



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-058
Appellant:	Lee Cameron Thompson
Respondent: (Assessment manager)	Rob Wibrow
Co-respondent: (Concurrence agency)	Noosa Shire Council
Site address:	43 Shorehaven Drive, Noosaville Qld 4566, described as Lot 254 on RP 856183 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal, at the direction of the concurrence agency, of a development application for a development permit for building work for the construction of a carport (Reference Noosa Council RAB 23-0069).

Date and time of hearing:	Monday 29 January 2024 at 11.30 am
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Catherine Baudet – Member
Present:	Lee Cameron Thompson (Appellant/Owner) Marcus Brennan (Brennan Planning, agent for the Appellant/Owner) Jarrad Postle (Noosa Shire Council, Co-respondent)

Decision:

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 Building Development Application (Noosa Council RAB 23/0069) with a decision that the Development Permit for Building Work (RAB 23/0069) be approved, with the following conditions:

- a) A minimum set back of 0.2m of the outermost part of the carport from the front property boundary.
- b) The sides of the carport not to be enclosed (or otherwise screened with louvres, slats, battens, doors etc).
- c) The front of the carport not to be gated (or otherwise screened with louvers, slats, battens, doors etc).
- d) The front wall and gatehouse at the front of the property to remain on their existing alignment and not to be brought forward from their existing alignment.

- e) The existing 50m² of landscaping, in front of the property between the existing front wall and gatehouse and the front property boundary to remain and be maintained with a mixture of grass, ground covers, large shrubs and trees.
- f) A 1.17m wide densely landscaped strip to be provided and maintained between the carport and the south-east property boundary adjacent to the adjoining property to the south-east.
- g) Such other conditions, as the assessment manager reasonably requires to ensure compliance with the building assessment provisions.

(For clarity, the Tribunal formed the opinion that the impact of the proposed carport on the streetscape was partly mitigated by the existing front wall and gatehouse forming the remaining frontage of the property being well set back behind the front property boundary, with the area between the front property boundary and this wall and gatehouse being well landscaped).

Background

The subject site

1. The subject site is a rectangular shaped block of 739.77m² located on the inner curve of Shorehaven Drive, developed with a double storey, hip roofed, detached residence, with an integrated hip roofed double garage, developed on the high side of the road frontage.
2. The site has 20m frontage to Shorehaven Drive.

The proposal

3. The proposal is for the construction of a double carport that would be 5.9m wide, 6.4m deep, 3.4m at the front property boundary, rising to a maximum of 4.77m to the highest part of the hip roof ridge line of the carport set back from the front property boundary.

Assessment of the application

4. On 7 September 2023, the Noosa Council advised the proposal is not supported by Council and directed that the application be refused.
5. Council's stated reason for refusal was non-compliance with the *Noosa Plan 2020 – Low Density Residential Code* Performance Outcome PO9.

Findings of fact

6. The Tribunal inspected Shorehaven Drive for its streetscape, the visual continuity and pattern of buildings and landscape elements within the street. Shorehaven Drive has particularly wide verges between the road kerb and the front property boundaries that are well grassed, but without street trees that would form an avenue.
7. The open space of the curving street and its verges, together with the front gardens including dense vegetation and trees behind the property frontages, has a continuity of character, and presents as a spacious, landscaped streetscape.
8. The dominant features of the streetscape are the tall, 1.6m to 2m high, masonry walls and gated driveways, most with solid or view-obscuring gates, and some with modest gatehouses located along the front boundary of the properties.
9. The property immediately to the south of the subject property at 45 Shorehaven Drive is a two storey detached dwelling that presents as a one storey detached dwelling to Shorehaven Drive. This property has a 1.6m to 2m high masonry front boundary fence, with

an approved 2.4m to 2.6m high skillion roofed carport located on the front boundary immediately behind this fence, accessed from the existing driveway.

