



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number: 22-040

Appellant: RG Strategic Australia

**Respondent:
(Assessment Manager)** Stewart Magill (Pure Building Approvals)

**Co-Respondent:
(Concurrence Agency)** Noosa Shire Council

Site Address: 21 Wesley Court, Noosa. described as Lot 42 on Crown Plan N21843 – the subject site

Appeal

Appeal under Section 229 and Schedule 1, Table 1, Item 1(a) of the Planning Act 2016 against Stewart Magill's refusal of a Building Development Application (reference Noosa Council RAB 21/0259).

(For clarity, the Assessment Manager (Stewart Magill of Pure Building Approvals) refused the proposed building works citing the reason as the onerous conditions imposed by the Referral Agency (Noosa Shire Council) for a carport within the front boundary set back. The Refusal Notice cites the reason for refusal being solely because of the Council condition requiring the door to the proposed carport be removed).

Date and time of hearing: Thursday 29 September 2022 at 11.30 am

Place of hearing: The subject site

Tribunal: Derek Kemp – Chair
Henk Mulder – Member

Present: Russell Green of the Appellant
Stewart Magill (Pure Building Approvals), Assessment Manager
Jon Day (Pure Building Approvals)
Matt Anderson of Noosa Shire Council, Co-Respondent
Jarrod Yostle of Noosa Shire Council (observer)

Decision:

The Development Tribunal, in accordance with section 254(2)(c) of the *Planning Act 2016* **replaces** the decision of the Assessment Manager to 'refuse' the Building Development Application (Noosa Council RAB 21/0259) with a decision that the Development Permit for Building Work (RAB 22/0259) **be approved**, with the following conditions:

- a) A 'minimum' set back of 0.2 metres of the outermost part of the carport from the front property boundary.
- b) The sides of the carport not to be enclosed or otherwise screened with louvers, slats, battens etc.
- c) The maximum building height of the carport not to exceed 3.183 metres above the finished level of the slab.
- d) Such other conditions, as the assessment manager reasonably requires to ensure compliance with the building assessment provisions.

Background

The Subject Site

1. The subject site is a nominally rectangular level block with a site area of 834 square metres, a 19.5 metre frontage and a slightly wider, curved rear boundary. The existing residence is a single storey detached dwelling in a 'Y' shaped configuration with one extent of the configuration facing the street at an angle and having a setback of 6.5 metres at its nearest proximity. A single vehicle carport currently exists by the entry walkway, with the remaining area under roof and facing the street utilised as a spare bedroom. The remaining area of the setback to the street frontage is occupied by an in-ground pool.
2. The subject site is situated towards one end of Wesley Ct, which constitutes a short street with a cul-de-sac at both ends. That part of the Wesley Ct surrounding the subject site contains similar or larger residences, with a significant component of solid masonry fencing to the street boundary.
3. The subject site also has a 1.8 metre high solid masonry fence with a 1.8 metre high 'solid' vehicle and pedestrian entry gate along the full length of the property boundary fronting Wesley Ct.

The Proposal

4. The proposal is for an 'open carport' located in the front setback of the existing dwelling with a roller door. (Reference Kidd & Co Plans SD 103, SD 401, SD 501 stamped RAB21/0259, dated 9/05/2022 by the Noosa Shire Council as the '*plans accompanying the concurrence agency response*').

Assessment of the Application

5. On the 6 December 2021 Pure Building Approvals requested the Noosa Shire Council '*Referral Agency Response*' for the proposed works.

6. On the 21 December Noosa Shire Council issued a '*Further Information Request*' that *inter alia* stated:

Issue

It has been considered that the design and location of the carport is not consistent with the predominant character of the streetscape. It is suggested that Council will not support the current proposal as it does not comply with the performance outcomes found in PO9 of the Low Density Residential Zone Code.

