



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-029
Appellant:	Mr Simon Duff (owner)
Respondent: (Assessment Manager)	Luke Owen-Jones, EarthCert Building Approvals Certifiers
Co-Respondent: (Concurrence Agency)	Noosa Shire Council
Site Address:	18 Coreen Avenue, Tewantin, Qld. described as Lot 15 on RP 132427 – the subject site

Appeal

Appeal under Section 229 and Schedule 1, Table 1, Item 1(a) of the Planning Act 2016 against the decision of the Respondent to refuse the Development Permit for Building Work (RAB 22/0036) at the direction of the concurrence agency, Noosa Shire Council.

(For clarity, Council required that the Development Permit for Building Work Application for a carport and for a gazebo to be refused because the proposed work did not meet the Performance Outcomes of the Noosa Shire Planning Scheme's 'Low Density Residential Code' with respect to the proposed carport's set back from the front property boundary and the proposed gazebo's side boundary set back from the side property boundary).

Date and time of hearing:	Monday 15 August 2022 at 2.00 pm
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Julie Brook – Member
Present:	Simon Duff (Owner and Appellant) Marcus Brenan (of Brenan Planning, acting for EarthCert Building Approvals Certifiers, and the Applicant's and Appellant's Agent) Brad Geaney (Noosa Shire Council, Respondent)

Decision:

1. 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 Development Permit for Building Work (RAB 22/0036) with a decision that the Development Permit for Building Work (RAB 22/0036) be approved, with the following conditions:
 - a) The building work to conform to the amended plans submitted by the appellant to the Tribunal on 8 September 2022 that no-longer proposes the gazebo (identified as the

Collins Building Designs plans, headed Final Drawing Number Rev.A07 A101, A102, A103, A104, A201, A202, A301, A302 A303, A401, A402, A501, dated 08.09.2022),

- b) Such other conditions, as the assessment manager reasonably requires to ensure compliance with the building assessment provisions.

Background

The proposal

1. The subject site is a rectangular, level block with a site area of 758 square metres with a 16.763 metre frontage to Coreen Avenue, Tewantin.
2. There is a single storey dwelling built on this block that incorporates an enclosed garage that is set back approximately 8.5 metres from the Coreen Avenue frontage, that is accessed from the north west from a sweeping driveway and cross-over at the north side of the block (Collins Building Design, 'Proposed Site Plan', Drawing Number 'A103', dated '01/02/2022'. Stamped 'RECOMMENDED REFUSAL Date: 07/04/2022').
3. An open carport is proposed that is accessed from the existing driveway and cross-over. The proposed carport extends 7.7 metres from the existing garage wall to an outer most point 1400mm (1.4 metres) from the front property boundary (Collins Building Design, 'Proposed Site Plan', Drawing Number 'A103', dated '01/02/2022'. Stamped 'RECOMMENDED REFUSAL Date: 07/04/2022').
4. An open gazebo and deck is proposed that extends to an outer most point 900mm from the northern, side property boundary and 1,530 mm (1.53 metres) from the eastern, rear property boundary (Collins Building Design, 'Proposed Site Plan', Drawing Number 'A103', dated '01/02/2022'. Stamped 'RECOMMENDED REFUSAL Date: 07/04/2022').

Refusal of the application

5. On the 7 April 2022, the Noosa Shire Council directed that the Development Permit for Building Work (RAB 22/0036) be refused based on non-compliance with the Noosa Shire Council 'Low Density Residential Code' Performance Criteria, *Performance Outcome PO9* provisions a), c) and f). (Noosa Shire Council Referral Agency Response dated 07/04/2022).
6. With respect to the 'carport', the relevant 'Performance Outcomes' of that 'Low Density Residential Code' are:
 - 'PO9 Buildings and structures are designed and sited to:...
 - f) be consistent with the predominant character of the streetscape'.
7. With respect to the 'gazebo' the relevant 'Performance Outcomes' of that 'Low Density Residential Code' are:
 - '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...
 - c) provide adequate distance from adjoining land uses'.

Nearby developments

8. The property immediately to the south (16 Coreen, Avenue, Tewantin) is a single storey detached house set back approximately nine metres from the front property boundary (approximately the same distance as the existing dwelling's garage on the subject site), with an approximately 1.8 metre high horizontally narrow slatted fence with a masonry base and masonry columns set back approximately 1 metre from the property boundary. There is an

approximately 1.8 metre high timber side boundary fence extending between the properties to this front fence.

9. The property immediately to the north of the subject property (20 Coreen, Avenue, Tewantin) is a double storey detached house with a set back from the front property boundary approximately twelve metres (somewhat more than the existing dwelling on the subject property).
10. The property next down the street to the north (22 Coreen Avenue) is a single storey dwelling with a solid 'colourbond' style fence running along the front property boundary and an open carport extending to approximately three metres from the front property boundary. Council advised at the Hearing that this carport was not approved by Council. (However, no evidence was adduced at the Hearing that Council has, or that Council intended, to require the demolition or removal of this carport).
11. The nearby property opposite the subject site (21 Coreen Avenue) has a double carport, built to approximately half a metre of the front property boundary. With a high gable roof end fronting the street (similar to the gable roof proposed for the proposed carport on the subject site).
12. The adjoining property (19 Coreen Avenue) has a large metal sea container imposing on the street scape (occupying the driveway up to the front property boundary).
13. The nearby property further south opposite the subject site (17 Coreen Avenue) has a two metre high solid 'colourbond' style fence running along its front property boundary.
14. The Tribunal noted the written advice from the appellant's Town Planner about the front boundary setbacks of various structures and buildings in Coreen Avenue and nearby Stuart Place - including properties on the corner of Stuart Place with Coreen Avenue (Appendix A, Grounds for Appeal attached to the Form 10 Appeal document). The Tribunal confirmed these to be generally correct by inspection of the Coreen Avenue streetscape at the time of the Hearing.

