



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	19-056
Appellant:	David Meakins
Respondent (Assessment Manager):	Terry Neller c/-Noosa Building Certifiers
Co-respondent (Concurrence Agency):	Noosa Shire Council
Site Address:	1 Tecoma Close Peregian Beach corner of Calliandra Grove Road described as Lot 527 MCH5293 – the subject site

Appeal

Appeal made 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 a preliminary approval for the siting of building work associated with the construction of a garage. Noosa Council as the concurrence agency directed the assessment manager to refuse the application stating it did not satisfy and could not be conditioned to satisfy Performance Outcome O1 (e) and (f) of the Noosa Plan's Detached House Code.

Date and time of hearing:	10 March 2020 at 1.00pm
Place of hearing:	The subject site
Tribunal:	Debbie Johnson – Chair Elisa Knowlman – Member
Present:	Yvonne Meakins and David Meakins – Appellant and property owner Matt Adamson- Council representative Brad Geaney- Council representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) confirms the council's concurrence agency response to direct the assessment manager to refuse the development application for a preliminary approval for carrying out building work for the construction of a garage.

Background:

1. The appellant purchased the subject corner site in 2016. At that time the two storey home did not have a garage, only a driveway and crossover from Tecoma Close. A previous home owner had converted the original double garage into habitable living area which is now used for bedrooms.
2. On 4 April 2018, the appellant sought and subsequently obtained a building permit for alterations and additions to his home. These works primarily involved the removal and replacement of pitched roof sections with open tiled patio areas to cover the existing ground floor living rooms. This work is almost complete save the intention to provide further roof cover to the new patio.
3. On 23 October 2018, the appellant sought a building permit through the assessment manager for the erection of a double carport. The structure was to be sited predominately within the street setback area to Calliandra Grove Rd.
4. On 29 October 2018, the assessment manager referred the application to Council as the proposed siting for that structure was within the nominated street setback area.
5. On 5 November 2018, Council wrote to the assessment manager and recommended conditional approval for the design and siting of a double carport to allow a 1.7m setback and access from Calliandra Grove Road frontage.
6. The appellant did not proceed with the approved carport works as he decided that an enclosed garage would be more appropriate to suit his needs.
7. On 2 August 2019, the appellant lodged an application with the assessment manager for preliminary approval of a double garage in lieu of the approved carport. That is, the proposed garage was to be sited in the same location as the approved carport.
8. On 6 August 2019, the assessment manager referred the application to Council as design and overall size of the proposed structure was materially different to that which was previously approved.
9. On 14 August 2019, Council issued an information request to the assessment manager stating that the proposed garage was unlikely to be supported. Council stated that the proposed structure would have a dominating effect over the streetscape given the height at 3.8m above ground level. The Council further requested that the height be reduced and that amended plans be lodged.
10. On 22 November 2019, Council directed the assessment manager to refuse the application stating that the proposed development did not comply and could not be conditioned to comply with Noosa Plan's Detached House Code performance criteria, PO1:
 - (e) Maintain the visual continuity and pattern of buildings and landscape elements within the street; and
 - (f) For Class 10a buildings, do not visually dominate the street.
11. On 17 December 2019, the appellant lodged an appeal with the Registrar.

Jurisdiction:

12. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
13. Schedule 1 of PA, section 1(2) however states table 1 may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs 1(2)(a) to (l). Paragraph (g) of this section states: “a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission”.
14. The tribunal is satisfied that the development application made to Council satisfies that requirement being, a development application for preliminary approval for building works under the section 33 of the *Building Act 1975*, which allows alternative provisions to QDC boundary clearance and site cover provisions for particular buildings.
15. That application was subsequently refused by the assessment manager as directed by council as the concurrence agency. Table 1 item 1(a) in Schedule 1 of the PA states that for a development application an appeal may be made to a tribunal against the refusal of all or part of the development application.

