



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-017
Appellant:	Elizabeth Dangerfield and Stephen Dangerfield
Respondent (Assessment manager):	Luke Owen-Jones
Co-respondent (Concurrence agency):	Noosa Shire Council
Site address:	24 Oriole Avenue, Peregrin Beach Qld 4573 described as lot 666 on P93128 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the refusal, at the direction of the concurrence agency, of a development application for building works being renovations and extensions to a dwelling. Works included extensions for a double width carport within the front road setback and a raised deck for a pool area, sited within the side boundary setback. Council referenced their assessment against the Noosa Plan 2020 – Low Density Residential Zone Code, specifically clauses (a), (b), (c) and (f) of PO9 being the setback provisions. Council found and stated as follows:

- With reference to PO9(a), *'It has been considered that the proposed deck within the southern side boundary setback will impact the amenity of the adjoining premises... It is Council's view that the proposed deck provides for building work within the side boundary setback that does not protect the privacy of the adjoining premises.*
 - With reference to PO9(b), *'It has been considered that due to the height and location of the raised deck abutting the southern side boundary, the proposal will cause overlooking of private open space of the adjoining premises.*
 - With reference to PO9(c), *'It has been considered that the proposed deck does not provide an adequate distance from adjoining land uses.*
 - With reference to PO9(f), *'It has been considered that the location of the proposed carport is not consistent with the predominant character of the streetscape...It is Council's view that the predominant character of the streetscape consists of buildings and structures providing a greater road boundary setback than that of the current proposal.*
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Date and time of hearing:	10.30am, 25 May 2023
Place of hearing:	The subject site
Tribunal:	Debbie Johnson - Chair Elizabeth Anderson - Member
Present:	Marcus Brennan, Brennan Planning - Appellants' agent Bradley Geaney - Council representative Mitchell Collins - Appellants' building designer Luke Owen-Jones - Assessment manager

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the assessment manager to refuse the development application for building works assessable against the *Building Act 1975*.

Background

1. The subject site is approximately 509 sq/m in area. It is rectangular in shape with an 18m wide frontage on the eastern shoulder of Oriole Ave. The highest portion of the allotment is the south western corner where a double carport has been proposed. The frontage has an obvious cross fall of 1m from the south to the north. It is in this lower portion that the existing driveway crossover is positioned. Within the south-western corner area, there is a further 800mm rise in the natural ground from the frontage to the existing building line.
2. The southern side boundary line is generally the highest portion of the allotment, although it falls slightly towards to the street kerb and at the rear eastern corner. It is along the southern boundary, at the rear of the lot, that a raised pool deck and pool is proposed.
3. The site boasts a two storey (in part) brick veneer dwelling with a tiled dutch gable roof. It was built in 1980 or thereabouts. The entry to this home is at ground level, where there is a single garage, laundry and a rumpus room. Sitting over these rooms and extending beyond is the main living area. This upper level has three bedrooms, two bathrooms, kitchen, dining, living and a rear covered deck. Given the cross fall of the site, approximately half of the first floor level has been constructed over an enclosed subfloor void. At the northern end, the remaining portion of the first floor sits over the garage, entry and rumpus room.
4. The site is naturally high compared to the road and all but one neighbouring allotment that shares the southern boundary. There are two allotments that share the eastern boundary at the rear of the property and another that shares the northern boundary. All of these are between 1-2m lower than the appellants' property.
5. Privacy is currently afforded the existing two storey home on the higher site due to a thick band of existing landscape on their own property. Their main entry faces north and therefore the subject site, so too their upper level outdoor area. The home on this allotment is setback 6m from the road frontage.
6. The neighbouring resident on the lower side has a two storey 'A' frame home with a low level 'flat' roofed carport built to within a few metres of the front boundary. Across the street there are two neighbouring properties each with a single width carport structure built to boundary. It appears that Council has previously approved with conditions, all of these carport structures.
7. The nature strip in this immediate location is devoid of street trees or other landscape elements. The line of power poles with overhead powerlines is along the eastern side of the road. There is a power pole on the nature strip adjacent to the subject site. That power pole is in close proximity to where a crossover would be intended to serve the proposed double carport.
8. The tribunal was informed that the appellants had determined to renovate and extend their home having purchased it seven years earlier. A key objective was the need to provide two onsite parking spaces and improve the access from the car accommodation to the first floor living area.
9. The appellants engaged the services of Collins Building Designs. The final design illustrates a self-contained living area on the ground floor in lieu of the existing single garage and

