that the street of the subject site consistently demonstrates wide landscaping from the front boundary setback, including for the varying landscape strip or roadside verge at both sides of the road. The offsite plant conditions to the West along the nature strip is not considered as a part of the character of the proposed structure.
69. Neptune Circuit is made up of relatively few viable examples for similar structures with a reduced boundary setback to structures and landscape elements comparable to the structure proposed.
70. Accordingly, the Tribunal considers the decision should not be altered.

Henk Mulder

Development Tribunal Chair
Date: 24 October 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:

The Registrar of Development Tribunals
Department of Energy and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone: 1800 804 833 Facsimile: (07) 3237 1248

Email: registrar@hpw.qld.gov.au