Decision Framework:

16. Section 246 of the PA provides as follows (omitting the examples contained in the section):
 - (1) The registrar may, at any time, ask a person to give the registrar any information that the Registrar reasonably requires for the proceedings.
 - (2) The person must give the information to the registrar within 10 business days after the registrar asks for the information.
17. 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—
 - (a) other evidence presented by a party to the appeal with leave of the tribunal; or
 - (b) any information provided under section 246 [however, not relevant for this appeal].
18. Section 254 of the PA deals with how this appeal may be decided and the first three subsections of that subsection 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;

(3) However, the tribunal must not make a change, other than a minor change, to a development application.

Material Considered:

19. The material considered in arriving at this decision comprises:
- I. 'Form 10 – Appeal Notice', noting grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 17 December 2019.
 - II. Axis Building Design drawings dated 21 October 2019, illustrating Site and Location Plan, Floor, Roof, Slab and Footing Plan, Elevations, Section Details and 3D Views of the existing and proposed development which is the subject of this appeal.
 - III. Council's Information Request for Application RAB19/0172 to Noosa Building Certifiers dated 14 August 2019.
 - IV. Referral Agency Response issued by council to Noosa Building Certifiers for Application RAB19/0172, on 22 November 2019.
 - V. Preliminary Approval Decision Notice of Refusal issued by Noosa Building Certifiers, the assessment manager on 23 November 2019.
 - VI. DA Form 2 Building work details as completed by the appellant who is noted as the owner builder however no owner builder permit number is recorded on the application. This copy of the document is dated 23 October 2018.
 - VII. Appellant's supporting submission dated 16 December 2019, being photographic images of similar garage structures which are identified on site location map.
 - VIII. Referral Agency Response issued by Council to Noosa Building Certifiers for Application No RAB18/0226 for a Carport within the front boundary setback.
 - IX. Google maps and street view images
 - X. Planning and Development Online information for the subject site
 - XI. The Planning Act 2016 (PA)
 - XII. The Planning Regulation 2017 (PR)
 - XIII. The Development Application Rules 2017
 - XIV. The Building Act 1975 (BA)
 - XV. The Building Regulation 2006 (BR)
 - XVI. The Queensland Development Code (QDC) Part MP 1.2

XVII. The Noosa Plan 2006

XVIII. The National Construction Code 2019 (NCC)

Findings of Fact:

20. The subject site is rectangular in shape, being approximately 23m wide and 35m deep with an area of 805 sq/m. It is a corner allotment located at the intersection of Tecoma Close and Calliandra Grove Road which is the shorter of the two frontages. The site has a 2m fall away from Calliandra Grove Road at the south to the opposite northern side boundary, a distance of 35m. However, the fall is predominately in the northern half of the site, and the existing home is situated at the higher, relatively level area near the corner. There was a swimming pool with timber decking along the northern side of the home which has since been removed. Beyond that, the remaining portion of the site is an area of approximately 200sq/m. This northern part of the site is 1-2m lower than the building platform and is readily accessed from Tecoma Close, as this road follows the slope of the subject site.

21. The existing two storey brick home appears to have been constructed 6m in from both street frontages. It was originally built in 1994. The home must have featured an integrated double garage at that time. The property was sold in 2004 and again in 2007 before the appellant purchased it in 2016. It is clear that one of the previous owners has converted the original double garage to provide additional habitable area. This left the site with a driveway but no covered car accommodation when it was purchased by the current owner. The driveway has recently been removed and the site and nature strip made good.

22. The immediate neighbourhood is well established with contemporary single and two storey residential properties. The homes and surrounding gardens are attractive and well maintained. There is no evidence of building activity in the area save the recent renovations and alterations on the subject site. The original tiled roof and much of the truss framing has been removed from the original house. This has made way for generous tiled patio areas and expansive glazing at the first floor level.

23. While the immediate landscape is sloping and the streets meander, there is only one other example in close proximity to the subject site where a garage or dwelling has been constructed within the 6m street setback area. That property is two allotments east of the site, on the corner of Calliandra Grove Road and Persimmon Drive. The home on this site is single storey, with a single car garage and is positioned at an angle to both streets, therefore minimising the setback variation.