Material Considered

15. The material considered in arriving at this decision comprises:
 1. 'Form 10 – Notice of Appeal/ Application for Declaration', being the grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 22 June 2022. (Including the written advice from the appellant's Town Planner about the front boundary setbacks of various structures and buildings in Coreen Avenue and nearby Stuart Place - including properties on the corner of Stuart Place with Coreen Avenue).
 2. Planning Regulation 2017 (PR)
 3. Planning Act 2016. (PA)
 4. Noosa Shire Planning Scheme '*Noosa Plan 2020*' - '*Low Density Residential Code*'
 5. Verbal representations at the Tribunal Hearing on 15 August 2022.
 6. Amended plans submitted to by the appellant to the Tribunal by email to the Registrar on the 8 September 2022.
 7. The Noosa Shire Council response to the amended plans submitted to the Tribunal on the 8 September 2022 and the information about the width of the Coreen Avenue street verge provided by Council by email to the Registrar on the 16 September 2022.

Findings of Fact

16. The Tribunal finds that there is no one type of predominant streetscape in Coreen Avenue given the following site conditions:
- a. nearby properties having different building setbacks
 - b. some carports being built nearly up to the front property boundary
 - c. some carports being built within three metres of their front property boundaries
 - d. garages attached to dwellings built within the six metre set back from their front property boundary
 - e. some garages built up to their front property boundary
 - f. high, solid 'colourbond' and timber fences, up to two metres high, being built along the front property boundaries and
 - g. high, solid fences up to two metres high being built along the side property boundaries up to the front property boundary of some properties.
17. The Tribunal finds the existing landscape verge between the formed road and the front property boundaries in Coreen Avenue to be particularly wide at 5.8 metres width.
18. The streetscape featured a number of large mature and thick street trees.

Reasons for the Decision

19. During the Hearing the owner/appellant advised that he no-longer wishes to include the refused 'gazebo' in the original application. This gazebo is not shown on the amended plans submitted by the appellant to the Registrar and received by the Tribunal on the 8 September 2022. Consequently, no further consideration was given to the gazebo and Council's objection to that gazebo.
20. The Tribunal formed the opinion that the 5.8 metre wide verge with its mature trees was the only consistent, prominent feature of the existing Coreen Avenue streetscape.
21. The Tribunal formed the opinion that this wide verge and mature trees afforded the ability of structures to be built close to front property boundaries.
22. The Tribunal considers the amended plans (submitted to the Registrar and received by the Tribunal on 8 September 2022. Identified as the Collins Building Designs plans, headed Final Drawing Number Rev.A07 A101, A102, A103, A104, A201, A202, A301, A302, A303, A401, A402, A501, dated 08.09.2022) to be a 'minor variation' (under Section 254(3) of the Planning Act 2016) to the plans submitted with the application for the Development Permit for Building Work (RAB 22/0036) previously considered by the Assessment Manager.
23. The Tribunal formed the opinion that the proposed 'carport' shown on the amended plans (submitted by the applicant to the Registrar and received by the Tribunal on 8 September 2022 (Identified as the Collins Building Designs plans, headed Final Drawing Number Rev.A07 A101, A102, A103, A104, A201, A202, A301, A302, A303, A401, A402, A501, dated 08.09.2022) will meet the 'Performance Criteria' and the relevant 'Performance Outcomes' PO6 of the Noosa Shire Plan's 'Low Density Residential Code'.
24. The Tribunal formed the opinion that the existing wide verge and street planting and the proposed landscaping and open fencing proposed by the applicant within the front property boundary submitted by the appellant to the Registrar and received by the Tribunal on 8 September 2022 (Identified as the Collins Building Designs plans, headed Final Drawing Number Rev.A07 A101, A102, A103, A104, A201, A202, A301, A302, A303, A401, A402, A501, dated 08.09.2022) will enhance the existing street

scape and mitigate any adverse impacts to the existing Coreen Avenue streetscape cause by the proposed 'carport'.

25. In the circumstances, the Tribunal is satisfied that the Appellant has established, on the balance of probabilities, that the appeal should be upheld subject to the condition that the works conform to the amended plans submitted by the Appellant to the Registrar and received by the Tribunal on 8 September 2022 (Identified as the Collins Building Designs plans, headed Final Drawing Number Rev.A07 A101, A102, A103, A104, A201, A202, A301, A302, A303, A401, A402, A501, dated 08.09.2022).

Derek Craven Kemp
Development Tribunal Chair

Date: 29 September 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
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