rumpus room. A double width carport was proposed within the 6m street setback and at the rear, a pool with a raised timber deck to be built to the side boundary.

10. On 22 December 2022, the appellants' representative lodged a Request for a Referral Agency Response under Schedule 9, Division 2, Table 3 of the Planning Regulation 2017, to the Noosa Council for proposed building work within the prescribed setback requirements.
11. On 17 January 2023, Council issued an information request in relation to proposed development.
12. On 22 February 2023, the appellants responded to Council's information request.
13. On 7 March 2023, Council issued a Referral Agency Response directing the assessment manager to refuse the application for the reasons stated in their response.
14. On 23 March 2023, the assessment manager issued a decision notice refusing the carrying out of building works assessable under the *Building Act 1975*. The decision stated the following reason: 'Concurrence agency refusal for design and siting received'.
15. On 17 April 2023, the appellants stated their grounds for appeal, and completed and submitted the Form 10 – Notice of Appeal to the Registrar.

Jurisdiction

16. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
17. 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 (a) to (l) of that section. Paragraph (g) of section 1(2) 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'.
18. The tribunal is satisfied that the application lodged with the assessment manager and the referral of the development application to Council satisfies that requirement, being, a development application for approval of 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.
19. That application was subsequently refused by the assessment manager as directed by Council as the referral agency. Table 1 item 1(a) in schedule 1 of the PA sets out that for a development application an appeal may be made to a tribunal against the refusal or all or part of the development application.
20. The refusal directed by Council and made by the assessment manager have enlivened the jurisdiction of the Tribunal.

Decision framework

21. 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.*

22. 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— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.*
23. Section 254 of the PA deals with how an appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal (not relevant here) and 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; or*
 - (e) [not relevant].*
 - (3) However, the tribunal must not make a change, other than a minor change, to a development application.*

Material considered

24. The material considered in arriving at this decision comprises:
- a. Proposed building works plans prepared by Collins Building Design identified as drawing numbers A103, A202, A204, A301, A302, A401, A402 and A403 dated 21 December 2022
 - b. Referral Agency Response for RAB22/0231 dated 7 March 2023 directing the assessment manager to refuse the development application for building works.
 - c. Decision Notice - Refusal to carry out building work, classification 10a and 10b, assessable against the Building Act 1975 by assessment manager Luke Owen-Jones of Earthcert Building Approvals. Reference number 23-0070, dated 23 March 2023.
 - d. Form 10 – Appeal Notice and other documents including Appendix A Grounds for Appeal, lodged with the Tribunals Registrar on 17 April 2023.
 - e. Google maps and street view images.
 - f. Nearthmaps satellite images from 2010 to current date.
 - g. Planning and Development Online information for the subject site.
 - h. Core Logic RP Data Online
 - i. The Planning Act 2016 (PA).
 - j. The Planning Regulation 2017 (PR).
 - k. The Development Application Rules.
 - l. The Building Act 1975 (BA).
 - m. The Building Regulation 2021 (BR).
 - n. The Queensland Development Code (QDC) Part MP 1.2.
 - o. The Noosa Plan 2020.
 - p. The National Construction Code 2019 (NCC).
 - q. The verbal submissions made by the parties at the hearing and during the site inspection.
 - r. Topographic Survey of the subject site prepared by Focus Survey Group dated 30/ August 2022. The survey was provided after the hearing at the request of the Tribunal.
 - s. Updated building design drawings for the proposed works prepared by Collins Building Design. The drawings are marked Final and dated 16 June 2023. The drawings are identified as a Cover Sheet and Sheets A102, A103, A110, A201, A202, A203, A204, A301, A302, A303, A401, A402, A403, A404 and A501. These were provided after the hearing at the request of the Tribunal.

