



## Development Tribunal – Decision Notice

---

### **Planning Act 2016, section 255**

<b>Appeal Number:</b>	<b>21-032</b>
<b>Appellant:</b>	Mark Andrew Sexton and Jean Dorothy Sexton
<b>Respondent: (Assessment manager)</b>	Michael Bowcock of Coastal Building Certifications
<b>Co-respondent: (Concurrence agency)</b>	Noosa Shire Council
<b>Site Address:</b>	16 Forest Acres Drive, Lake MacDonald QLD 4563

---

### **Appeal**

Appeal by a property owner against a decision notice issued by the Respondent as assessment manager refusing a relaxation for a carport in front setback.

---

<b>Date and time of hearing:</b>	10.30am- 30 August 2021
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Stuart Smith – Chairperson Ms Kate Isles – Referee Ms Kym Barry – Referee
<b>Present:</b>	Mark Sexton – Applicant Jean Sexton – Applicant Brad Geaney – Building Officer (Noosa Shire Council Representative) Matt Adamson – Building Officer (Noosa Shire Council Representative) Michael Bowcock – Building Certifier (Coastal Building Certifications)

---

### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) replaces the decision of the Respondent dated 22 June 2021 with a decision approving the development application, subject to reasonable conditions imposed by the Respondent.

### **Background**

1. The subject site is 16 Forest Acres Drive, Lake MacDonald, where the appellants had purchased the subject site in October 2020. Noosa Shire Council (the Council) issued an Advisory note to the appellants on 12 March 2021 alleging that the carport structure was unlawful. Within the notice the Council advised the appellants to either engage a certifier to obtain approval or to remove the structure.

2. The appellant engaged Coastal Building Certification to seek approval for the carport structure. As part of the certification process, Coastal Building Certification referred the application to the Council as a Referral Agency. The referral application was lodged with the Council on 22 April 2021 and was subsequently refused by a Council delegate on 7 June 2021.
3. On 10 June 2021, Noosa Shire Council wrote a letter to the appellants stating the decision of the Referral Agency Response. The letter states the application was assessed under Schedule 9, Division 2, Table 3 of *Planning Regulation 2017*. The following decision was conveyed:
  - *Council directs the assessment manager to refuse the application for the reasons stated in this response.*

The Respondent, as assessment manager, duly refused the development application by a decision notice dated 22 June 2021.

4. The reasons given by the Council in its referral agency response were:
  - *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- Rural Residential Zone Code*  
***PO6 a)*** *Provide a high level of amenity to users of the subject site and adjoining premises, including provision of visual and acoustic privacy, access to breezes and protection from noise, odour and artificial lighting;*

It has been considered that a high level of amenity to the users of the subject site will not be adversely affected through the provision of providing an increased road boundary setback.

It should be further noted that the consistency of structures within the streetscapes are at a far greater boundary setback to that of the current proposal.

5. The Appellants had provided letters from neighbouring property owners who are in support of the structure recognising the limited impact this will have on their properties.

### **The Appellant's submissions**

6. The following submissions were made by the appellants:
  - The property was purchased in October 2020 at which time the property searches performed prior to settlement did not identify the carport as being an illegal structure.
  - The appellants specifically chose the property for the location and the carport where the appellants can keep a motorhome in the future.
  - The house structure does not contain a garage. The existing council approved - three bay shed appears to have a front setback of 6m consistent with the previous planning scheme. This shed contains a workshop and car accommodation.
  - The appellants stated they engaged a certifier & draftsman and subsequently lodged the relaxation for reduced setback. In addition, written consent from all adjoining neighbours, and neighbours across from property was provided with the application for approval.
  - The appellant confirmed his willingness to establish a "compromise" where he reduces the roofline to be within the limits of the height of the existing boundary fence in addition to installing landscaping to the area between the carport and boundary fence.

### **The Council's submissions**

7. The Council made the following submissions:

- The Council's representatives advised that prior to issuing the advisory note, the Council had received complaints about illegal building works which they investigated. The source and details of these complaints, including the dates of complaints, were not provided.
- The advisory note recommended that the owner either engage a certifier to obtain a building approval or remove the structure.
- Despite the advisory note being issued, the Council advised that a conversation was held with the certifier stating that approval of the relaxation was unlikely and suggested withdrawal.
- The Council advised that prior to the issue of the refusal that a drive-by inspection was undertaken.
- The Council is not supportive of the location of the carport. The Council proposed an alternative location for the carport located in the grassed area in front of the home.
- The Council declined to accept the compromises by the owner due to the building line of the current planning scheme stating building setbacks to be 10m.
- The Council's reason for not supporting the location is  
*"it doesn't meet Performance Outcome PO6 (a) from the Rural Residential Zone Code, "provide a high level of amenity to users of the subject site and adjoining premises, including provision of visual and acoustic privacy, access to breezes and protection from noise, odour or artificial lighting"*
- The Council believes that *"it has been considered that a high level of amenity to the users of the subject site will not be adversely affected through the provision of providing an increased road boundary setback."* The Council submitted on visual inspection at the hearing that the appellants can move the structure and comply with the increased setback with recognition that the structure will be located at the front door of the home.
- The Council noted *"the consistency of structures within the streetscape are at a far greater road boundary setback to that of the current proposal."*
- The Council submitted that the setback of 1.8m is not sufficient for Performance Outcome relating to streetscape and with the size of the property the owners have other options to locate the carport.
- The Council submitted the structure would also not have been approved under the previous planning scheme.

