



Development Tribunal – Decision Notice

Planning Act 2016

Appeal Number:	21-067
Appellant:	Michael Birchall and Diane Lynas
Assessment Manager:	Pacific BCQ
Concurrence Agency:	Noosa Shire Council
Site Address:	5 Seashell Place Noosaville and described as Lot 208 on RP 842157 – 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 refusal of a Development Application for approval of Building Work (Dwelling House) 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 a 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:	1.30pm on Monday 28 March 2022
Place of hearing:	The subject site
Tribunal:	Anthony Roberts – Chair Catherine Baudet – Member
Present:	Michael Burchell and Diane Lynas – Appellant Marcus Brennan – Planner Jan Grotherr – Building Designer Matt Adamson - Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the Planning Act 2016 replaces the decision of the Assessment Manager on 3 November 2021 with another decision, namely to approve the siting of the proposed open carport on the subject land as shown on Drawings No.19174-01_P1;19174-02_P1;19174-03_P1;19174-04_P1;19174-05_P1 prepared by PJ Concepts & Design and dated 6 July 2021.

Background

1. The subject site of this appeal is:
 - irregular in shape with a 25m frontage to Seashell Place, comprises an area of 936m² and contains a dwelling house including a garage, swimming pool, and well landscaped grounds.

- located just off a sweeping curve in Seashell Place and adjoined by the following:
 - f. to the north, on the opposite side of Seashell Place, is a vacant residential parcel of land;
 - ii. to the east is a single storey dwelling;
 - iii. to the south is vegetated parkland;
 - iv. to the west is a croquet club and associated parking area on a Council reserve.
 - zoned Low Density Residential under the Noosa Plan 2020.
2. The single storey dwelling on the site is setback 7 metres from the street and has a double garage which has been modified by a previous owner to include cabinetry and now has an effective internal length of 5.04m which makes it too constrained for a modern large (B99) vehicle.
 3. The proposed double carport over the existing double driveway:
 - is open on all sides;
 - has a length of 6.9m and a width of 7.8m (inclusive of eaves);
 - is setback 0.5 metres to the street frontage to its outermost projection;
 - presents a height of 2.7m to the street frontage and a maximum height of 4.15m along its ridgeline, which is setback 3.2m from the front property boundary;
 - has a floor area of 33.6m² measured from the outside of its columns;
 - is a Dutch gable design to match the character of the existing dwelling.
 4. As the proposed carport triggers assessment against the relevant performance criteria of the Noosa Plan 2020 due to the proposed siting within the 6 metre front setback, PJ Concept Designs lodged a Request for a Referral Agency Response (under Schedule 9, Division 2, Table 3 of the Planning Regulation 2017) for building work relating to carport within the front setback over the site with the Noosa Shire Council on 6 July 2021.
 5. On 11 August 2021, 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 an 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 is not 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 building and structures, 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.”
 6. Accordingly, the Assessment Manager issued a Decision Notice refusing the proposed development based exclusively on the Referral Agency Response from Council on 3 November 2021.
 7. The Appellants subsequently appealed this decision by lodging with the Registrar a Form 10 – Notice of Appeal on 25 November 2021.

8. The hearing for the appeal was held at the subject site on 28 March 2022 at 1-30 p.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.

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 Appellants against the refusal of the development application by the Assessment Manager on the direction of the Referral 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 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.
13. 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.

Material Considered

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence/attachments accompanying the appeal lodged with the Tribunals Registrar 25 November 2021;
2. The Planning Act 2016 (PA);
3. The Planning Regulation 2017 (PR);
4. The Building Act 1975 (BA);
5. The Building Regulation 2006 (BR);
6. The Queensland Development Code (QDC) Part MP 1.2;
7. The Noosa Plan 2020 (Noosa Plan);
8. Noosa Plan 2020 – Low Density Residential Zone Code (the Code);
9. The verbal submissions made by the parties at the hearing and during the site inspection.

Findings of Fact

The Tribunal makes the following findings of fact:

Consistency with predominant character of the existing streetscape

14. In relation to the first grounds for refusal identified by Council as: *the design and location of the proposed carport is not 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 building and structures, is represented by buildings and larger structures being setback at least 6.0 metres from the road frontage.*
15. In relation to this component of the grounds for refusal, the Appellants, in the main, contend that the proposal complies with Performance Outcome PO9 (f) of the Code for the following reasons:
- Seashell Place seamlessly transitions into Aquamarine Circuit and they visually appear as part of the same streetscape. There is no "predominant character" that can be attributed to the streetscape, rather there are several different character aspects in the streetscape.
 - The streetscape contains a mixture of architecture forms with a mixture of open and fenced front yards occurring along the streetscape.
 - The fenced front yards are typically set behind a 1.8m high rendered blockwork fences and there are number of structures that exist within the front setback areas of including permanent shade sail structures over carparking areas, pergolas and cabanas;
 - The streetscape is also generally well vegetated and the proposed carport would have very limited visibility from the streetscape due to vegetation screening that exists onsite, on the street verge and within the adjoining park reserve.
16. Council's position is that the existing predominant charter of the streetscape *with respect to the design and location of buildings and structures* is represented by the majority of buildings and 'larger structures' being behind the 6 metre setback. As confirmed by Council's representative at the Appeal, Council therefore contends that a carport setback at 0.5m from the front boundary of the subject site is inconsistent with the existing visual continuity and pattern of buildings and 'larger structures' in the street - therefore failing to comply with Performance Outcome PO9 (f) of the Code.
17. Based upon the site inspection conducted at the hearing, the Tribunal finds that while Seashell Place exhibits a 'leafy' well landscaped street appearance substantial windiness or curvature of the road alignment actually presents varied 'streetscapes' comprising varied building pattern and landscape elements along the extent of the street.
18. It is also evident that the pattern of buildings and structures is characterised by considerable 'visual clutter' in the streetscape generally attributed to the presence of assorted structures such as solid rendered block fences (up to 1.8 metres high) and shade sail structures. These structures detract from the Council's design intention of having visual continuity and a consistent pattern of buildings and landscape elements. A clear pattern of the streetscape, defined primarily by built form, is therefore not apparent.

Design Considerations

19. The second component of Council's reasons for refusal was that the location and design of the proposed carport means that it would amount to an 'exceedingly dominant structure within the prescribed road boundary setback.' In relation to the design considerations, at the hearing the Council representative advised that Council would not accept a lighter-weight structure as an alternative in the proposed location.

20. The Appellants contend that the carport has been designed to integrate seamlessly into the existing Dutch gable dwelling structure and incorporates a cantilever to allow the front columns to be setback 1.4 from the front boundary. Further, this design together with the onsite and adjacent vegetation will provide significant screening of the proposed carport to ensure that it is not a visually dominant feature within the streetscape. The Appellants also stated that the existing front brush fence would be replaced with a new fence that retained the existing vegetation buffer and enhanced it with landscaped recesses for further streetscaping.
21. The site when viewed from the street immediately in front at the hearing features well landscaped grounds enclosed with a high brush fence. Mature trees in front of the site on the western side provide a substantial visual buffer. The adjoining residential property to the east cannot readily be seen from the front yard of the site due to the fencing and vegetation on site.
22. The Tribunal therefore finds that the carport itself, with a Dutch gable design which will blend seamlessly into the existing dwelling, is unlikely to have a detrimental impact on the visual values of the streetscape and that it would effectively maintain the existing visual continuity and pattern of building elements already evident in the street.

Impact on neighbours

23. The Tribunal notes that, as stated by the Appellants at the hearing, written approaches had been made to immediately neighbouring property holders seeking any objections prior to the application being made and that as a result no objections were raised and that two written indications of support were received by the Appellants
24. The Tribunal therefore considers that those parties likely to be most directly affected by the development evidently have no concerns with the siting and design of the proposed carport.

Existing Car Accommodation on Site

25. The Appellants contend that the existing double garage is currently unusable for the intended purpose of parking a large SUV (B99) vehicle due to the garage length constraints and that accommodation for a total of three vehicles is required.
26. The Tribunal finds that modification of the existing garage for the intended purpose would be costly and still not archive the desired result of accommodating three vehicles.

Reasons for the Decision

27. In this Appeal, the Tribunal considers the Appellants have satisfied the onus to demonstrate the appeal should be upheld. Therefore, the Tribunal has determined to replace the decision of the Assessment Manager for the reasons identified below.
28. The Tribunal found that substantial curvature of the road alignment, together with existing vegetation, actually presents varied 'streetscapes' comprising varied building pattern and landscape elements along the extent of the street.
29. Council's intent, through the focus on the design and siting of buildings and structures in the framing of PO9 of the Code, that garages and carports do not dominate the streetscape, is clear. However, while it may be the case that garages and carports are predominantly setback at least 6 metres from the street frontage, it is also evident that the pattern of built form is characterised by considerable 'visual clutter' in the streetscape generally attributed to the presence of assorted structures such as solid high fences and sail shade structures.

30. With respect to the second component of Council's reasons for refusal, that is, the design of the carport provides for 'an exceedingly dominant structure within the prescribed road boundary setback', the Tribunal finds that the Dutch gable design will allow the structure to blend seamlessly into the existing dwelling and together with the existing and proposed landscape elements in the streetscape, would not result in a detrimental impact on the visual values of the streetscape. A good indication of this is the absence of concerns raised by immediate neighbours - the parties most directly affected by the appearance and location of the carport.

Anthony Roberts

Development Tribunal Chair

Date: 19 April 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:

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