24. There are three elevated properties in Calliandra Grove Road that are situated across from the subject site and are therefore most likely affected by the siting of the proposed garage. Each of these three properties feature two storey homes with outdoor areas at the upper levels which would overlooking the site.

25. The proposed garage is designed to accommodate two cars and a trailer in tandem. The building has been designed to be integrated with the dwelling to ensure secure access directly from the garage into the home. The preferred location for the proposed structure has been previously used for a small storage shed, it was landscaped and screened from the road. The storage shed has since been relocated and the landscape cleared. The site has been made ready for the new build.

26. At the hearing the appellant explained that his wife was often at home alone for days at a time with their toddler and that a garage would offer them security that a carport could not. The appellant also explained that the proposed skillion roof had been designed to achieve a loft storage platform.
27. The Lower Floor Plan drawings show the proposed building setback for the garage at 1.79m from Calliandra Grove Road and a side boundary setback of 1.741m from the neighbouring western property. The drawings do not clearly demonstrate the minimum and maximum building heights for the garage but the West Elevation notes that the structure pitches from 2.96m and illustrates a skillion roof rising from there to the rear at 6 degrees. The Lower Floor Plan also notes the depth or length of the garage at 11.955m and the width across the road frontage at 7.0m. Using the scale noted on these drawings the rear wall of the garage appears to be approximately 4.5m high. There are no front, side or rear roof overhangs indicated on the proposed plans, therefore all setback dimensions relate to the wall lines.
28. Through the hearing process it was acknowledged that some of the dimensioning on the proposal plans did not reflect the setbacks apparent on site. However these discrepancies were considered minor and not relevant to the street setback of the garage itself.
29. Half of the proposed garage is to be constructed using single skin concrete masonry and the balance is shown as single skin framing with light weight fibre cement cladding. Both surfaces are to be rendered to suit the existing dwelling. Similarly, the skillion roof will be colorbonded customorb steel sheeting to match that roof sheeting material used on the existing home.
30. Relevant to the subject building development application, the council's jurisdiction is limited to its Referral Agency functions under Section 33 of the *Building Act 1975* in relation to assessing whether the proposed building or structure complies with the quantifiable standards under the planning scheme in respect of boundary clearances.
31. The *Building Regulation 2006* in Part 3, nominates the Queensland Development Code, as setting out the standard siting requirements for buildings and structures, except where the relevant planning scheme identifies an alternative siting provision.

The Noosa Plan 2006

32. Under part 2.9 Building work regulated under the planning scheme, subsection 2.9.3 states:
This planning scheme, through Part 5, regulates building work in accordance with sections 32 and 33 of the Building Act 1975.
33. Under definitions part 2.11.5 Residential uses and use classes of the Noosa Plan: Detached house means the use of premises for a single dwelling unit which comprises the whole of the building on one lot. The term includes uses and works incidental to and associated with the detached house.
34. A garage is not separately defined in the Noosa Plan. A garage use, either as a separate or integrated building that is to be used as a private garage, is therefore included in the definition of a detached house.
35. Under the Eastern Beaches Zone Map4 the subject site is included in the Detached Housing Zone.