- t. Structural Engineering Drawings by Reinmac identified as Job No 233993 Issue A, Sheets S1-S12 inclusive. While not specifically requested by the Tribunal they were provided on 16 June 2023 along with the final building design and topographical survey, via an email from the appellants' representative to the Registrar.

Findings of fact

25. The hearing for the appeal was held at the appellants' home and therefore at the subject site, on 25 May 2023. It was evident that the home and garden were stepped and designed to accommodate the sloping site.
26. The single bay garage is situated under and within the dwelling which is setback 6m from the street frontage. The driveway leading to the garage is reasonably level. It is bordered on the southern side by a brick retainment wall to address the natural slope across the property's frontage. The retainment wall is 300mm high at the property boundary, increasing in height to almost a metre, where it abuts the front wall of the home at the other end.
27. The entry door is recessed but effectively alongside the garage door. Access from the street to the entry would be via the driveway and then internally to the upper level via an internal stair. The tribunal was informed that these stairs were very steep and difficult to navigate. For the residents, it is currently possible to drive into the single bay garage and there is an internal door from the garage to the entry stair area.
28. The tribunal was informed that the appellants required two covered car parking spaces, and that the existing garage was not suited to their needs. Further we were advised, that the proposed location of the carport, on the higher portion of the property was to provide more direct access to the upper level living areas. The new entry stairs are proposed externally and marginally within the 6m road boundary setback.
29. According to the survey and drawings provided, the existing garage level has an RL12.16, the proposed carport slab level RL13.196 and the upper living level RL14.91. The carport roof is noted as being 0.361m from the southern side boundary and 0.624m from the road frontage.
30. The building design plans show the proposed carport structure as having an open ended gable, with a metal roof, pitched at 16 degrees. The maximum height is shown at 3.412m above the finished slab level. The engineering plans differ to the building design in that they show a 240mm deep horizontal tie beam and king post to support a ridge beam, however the gable would still essentially be considered open.
31. The garden area at the rear of the dwelling is approximately 14m deep and 18m wide. Within this space there is an existing covered deck that is approximately 4m deep and 6m wide. This deck is raised and at the same level as the upper living areas. Despite the deck, there is still a generous garden area available. It is in this garden that the appellants have proposed a pool with an enclosed deck surround.
32. The nominated size of the pool and deck is 8.5m deep and 9m wide. The finished surface level of the deck and pool surround is shown as having an RL13.71, that is 1.2m below the existing rear deck and approximately 1.2m higher than the remaining garden area. The deck is positioned along and adjacent to the southern boundary. It is setback 1.5m from the rear or eastern boundary.
33. The remaining garden area, clear of any structures is 14m deep and 9m wide.

The Queensland Development Code (QDC)

34. QDC MP 1.2 applies to new building work for single detached dwellings, Class 1 and associated Class 10 buildings and associated structures on lots 450m² and over in area.
35. QDC Acceptable Solutions A1 and A2 outline the required building line setbacks from the road, side and rear boundary lines. A1(a) relevantly states 'For a *detached dwelling*, *garage* or a *carport* the minimum road setback is – (i) 6m; ...'.
36. A2(a) relevantly states 'The **side and rear boundary clearance** for a part of the building or structure is – (i) where the height of that part is 4.5m or less - 1.5m...'
37. A2 goes further to qualify exemptions and conditions pertaining to this requirement as follows:
- (c) **Structures** may be exempted from A2 (a) and (b) where –
 - (i) *the structure is not a deck, patio, pergola, verandah, gazebo or the like other than one permitted under A2 (c) (v) being primarily a horticultural structure;*
 - (ii) *the structure is not used for entertainment, recreational purposes or the like;*
 - (iii) *a screen, fence or retaining wall or a combination of screens, fences or retaining walls is not more than 2m in height*
 - (...)
 - (d) Subject to A2(c), **class 10a** buildings or parts may be within the boundary clearances nominated in A2(a) and (b) where –
 - (i) *the height of a part within the boundary clearance is not more than 4.5m and has a mean height of not more than 3.5m; and*
 - (ii) *the total length of all buildings or parts, of any class, within the boundary clearance is not more than 9m along any one boundary;*
 - (...)
38. However, local government may adopt alternative boundary clearances and site cover provisions for Class 1 and 10 buildings in their local planning scheme. The provisions of the QDC apply to the extent that a local planning scheme does not opt to provide alternative provisions.
39. In the Noosa Plan, the Low Density Residential Zone Code Table 6.3.1.3, contains some alternate provisions to the QDC.
40. In this instance the Low Density Residential Zone code, Table 6.3.1.3, PO9 provides some alternative siting provisions to the QDC A1 and A2 stated above. Therefore, the siting and setback provisions set out in PO9 do apply.

