



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-047
Appellant:	Mark Skinner
Assessment Manager:	Brett McCullagh
Co-respondent (Concurrence Agency):	Noosa Shire Council
Site Address:	5 Cordia Close Peregrin Beach and described as Lot 382 on P 93153 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the Planning Act 2016 against the decision of the Assessment Manager, as directed by the Concurrence Agency, for refusal of a Development Permit for Building Works for a Class 10a structure, being a carport, on a residential site. The decision followed a referral agency response by the Noosa Shire Council directing refusal of the application on the grounds that the proposed carport does not comply and cannot be conditioned to comply with the provisions of the Noosa Plan 2020, Low Density Residential Zone Code PO9(f) (be consistent with the predominant character of the streetscape).

Date and time of hearing:	10-30 a.m. 5 December 2022
Place of hearing:	The subject site
Tribunal:	Anthony Roberts – Chair Anne-Maree Ireland - Member
Present:	Mark Skinner (and Tahne Skinner) – Appellant Brett McCullagh (North Shore Building Approvals) – Assessment Manager Brad Geaney – Noosa Shire Council

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the Planning Act 2016, confirms the decision of the Assessment Manager, as directed by the Concurrence Agency to refuse the application.

Background

1. The subject site of this appeal is:

- a. elevated and located near the head of the Cordia Close cul-de-sac;
 - b. a 941m² steeply sloping allotment (with a 19 m angular frontage to Cordia Close) which falls nearly 2 m from the frontage to the foot of the existing dwelling;
 - c. contains a large two-storey dwelling house including a garage, swimming pool, and well landscaped grounds;
 - d. zoned Low Density Residential under the Noosa Plan 2020.
2. The proposed carport is a single structure consisting of two single carports with a central breezeway and is:
 - a. to be located 1.2 m minimum from the road boundary;
 - b. 6.1m in length with a width of 7.2m and area of 45.1m²;
 - c. 3 metres in height to the street frontage;
 - d. lightweight in design with side-wall slats and a skillion roof sloping towards the rear.
 3. As the proposed structure triggers assessment against the relevant performance criteria of the Noosa Plan 2020 due to the proposed siting within the 6m front setback, the Assessment Manager lodged a Request for a Referral Agency Response for building work for 'design and siting' within the required front setback with the Noosa Shire Council on 21 February 2022.
 4. On 10 August 2022, Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for the reasons stated 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 design and location of the proposed carport provides an insufficient road boundary setback and is not consistent with the predominant character of the streetscape.

Additionally, the proposed carport provides for an exceedingly dominant structure within the road boundary setback.

5. Accordingly, the Assessment Manager issued a Decision Notice on 9 September 2022 refusing the proposed development based exclusively on the Referral Agency Response from Council.
6. The Appellant subsequently appealed this decision by lodging with the Registrar a Form 10 – Notice of Appeal on 16 September 2022.
7. The hearing for the appeal was held at the subject site on 5 December 2022 at 10-30 a.m. The Tribunal had the opportunity to view the positioning of the proposed structure from the subject site, neighbouring properties, and the streetscape more generally.

Material considered

8. The Tribunal considered the following material:
 - a. Form 10 – Appeal Notice, grounds for appeal and correspondence/attachments accompanying the appeal lodged with the Tribunals Registrar 16 September 2022
 - b. The Planning Act 2016 (PA)

- c. The Planning Regulation 2017 (PR)
- d. The Building Act 1975 (BA)
- e. The Building Regulation 2006 (BR)
- f. The Queensland Development Code (QDC) Part MP 1.2
- g. The Noosa Plan 2020 (Noosa Plan)
- h. Noosa Plan 2020 – Low Density Residential Zone Code (the Code)
- i. The verbal submissions made by the parties at the hearing and during the site inspection
- j. Additional post-hearing written submission made by the Appellant dated 6 December 2022
- k. Additional post-hearing submission made by Council dated 7 December 2022.

Jurisdiction

- 9. The Tribunal has jurisdiction to hear the appeal under the PA section 229(1)(a)(i) and Schedule 1, sections 1(1)(b), 1(2)(g) and Table 1, item 1(a) being an appeal by the Appellant against the refusal of the development application by the Assessment Manager at the direction of the Concurrence Agency.
- 10. Pursuant to section 253(4) 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 Assessment Manager. The Tribunal may, nevertheless (but need not), consider other evidence presented by a party with leave of the Tribunal, or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
- 11. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Decision framework

- 12. Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:
 - (2) Generally, the appellant must establish the appeal should be upheld.
 - (4) The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.
 - (5) However, the tribunal may, but need not, consider— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.
- 13. Section 254 of the PA deals with how an appeal such as this may be decided. The first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal and is not relevant here) are as follows:
 - (1) This section applies to an appeal to a tribunal against a decision.
 - (2) The tribunal must decide the appeal by-
 - (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) [not relevant].