10. 47 Shorehaven Drive is a single storey detached dwelling set 6m back, located behind a 2m high masonry wall.
11. 49 Shorehaven Drive is two storey detached dwelling set back behind a single storey garage that itself is set 6m back from the front property boundary. This property has a 1.8m high masonry fence with full height, full width driveway and entrance gates on the property boundary that presents to Shorehaven Drive.
12. 51 Shorehaven Drive is a two storey detached dwelling located behind a garage on the right hand side, and a carport on the left hand side, located behind a 2m high front masonry fence, with full height, full width solid driveway gates.
13. To the north of the subject property, at 41 Shorehaven Drive, is a single storey detached dwelling, set back 6m behind an articulated 1.6m high masonry front boundary wall.
14. Further north is tree-lined, open parkland, with provision for overland flow drainage, with approximately 30m frontage to Shorehaven Drive.
15. Opposite the subject site is tree lined, open parkland, with provision for overland flow drainage, with approximately 40m frontage to Shorehaven Drive.

Material considered

16. The material considered in arriving at this decision comprises:
 - a. Form 10 – A copy of the application and the accompanying plans
 - c. The Concurrence Advice Response from the Noosa Council

Jurisdiction

17. Section 229(1) of the PA provides that schedule 1 ('the schedule') of the PA states the matters that may be appealed to a tribunal.
18. Section 1(1)(b) of the schedule provides that the matters stated in Table 1 of the schedule ('Table 1') are the matters that may be appealed to a tribunal. However, subsection 1(2) of the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
19. Section 1(2)(g) provides that Table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the *Building Act 1975*, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
20. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

Decision framework

21. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
22. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA); however, the tribunal may nevertheless (but need not) consider other

evidence presented by a party with leave of the tribunal, or any information provided under section 246 of PA.

23. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal's decision takes the place of the decision appealed against (section 254(4)).
24. The tribunal must not make a change, other than a minor change, to a development application (section 254(3))

Reasons for the decision

25. During the hearing Council offered the view that the 'streetscape of interest' was that visible from the verge immediately outside the subject property. The appellant in the appeal documents contended the 'streetscape of interest' should extend from Figurehead Drive to the north, to The Peninsula to the south. During the site inspections at the hearing, the appellant's agent reduced the claimed streetscape of interest to be from Figurehead Drive to Seacove Court.
26. During the site inspections at the hearing the Tribunal formed the opinion that the 'streetscape of interest' was the streetscape from which the subject site was visible from the verge on the opposite side of Shorehaven Drive to the subject site. To clarify, the Tribunal determined the 'streetscape of interest' to be the streetscape visible from the verge outside 37 Shorehaven Drive looking towards the subject site and the streetscape visible from the verge opposite 49 Shorehaven Drive looking towards the subject site.
27. The Tribunal formed the view that the proposed carport would be consistent with the predominant character of the streetscape given its roof design that complements that of 43 Shorehaven Drive; the limited visibility of the proposed carport from the street, and the prevailing character of the street being dictated by the predominance of 1.8m to 2m high, masonry front boundary walls with gated driveways.
28. The Tribunal formed the opinion that the impact of the proposed carport on the streetscape was partly mitigated by the existing front wall and gatehouse forming the remaining frontage of the property being well set back behind the front property boundary, with the area between the front property boundary and this wall and gatehouse being well landscaped.
29. The Tribunal formed the view that the proposed carport would provide a high level of amenity to the users of the subject site and would not significantly reduce the amenity of the adjoining property, nor significantly affect their visual or acoustic privacy, nor their access to sunlight.
30. The Tribunal formed the view that the proposed carport, at the proposed location, would provide adequate space from adjoining land uses and allow adequate space for landscaping between the buildings.
31. Consequently, the Tribunal found the proposed carport is consistent with the Noosa Council Planning Scheme 2020 'Low Density Residential Code' Performance Outcomes PO9.



Derek Craven Kemp
Development Tribunal Chair

Date: 16 February 2024

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 Housing, Local Government, Planning and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone (07) 1800 804 833

Email: registrar@epw.qld.gov.au