The Noosa Plan 2020

41. Acceptable outcome AO9.1 states:
Buildings and structures have a setback of 6m from the road frontage, provided that the setback may be reduced to 4.5m where the lot:
- (a) *has frontage to more than one road;*
 - (b) *is less than 600sq/m in area; or*
 - (c) *is less than 15m in width.*
42. Acceptable outcome AO9.3 states:
Buildings and structures meet the following minimum setbacks to boundaries other than road frontages and rear boundaries:
- (a) *1.5 metre setback up to 4.5 metres height;*
 - (...)

43. The proposed carport extension has a minimum setback of 0.624m. The subject site is not on a corner. The site has an area which is 509sq/m, that is less than 600sq/m, however the width of the site is approximately 18.105m.
44. The finished floor level of proposed pool deck structure is noted on the eastern elevation prepared by Collins Building Design as 0.883m above natural ground. The proposed deck is enclosed with a 1.2m pool fence along the southern boundary. However, the natural ground line varies approximately 200-300mm along the southern boundary and the drawings further note the combined height of the deck and pool fence is also noted to be less than 2m overall.
45. As the appellants' design proposal does not meet the acceptable outcomes of AO9.1, AO9.3 and AO9.4, assessment must be made by Council against the performance outcomes stated at PO9.
46. AO9.4 states:
Notwithstanding the provisions of AO9.2 and AO9.3, a lesser building setback to:
(a) side and rear boundaries may apply for the following provided they comply with the Queensland Development Code:
(i) open carport;
(ii) swimming pool, garage/shed; and
(iii) rainwater tank, retaining walls, screens and fences not exceeding 2 metres in height; and
(...)
47. PO9 states:
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 privacy 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.
48. Council's referral agency response directed the assessment manager to refuse the building application stating the proposal didn't comply with Noosa Plan 2020 – Low Density Residential Zone Code, PO9 clauses (a), (b), (c) and (f).

Reasons for the decision

49. The tribunal finds that the predominant streetscape consists generally of typical eighties style homes similar to the appellants' home on the subject site. There are several examples of existing approved single bay carport structures in the immediate vicinity. All of which have a low roof profile.
50. The appellants' double width carport is proposed within the front and the side boundary. This part of the allotment is the highest and therefore the most visually prominent. Furthermore, the 16 degree roof pitch and the sheet roof are considered bulky and out of character with the existing home.

51. There is little to no landscaping on the nature strip in and around the subject site. Therefore, there is no screening afforded to the subject site. The proposed carport would be inconsistent with the existing streetscape given its predominance if situated on the highest portion of the site, within the street setback.
52. The proposed carport would remove the existing landscaping within the property frontage in this location, and there is no other landscaping in this vicinity to allow for screening of the proposed carport. Furthermore, the proposed carport is located within the highest portion of the site and close to the apex of the street. These factors contribute to the proposed carport being inconsistent with the existing streetscape and would heighten its dominance within the streetscape.

Debra Johnson
Development Tribunal Chair

Date: 30 August 2023

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:

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