**Observations**

8. During hearing, the following observations were made:

- The site is indicated to be approximately 4878m<sup>2</sup> however it is noted that not all of the property is usable due to the site's topography, existing vegetation and greenspace. It would be reasonable to estimate that of this total area, approximately 1800m<sup>2</sup> of this land is 'useable' and located at the front of the allotment. The rear of the property is used for on site sewage disposal and densely vegetated and sloping, which renders this area 'unusable'.
- The usable area includes the existing house location, the triple bay shed, the driveway, pool area, small grassed area, and chicken coop. There appears to be water run off (channel lined with rocks) from the top left-hand side of the allotment at the street, through the left-hand neighbour's yard and through to the back of the appellants' property.
- The usable land is not at street level. A drop in the land level, particularly in the location of the shed and the carport is observed.
- An existing timber fence approximately 1.8m in height runs the full length of the boundary, excluding an automatic gate at the driveway.

- Mature and well-established trees also run along the front boundary with the exception of around 5m towards the eastern boundary of the subject site.
- Only a small portion of the roofline of the carport structure is visible above the existing fence line.
- An inspection of surrounding properties appears to have a number of structures built within the building line. Structures such as sheds, carports and other dwellings are observed within the 10m setback.
- There was limited realistic opportunity to re-locate the carport to another area of the property without impeding proper use of the home or amenity on the site.

### **Jurisdiction**

9. The tribunal is satisfied that it has jurisdiction to hear this appeal having regard to the PA section 229(1) and schedule 1. In this instance, the matter involves building work namely erection of a carport that may have required assessment against the 'planning assessment provisions' under the PA. Accordingly section 1((2)(g) of schedule 1 is satisfied and table 1, item 1 of schedule 1 applies.

### **Decision framework**

10. It is noted that:

- The onus rests on the appellant to establish that the appeal should be upheld (s253(2) 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 person who made the decision appealed against (s253(4) of the PA);
- The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s246 of the PA (pursuant to which the registrar may require information for tribunal proceedings); and
- The tribunal is required to decide the appeal in one of the ways mentioned in s254(2) of the PA.

### **Materials Considered**

11. The following materials have been considered:

- Development Application Decision Notice from Coastal Building Certifications dated 22 June 2021
- Referral Agency Response from Noosa Shire Council dated 10 June 2021.
- Design drawings by TM Designs dated April 2020
- Application for appeal dated 29 June 2021

### **Findings of fact and determinations regarding relaxation of the front setback**

12. The tribunal makes the following findings of fact:

- The subject site at 16 Forest Acres Drive, Lake MacDonald is a rural residential property with an existing house, pool, shed and carport structure. The home is inhabited by the appellants who purchased the home in or about October 2020.
- The carport is an existing structure. The notice of appeal relates to the carport being erected within the 10m front setback of the property. The fact the structure is within the building line is not disputed.

- An inspection of the streetscape indicated similar structures erected in the area.
- Neighbouring property owners have provided written consent for the structure.
- The appellant was issued an advisory notice to remedy the approval of the unapproved carport by either gaining approval or removal. The Appellant enlisted the services of a draftsman and certifier and made application for approval to the Council on 22 April 2021.
- Following a notice of refusal, the Appellant has sought to gain a compromise with the Council to install vegetation and reduce the height of the carport. A suitable compromise was not able to be reached by the parties.
- There was no evidence provided to indicate that the amenity of the property nor that of the neighbours was impacted by the current location of the carport. In this regard it was difficult to determine how PO6 a) had not been satisfied. While the block size is large, the usable area is limited and therefore in the absence of a reduced front boundary setback, the users of the subject site are adversely affected.
- Rural residential zone code (AO6.4) is the key assessment benchmark in considering the relaxation. As the structure cannot satisfy the requirements of AO6.4 (c) an assessment against PO6 is undertaken. Based on materials and plans provided, observations on site, review of the structure itself it is considered that PO6 as a whole (a-e) can be satisfied.
- On observation of the local area, surrounding structures within the streetscape are not at a far greater road boundary setback to that of the current proposal

### **Reasons for the Decision**

13. Based on all the evidence and submissions, the Tribunal is satisfied that the Referral Agency Response from Noosa Shire Council dated 10 June 2021 and refusal notice dated 22 June 2021 from Coastal Building Certifications should not have been issued.
14. The Tribunal is not satisfied that the application for approval has been assessed in accordance with the planning scheme and as such the Tribunal considers that PO6 could be achieved and therefore the application for the relaxation should be approved.

---

**Stuart Smith**  
**Development Tribunal Chair**

**Date: 21 September 2021**

## **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  
GPO Box 2457  
Brisbane QLD 4001

**Telephone (07) 1800 804 833**

**Email: [registrar@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)**