



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-009
Appellant:	Johann Holdysz
Respondent (Assessment Manager):	JDBA Building Certifiers
Co-respondent (Concurrence Agency):	Noosa Council
Site Address:	Lot 14 RP135349 / 25 Stuart Place Tewantin – the subject site

Appeal

Appeal under section 229 and item 1(a) of table 1 of section 1 of schedule 1 of the Planning Act 2016 (PA) against the decision to refuse a development permit for construction of a class 10a carport and other structures within the road boundary setback.

Date and time of hearing:	1.30 pm, 1 August 2022
Place of hearing:	The subject site
Tribunal:	Debbie Johnson - Chair Henk Mulder - Member Andrew Veres - Member
Present:	Appellant – Johann Holdysz Matthew Adamson – Noosa Council Representative Bradley Geaney – Noosa Council Representative

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the Planning Act 2016 (PA) replaces the decision of the Assessment Manager dated 11 April 2022 with another decision. Namely, to approve the siting of and the design for the proposed open carport on the subject land as shown on Drawing Number SP01 Amendment A dated 10 December 2021 and Drawing Number SP02 dated 18 November 2021 and SP03 being those refused by the Assessment Manager, JDBA Certifiers. The Tribunal hereby approves the siting for the proposed structures, subject to the following conditions:

- a) The construction of the carport not to commence until the construction of the front fence and landscaping as shown on Drawing Number SP01 Amendment A dated 10 December 2021 has been completed. This is to confirm the Fence indicated as Stage 2 to be completed as Stage 1. The Carport to be completed as Stage 2 with the roof to the Entry Gatehouse structure alone to be completed as Stage 3.
- b) No roller door or tilt-panel door to be installed
- c) A minimum set back of 0.050 metres of the outermost part of the carport from the front property boundary.
- d) Such other conditions, as the assessment manager reasonably requires to ensure compliance with the building assessment provisions

Background

1. The subject site is level and within an established residential community. It has a site area of 556 sq/m. The property is positioned on a corner with the main frontage and entry facing east to Coreen Avenue. The residence includes a double garage under roof on the northern end of the home with the driveway access from Stuart Place.
2. The site is unusually shaped in that it is not only truncated on the north-east corner, being the intersection of Coreen Avenue and Stuart Place, it is further truncated on the opposite north-west corner. These alignments to Stuart Place form the short cul-de-sac which provides access to six properties, including the subject site. Due to the 'keyhole' shape of this cul-de-sac all six properties are truncated at their frontage to Stuart Place.
3. Due to the truncated property alignments, there are reduced road boundary setbacks evident in four of the six homes. Similarly, on Coreen Avenue the neighboring property to the subject site has an enclosed double garage built to the road frontage.
4. The Appellant and his wife have owned and lived on this property for more than 35 years. Historically they have parked one or both of their vehicles on the driveway within their property alignment, due to the garage being repurposed for household storage and/ or other residential purposes. Consequently, they are wanting to provide weather protection for their vehicles in this area and sought a building approval to erect a steel framed kit form of carport.
5. On 17 November 2021, the Appellant lodged a Concurrence Agency Referral with Council for the open carport. Due to initial resistance against the proposal the Appellant sought qualified design advice and subsequently amended his application to include an entry gatehouse with landscape elements.
6. Council provided a referral agency response on 20 January 2022 refusing the design and siting of the proposed structure. The Appellant made several representations to Council both before and after the written response was determined.
7. Council refused the siting and design of the carport stating that the proposal did not meet the performance outcome set out in the Noosa Plan 2020, Low Density Zone Residential Code. Specifically, PO9 Buildings and Structures area designed and sited to: (f) Be consistent with the predominant character of the streetscape.
8. Following the referral agency's refusal, the Appellant considered various options for the design and siting of his carport before engaging JDBA Certifiers. The Assessment Manager was unable to issue a building approval for the proposed carport, fencing and gatehouse structure without the referral agency's approval. On the 11 April 2022, the assessment manager refused the Appellant's development application for building works.
9. On 13 April 2022, the Appellant paid the relevant appeal fee and a Form 10 – Notice of Appeal was subsequently lodged with the Registrar.

Jurisdiction

10. This Tribunal has jurisdiction to hear this appeal under the PA section 229(1)(a)(i) and Schedule 1, sections 1(2)(g) and Table 1 item 1(a) being an appeal by the Appellant against the refusal of the development application by the Assessment Manager.

Table 1

1. Development applications

For a development application other than an excluded application, an appeal may be made against—

- (a) the refusal of all or part of the development application.*

11. The Tribunal is satisfied that the development application to Council satisfies that requirement, being a development application for a building works assessable against the provisions of the Noosa Plan 2020 for a carport and other structures to be sited within the 6m road setback to Stuart Place.
12. The refusal by Council has enlivened the jurisdiction of the Tribunal.