36. Under Schedule 1-minimum boundary setbacks for buildings and other structures, Table 1-1 Standard minimum setbacks for zones, a 6m frontage setback is stipulated in the detached housing zone.
37. Subsection 2 of Schedule 1 states: The minimum boundary setbacks in the tables apply to (a) each building on a premises; and (b) structures whether or not located on the same premises as a building.
38. Subsection 3 further states: Subsection 2 does not apply to-
- (a) class 10a buildings except in relation to-
 - (i) garages and carports in front setback areas.
39. Therefore the 6m minimum frontage setback applies to the building work for the proposed garage.
40. Under Part 14, Division 7 of the Noosa Plan, sets out the Detached House Code provisions. Subsection 14.52.1 states: The following provisions are alternative provisions to the QDC for the purposes of Section 10 of the Building Regulation 2006 and Section 33 of the *Building Act 1975* -
- (a) Specific Outcome 1 (O1) and Acceptable/ Probable Solution 1.1 (S1.1) which contain the setback provisions listed under Table 14.54.
41. Subsection 14.53 Specific outcomes, acceptable solutions and probable solutions for the Detached House Code explains: The Specific Outcomes sought for the Detached House Code are included in Column 1 of Table 14.28, Acceptable Solutions for accepted development subject to requirements and Probable Solutions for code assessment development are included under Column 2 of the table.
42. S1.1 states the minimum setback of the detached house or dwelling unit and associated buildings and structures from boundaries is not less than the minimum specified in Schedule 1. As the proposed setback for the garage is 1.79m and not 6m, consideration an assessment of the application must be made against the provisions listed under O1.
43. O1 states buildings and other structures area appropriately designed and sited to-
- a) provide amenity for users of the premises
 - b) preserve the visual and acoustic privacy of adjoining and nearby land uses as well as reasonable access to views and sunlight;
 - c) preserve any existing *vegetation* that will buffer the proposed building or structure from adjoining uses;
 - d) allow for landscaping to be provided between buildings;
 - e) maintain the visual continuity and pattern of buildings and landscape elements within the street;
 - f) for class 10a buildings, do not visually dominate the street;
 - g) avoid any significant adverse impacts on the natural values of waterways and their foreshores, including those of the Noosa River and its lakes; and
 - h) do not interrupt the natural cycles of erosion and accretion of waterways and foreshore areas.
44. Council determined and stated that the application did not meet and could not be conditioned to meet two of these listed provisions-
- e) maintain the visual continuity and pattern of buildings and landscape elements within the street; and
 - f) for class 10a buildings, do not visually dominate the street;.

45. While a garage use is not separately defined, under table 14.28, S19.1 there are further provisions that relate to siting for garages and carports and other class 10a buildings. S19.1 states in part, within the detached housing zone, garages and carports and other class 10a buildings-

(a) have a front boundary setback of at least 6m; and

(b) garage doors that face the street and are visible from the road frontage have a maximum width of 6m within any one plane, with additional garage doors setback and additional 1m from the frontage to break up the width of the garage façade.

O19 states in part, within the detached housing zone, garage carports and other class 10a buildings are designed and sited to visually integrate with the dwelling unit and avoid dominating the street by-

(a) minimising the width of the structure; and

(b) minimising projection of the structure forward of the main face of the dwelling unit.

The Queensland Development Code (QDC)

46. The detached house code contains some alternate provisions to the QDC. The QDC Part MP1.2 is the standard for the Design and Siting requirements applicable to Class 1 Dwellings and Class 10 structures on residential sites over 450 m² in area. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions. In this instance the Dwelling House Code AO2.1 (a) provides some alternative siting provisions to the QDC A1 (a), therefore the 6m setback provisions (for a garage or a carport) of the Detached House Code apply to the proposed development.

Reasons for the Decision:

1. The subject site is large and there are alternative parts of the property, not currently utilized, that could accommodate the compliant siting of a double garage or storage shed.
2. Vehicular access could be readily achieved from Tecoma Place onto this area of the site.
3. The appellant has a current approval that would allow both a carport to be constructed in the nominated area within the site, where security could be maintained with fencing along the boundary.
4. The proposed garage is 11.955m long with a 1.79m street setback. As the building line setback provisions only apply to the first 6m there is sufficient length available in this area of the site to have an enclosed single garage in tandem at the rear of the approved carport.
5. The proposed garage placement on the subject site would be inconsistent with the building setback pattern that is established within the street. There is only one other example of a reduced building line setback and the design features and circumstances of the dwelling on that site are entirely different to that which is proposed.

6. The tribunal finds that the proposed garage would dominate the streetscape due to the overall height, width and length of the structure. This would be particularly evident to the neighbouring residents next door and on the opposite side of Calliandra Grove Drive.

Debbie Johnson

Development Tribunal Chair

Date: 6 May 2020

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 Housing and Public Works
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