Information Required

1. Reconsider the design and location of the proposed carport with consideration of the specific outcomes found in PO9 of the Low Density Residential Zone Code. It is suggested that there is an opportunity to reduce the impact on the streetscape by providing a greater road boundary setback, and reducing the width of the structure. Additionally, it is unlikely that Council will support a carport with a roller door within the prescribed road boundary setback. Please submit amended plans to allow further processing of the request.
7. Amended plans were submitted to the Noosa Shire Council by Pure Building Approvals identified as the Kidd & Co Plans SD 103, SD 401, SD 501 without amendment number or amendment date, and stamped RAB21/0259 and dated 9/05/2022 by the Noosa Shire Council, being the '*plans accompanying the concurrence agency response*'.
8. The amendments included a significant reduction of the proposed carport roof pitch from matching the existing residence's roof pitch of nominally 20° to that of 10°; a relocation of the carport to the west of the original proposal which minimally reduced the length of the carport due to the angled street boundary; the introduction of a masonry wall at the Eastern corner, and modifying the carport door proposed from a roller door type to a tilt panel type whilst maintaining the width of the opening.
9. It is noted the stamped drawings indicate an existing 2.0 metre high masonry front fence, whereas it was acknowledged on site that the existing masonry fence to be retained is 1.8 metres.
10. The Noosa Shire Council '*Referral Agency Response*' dated 9 May 2022 recommended '*approval*' of the proposed building works '*subject to conditions*' that::
- The carport must have a minimum setback of 0.2 metres from the outermost projection to the Wesley Court road boundary.
 - The carport must not be fitted with a roller/panel lift door.
 - The sides of the carport must not be enclosed or otherwise screened with louvers, slats, battens etc.
 - The maximum building height of the carport is not to exceed 3.183 metres above *ground level* (as defined by the Noosa Plan).
 - The building work subject of this response must be undertaken in accordance with the Council stamped and endorsed plans associated with this referral response.

Refusal of the Application

11. On the 18 July 2022 a '*Decision Notice Refusal*' was issued by the Assessment Manager (Stewart Magill of Pure Building Approvals) that *inter alia* stated the '*Details of refusal*' as (*sic*):

The assessment manager was directed to refuse the application by Noosa Shire Council in accordance with their referral agency role. The refusal is solely because of the direction of the referral agency imposing an onerous condition to remove the garage door or

12. That 'Decision Notice Refusal' stated '*Reasons for the refusal*' as:
Noosa Shire Council issued a Concurrency Agency Response approval (RAB21/0259) with a condition to remove the garage door. The applicant/property owners does want the garage door to be removed.
13. For clarity, the 'Referral Agency' (the Noosa Shire Council) directed the Assessment Manager to '*Approve*' the proposed development subject to conditions that included no panel or tilt door, a minimum front set back and a maximum height condition – that are now the subject of this appeal.

Nearby Developments

14. The property immediately to the east of the subject site (19 Wesley Ct) is a single storey residence with an enclosed garage that is indicatively set back 6.0 metres from the street with a 1.8 metre high wall to the entry driveway perimeter and the remainder of the street boundary.
15. The next property to the east (17 Wesley Ct.) is a two storey residence with a garage built up very close to the front property boundary using a vertical batten screened door and accompanying overhead parapet, adjacent to a 1.8 metre high masonry wall facing the street.
16. The property further to the east (11 Wesley Ct), near the end of the cul-de-sac, is a single storey residence with a 1.5 metre high masonry wall and solid timber fence and a garage, using a tilt panel door, built up very near to the front property boundary
17. The property immediately to the west of the subject site (23 Wesley Ct) is a two storey residence with a 2.0 metre high masonry front boundary wall, with a garage under construction set back approximately 6 metres, with a return wall extending from near the front boundary at 2 metres high rising in height to approximately 3 metres towards the existing dwelling and garage.
18. The property further to the west (25 Wesley Ct) is a single storey residence, with a triple garage with roller doors set back approximately 4.5 metres, with a 2.0 metre high masonry front boundary wall.

Material Considered

19. The material considered in arriving at this decision comprises:
 - (1) 'Form 10 – Notice of Appeal/ Application for Declaration', being the grounds for appeal lodged with the Tribunals Registrar on 26 July 2022.
 - (2) Correspondence accompanying the appeal lodged with the Tribunals Registrar on 26 July 2022. This includes:
 - a. The letter from Pure Building Approvals to the Noosa Shire Council dated 6 December 2021 requesting its Referral Agency response that inter alia sought to address the issue of non-compliance with the Noosa Shire Planning Scheme 'Noosa Plan 2020' - 'Low Density Residential Code'

- b. The letter to the Registrar from Pure Building Approvals dated 26 July 2022 which included advice on the owner's response to the Council conditions and the 'Decision to Refuse' notice.
- (3) The response from the parties to the Tribunal's request for advice confirming the appellant also objected to the conditions concerning the front set back and the proposed maximum height of the proposed carport (Reference the email responses received by the Registry on 15 September 2022).
- (4) Planning Act 2016.
- (5) Noosa Shire Planning Scheme 'Noosa Plan 2020' - 'Low Density Residential Code'
- (6) The Queensland Development Code, MP 1.2 March 2010.
- (7) Verbal representations at the Tribunal Hearing on 29 September 2022.
- (8) The email from Jon Day of Pure Building Approvals to the Tribunal clarifying their client's position after the Hearing (received by the Registry on 29 September 2022).