Decision framework

13. 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.*
14. 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.*
15. Section 254 of the PA deals with how an appeal such as this may be decided. The first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal and not relevant here) 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

16. The material considered in arriving at this decision comprises:
- (i) Form 10 – Appeal Notice, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 13 April 2022.
 - (ii) Noosa Council’s Referral Agency Response to the Appellant, dated 20 January 2022.
 - (iii) The assessment manager’s Decision Notice being a refusal of BA220214 and associated building design plans stamped and dated 11 April 2022.
 - (iv) Google maps and street view images.
 - (v) Nearmaps satellite images from 2010 to current date.
 - (vi) RP Data Professional site history for 25 Stuart Place Tewantin.
 - (vii) The Planning Act 2016 (PA).
 - (viii) The Planning Regulation 2017 (PR).
 - (ix) The Development Application Rules.
 - (x) The Building Act 1975 (BA).
 - (xi) The Building Regulation 2006 (BR).
 - (xii) The Noosa Plan 2020.
 - (xiii) The National Construction Code 2019 (NCC).
 - (xiv) The Queensland Development Code MP1.2
 - (xv) The verbal submissions made by the parties at the hearing and during the site inspection.
 - (xvi) Further written submissions by the Appellant and Council received by the registrar via email:
 - i. 4 August 2022 from the Appellant seeking to provide additional clarification of information provided by Council at the Hearing
 - ii. 8 August 2022 from Council responding to the Appellant’s email of 4 August.
 - iii. 8 August 2022 from the Appellant with additional information and a report detailing representation on Referral Agency Response dated 20/01/2021 for the Tribunal’s consideration
 - iv. 10 August 2022 from Council responding to the email from the Appellant containing the additional information and a report.

Findings of Fact

17. The hearing for the appeal was held at the Appellant’s home and therefore at the subject site, on 1 August 2022. The Tribunal had the opportunity to view the existing single storey dwelling and that portion of the site where the proposed carport, gatehouse, fencing and landscape was to be situated. The Tribunal also traversed the site to investigate alternative locations that might accommodate covered car parking within the site.

18. The Tribunal viewed and considered other properties in the immediate vicinity of the existing dwelling. Discussion centered on existing building line setbacks relative to Stuart Place and Coreen Avenue. The Tribunal considered the predominant character from both streets but agreed that the existing built form and nature of Stuart Place was most relevant to the matters being considered.
19. Four of the six homes (including the Appellant's) in Stuart Place have some built form within the 6m road setback. This is likely due to their respective triangular allotment shapes and truncated frontages. The Appellant's allotment and the allotment directly opposite in Stuart Place are rectangular but each have a double truncation to form the corners from Coreen Avenue into Stuart Place. Every property, except the Appellant's, currently has a solid 1.8m high fence along their frontage to Stuart Place.
20. The Appellant's home was built over 35 years ago and is visibly dwarfed by an enormous eucalypt tree on their footpath along Coreen Avenue. Their home has an existing 1.8m high masonry fence on this frontage which is now somewhat structurally compromised by the roots of this tree. The masonry boundary wall returns at ninety degrees along the northern side of the allotment finishing flush with the face of the existing garage fronting Stuart Place. This wall return, together with the face of the garage gives the impression that this is the extent of the property. However, the wall is considerably setback from the northern frontage to Stuart Place. The property line for the site extends 4.8m beyond the garage face for a width of 11m.
21. The proposed design is for a low rise open carport to be built over the existing driveway between the existing double garage and the secondary street frontage. The design includes a small gatehouse integrated with a stepped fence line and new landscaping within the truncated corner. To achieve this design the existing masonry wall between Coreen Avenue and their garage would be demolished and removed. The Appellant suggested the proposed building line would incorporate various elements and not only improve the character of their site but also the entry into Stuart Place.

The Queensland Development Code (QDC)

22. The Low Density Residential Zone code Table 6.3.1.3 contains some alternative 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 Low Density Residential Zone code Table 6.3.1.3 PO9 does provide alternative siting provisions to the QDC Part MP1.2 A1(a). Therefore, the 6m setback provisions (for a garage or a carport) of the Low Density Residential Zone code apply to the proposed development.

The Noosa Plan 2020

23. The Noosa Plan's Low Density Residential Zone Code Table 6.3.1.3 contains the following alternate provisions to the QDC.
24. 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.*
25. The proposed double carport is 4.8m deep and 6.6m wide with no setback proposed to the road frontage. The site is located on a corner and is truncated to accommodate a short cul-de-sac providing access to six properties including the subject site.
26. As the proposal does not meet the acceptable outcomes of AO9.1, assessment is made against the performance outcomes stated at PO9 which 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 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.*

27. Council's referral agency response refused the siting and design of the carport stating that the proposed development does not comply and cannot be conditioned to comply with the following performance criteria from the Noosa Plan 2020, Low Density Zone Residential Code *PO9 Buildings and Structures area designed and sited to:*

- (f) *Be consistent with the predominant character of the streetscape.*

28. Council further stated:

'...the design and location of the proposed carport and gatehouse provides insufficient road boundary setback. Therefore, the design and siting of the structures provides for a location that is not consistent with the predominant character of the streetscape. It is Council's view that the existing predominant character of the streetscape, with respect to the design and location of buildings and structures, is represented by buildings and structures having a greater setback than the proposed carport and gatehouse.'

29. The Noosa Plan 2020 states a Class 10 Structure as per building regulations is defined as a non-habitable building or structure.

30. The QDC MP1.2 defines a Structure as having the same meaning as in the Building Act 1975.

31. The Building Act 1975 Schedule 2 states a Structure includes a wall or fence, and anything fixed to or projecting from a building, wall, fence or other structure

Reasons for the Decision

32. The Tribunal finds that the scale and location of the carport, gatehouse, fencing and landscaping that is being proposed will be in keeping with the predominant character of the streetscape provided by the other five homes in Stuart Place and a neighboring property in Coreen Avenue. The stepping of the structures in Stuart Place around the corner of the subject site is entirely suitable given the keyhole shape of the cul-de-sac, the varied setbacks evident and the extent of solid boundary fencing erected on all five of the adjoining properties.

33. In the circumstances, the Appellant has satisfied the Tribunal that the appeal should be upheld.

Debbie Johnson

Development Tribunal Chair

Date: 17 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:

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