- (3) However, the tribunal must not make a change, other than a minor change, to a development application.
14. Section 33 of the BA (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover.
15. The Low Density Residential Zone Code Table 6.3.1.3, contains alternate provisions to the QDC. As the proposal does not meet the acceptable outcomes set out in Acceptable Outcome AO 9.1, which as applied to the site requires buildings and structures have a setback of 6m from the road frontage, assessment is made against the list of Performance Outcomes stated at PO9 of the Code. For the purposes of this appeal only PO9(f), 'be consistent with the predominant character of the streetscape', is applicable.

Findings of fact

The Tribunal makes the following findings of fact:

Consistency with predominant character of the existing streetscape

16. In relation to the grounds for refusal identified by Council, the Appellant contends that the carport is necessary to provide parking for a proposed dwelling extension (granny flat) intended to accommodate elderly parents which cannot proceed without the carport approval and put forward the following relevant grounds for appeal:
- There is no viable alternative for the siting of the structure as the existing dwelling is located central to the allotment and the site slopes substantially from the street necessitating a structure at floor level at the front of the existing dwelling for ease of access;
 - The existing dwelling does not comply with the Code given it has only one covered car space - not two as required by the Code;
 - The adjoining neighbours (at 3 and 7 Cordia Close) have advised in writing that they hold no objection to the proposed development;
 - There are several instances in Cordia Close (and in the immediate neighbourhood) of encroachments into the 6m required setback.
17. Council contends that the proposed carport fails to satisfy criterion PO9(f) of the Code as:
- The predominant streetscape character of Cordia Close is defined by buildings and structures which mainly comply with the required 6m setback with several Council approved exceptions and possibly two apparently unlawful exceptions;
 - The proposed location of the carport in close proximity to the front property boundary together with the height and bulk of the proposed structure will likely result in the structure dominating the existing streetscape;
 - The intention to enclose the side walls of the structure with slats will add to the visual dominance of the structure;
 - There are siting and design alternatives that would mitigate the visual impact of the proposed structure.
18. Based upon the site inspection conducted at the hearing, the Tribunal finds that Cordia Close generally presents as an 'open' well-vegetated streetscape with some buildings and structures (on allotments with dual frontage to Lorilet Street) being visually prominent.

19. At the hearing, the Council representative identified that the existing instances where buildings and structures intrude into the 6m setback were either consistent with previous approvals (mostly under the previous Noosa Plan and Code) or were unlawful developments. Further, Council considers that while reduced setbacks have been approved, the proposed development represents a significantly reduced setback compared to the setbacks of the existing buildings and therefore the proposed setback cannot be considered to be consistent with the predominant setbacks of the existing buildings within the streetscape.
20. At the request of the Tribunal and following the hearing, Council provided further particulars concerning these instances that highlighted that most occurred on dual frontage properties and that, for the properties that have a road frontage to both Lorilet Street and Cordia Close (21 to 29 Lorilet Street), the current alternative Noosa Plan siting provisions allow a reduced road boundary setback of 4.5m to one road frontage where the site area is less than 600m² – which is the case for these properties.
21. The Tribunal finds that the proposed setback on the subject site would represent a significantly reduced setback from those prevailing in the streetscape.
22. In regard to Council's suggestion that alternative siting and design options exist (for example by excluding the breezeway and/or relocating the carport positioning along the frontage) the Tribunal noted that the existence of a power pole adjacent to the south-west frontage substantially inhibited the feasibility of such options.

Dominance of proposed structure

23. Alongside concerns about the intended location of the carport, Council holds concerns that the bulk and height viz. '... Additionally, the proposed carport provides for an exceedingly dominant structure within the road boundary setback'.
24. Having regard to the proposed front height (3m), width (7.2m) and slat treatment to side walls and façade, the Tribunal considers that the proposed structure would likely present as visually dominant in relation to the prevailing streetscape.

Reasons for the decision

25. In this appeal, the Tribunal considers the Appellant has not satisfied the onus of demonstrating the appeal should be upheld. Therefore, the Tribunal has determined to confirm the decision of the Assessment Manager, as directed by the Concurrence Agency, to refuse the application for the reasons identified below.
26. Given the location of the proposed carport at a minimum of 1.2m from the front alignment, the proposed development would likely be inconsistent with the character of the street as exhibited by the existing pattern of buildings and structures in the street. Further, the intended bulk and height of the proposed structure presents a potentially dominant element in the streetscape.
27. The proposed carport therefore does not satisfy, and cannot be conditioned to satisfy, criterion (f) of Performance Outcome 9 of the Noosa Plan 2020 – Low Density Residential Zone Code requiring that buildings and structures are designed and sited to be consistent with the predominant character of the streetscape.

28. The Tribunal acknowledges that the subject proposal is inter-linked with a separate proposal for a granny flat on the premises but has considered this appeal as freestanding and independent of the granny flat proposal.
29. However, in this regard, the Tribunal notes that any apparent non-compliance of the existing dwelling with the current code is historical and that the current code only requires provision of one uncovered car space for a granny flat.

Anthony Roberts

Development Tribunal Chair

Date: 16 January 2023

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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