Findings of Fact

- 20. The Tribunal finds that the Referral Agency (Noosa Shire Council) did not direct the Assessment Manager (Stewart Magill of Pure Building Approvals) to 'Refuse' the Building Development Application (reference Noosa Council RAB 21/0259).
- 21. The Tribunal finds that the Assessment Manager (Stewart Magill of Pure Building Approvals) 'Refused' the Building Development Application (reference Noosa Council RAB 21/0259) citing the reason that the Referral Agency (Noosa Shire Council) condition that there be no roller/panel lift door was an unacceptable condition.
- 22. The Tribunal finds that the matters considered in reaching its Decision against this 'refusal' would be the same as those considered if the Assessment Manager had 'Approved' the Building Development Application (reference Noosa Council RAB 21/0259) and the Appellant had appealed against the Council's 'Referral Agency' conditions (Noosa Shire Council 'Referral Agency Response' dated 9 May 2022).

Reasons for the Decision

- 23. The relevant part of the Noosa Shire Planning Scheme 'Noosa Plan 2020' - '*Low Density Residential Code*' is the '*Performance Outcome*' PO9 that states:

Setback

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) not unreasonably obstruct views or cause overlooking of private open space or habitable areas of adjoining premises;
- (c) provide adequate distance from adjoining land uses;
- (d) preserve existing vegetation that will help buffer development;
- (e) allow for space and landscaping to be provided between buildings including adequate area at ground level for landscaping with trees, shrubs and outdoor living;
- (f) be consistent with the predominant character of the streetscape; and
- (g) protect the natural character and avoid adverse impacts on ecologically important areas such as national parks, waterways and wetlands.

24. The Tribunal noted that the Noosa Shire Council *had no objection* to the proposed carport at the proposed location provided it meets the following conditions (Noosa Shire Council 'Referral Agency Response' dated 9 May 2022 recommended 'approval' of the proposed building works 'subject to conditions'):

- The carport must have a minimum setback of 0.2 metres from the outermost projection to the Wesley Court road boundary.
- The carport must not be fitted with a roller/panel lift door.
- The sides of the carport must not be enclosed or otherwise screened with louvers, slats, battens etc.
- The maximum building height of the carport is not to exceed 3.183 metres above *ground level* (as defined by the Noosa Plan).
- The building work subject of this response must be undertaken in accordance with the Council stamped and endorsed plans associated with this referral response.

25. The Tribunal noted that all of the properties within the eastern extent of the *cul-de-sac* within the streetscape on both sides of the street, visible to the subject property, all had solid timber or masonry walls and gates at, or exceeding, 1.8 metres high.

26. The Tribunal noted that the significant majority of properties in this streetscape had garages or carports with roller or tilt doors, or were located behind solid gates at least 1.8 metre high (with the one exception of 17 Wesley Ct. which has a garage with a vertically screen tilt door built up to the front property boundary).

27. In terms of PO6(a) the Tribunal formed the opinion that the *high level of amenity* and *visual and acoustic privacy* being sought in this part of Wesley Ct. was by high masonry walls, solid fences, high solid screen gates and garage and carport doors.

28. In terms of PO6(f) the Tribunal formed the view that the *prevailing streetscape* in this part of Wesley Ct. was characterised by high masonry walls, solid fences, high solid screen gates and garage and carports with predominantly solid doors.

29. For clarity, the Tribunal formed the opinion that the proposed maximum height of the proposed carport of 3.183 metres above the slab level and the proposed roller or tilt door to the proposed carport are acceptable and meet the Noosa Shire Planning Scheme '*Low Density Residential Code*' 'Performance Outcome' PO9.
30. In the circumstances, the Tribunal is satisfied that the Appellant has established that the appeal should be upheld subject to the condition that the minimum set back of 0.2 metres (200 mm) of the outermost part of the carport from the front property boundary.

Derek Craven Kemp
Development Tribunal Chair
Date: 26 October 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 (07) 1800 804 833

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