



Development Tribunal – Decision Notice

Planning Act 2016, section 255

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| Appeal number: | 24-062 |
| Appellant: | Pamela Pannifex |
| Respondent: (Assessment manager) | Veen Lyall-Wilson |
| Co-respondent: (Concurrence agency) | Noosa Shire Council |
| Site address: | 9 Columbus Court, Sunrise Beach Qld 4567, described as Lot 422 on N 28162 – 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 building works for the construction of a 'carport' (Reference Pronto Building Approvals Decision Notice Refusal Reference Number 240309, Noosa Council RAB24/0115).

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| Date and time of hearing: | Friday 13 February 2025 at 10.00am |
| Place of hearing: | The subject site |
| Tribunal: | Derek Kemp – Chair Lisa Lambie – Member |
| Present: | Andy Pannifex (Agent for the appellant property owner) Jason Devine (Noosa Shire Council, Co-respondent) |

Decision:

The Development Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016* **confirms** the decision of the Assessment Manager to refuse the proposed building works (Reference Pronto Building Approvals Decision Notice Refusal Reference Number 240309, Noosa Council RAB24/0115).

Background

The approval sought

1. Approval was sought for proposed building works for an open carport attached to the front of the existing dwelling.

The subject site

2. The subject site is a rectangular block of 648 square metres, with a frontage of 20 metres to Columbus Court, developed with a modern, two storey dwelling, set back approximately 6 metres from the front property boundary.

The proposal

3. The proposal is for the construction of an open carport, 6,500 mm in width and 7000 mm in depth, with a rendered front parapet and façade. (Note: the carport extends beneath the front overhang of the second floor of the main building)
4. This open carport is proposed to be located immediately in front of the existing two car garage that exists within the existing dwelling and will be attached to the front wall of the existing dwelling in front of the existing double garage.
5. The front of the proposed carport would be located approximately 100mm in from the front property boundary and will be built at least 2600mm in height above natural ground level at the front.
6. The proposed carport will align with the ground storey of the existing dwelling and will be located 1000mm from the southern side property boundary.
7. The existing dwelling is presently set back 1000mm from this southern side property boundary for approximately 6 metres. The combined length of the existing dwelling and the proposed carport set back 1000mm from this side property boundary will be 13 metres.

Assessment of the application

8. On 12 August 2024, the Respondent requested a Referral Agency Response from Council regarding to the proposed building works.
9. On 12 November 2024, the Referral Agency, Noosa Shire Council, directed the Assessment Manager to refuse the proposed building works (Noosa Council Referral Agency Response RAB24/0115).
10. Council's stated reasons for refusal were:

The proposed development does not comply with and cannot be conditioned to comply with the following performance criteria:

Noosa Plan 2020 – Low Density Residential Zone Code
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;

(f) be consistent with the predominant character of the streetscape;

11. The Referral Agency Decision and Reasons state:

It has been considered that the location of the proposed carport is not consistent with the predominant character of the streetscape and does not provide a high level of amenity to the adjoining premises.

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 and additionally, it has been noted that the combined length of building work along the prescribed side boundary setback, is considerable at over 13 meters long, may impact the amenity of the adjoining premises [sic].

12. On 22 November 2024, the Assessment Manager issued his Decision Notice refusing the Development Application (Decision Notice – Refusal, Reference Number 240309).

Jurisdiction

13. 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.
14. 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).
15. 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.
16. 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

17. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
18. 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.
19. 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)).
20. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

21. The material considered in arriving at this decision was:
- a. 'Form 10 – Notice of Appeal' (with the supporting documents and further information contained therein).
 - b. 'Referral Agency Response Directing Refusal' issued by the Noosa Shire Council, dated 12 November 2024 (RAB24/0115).
 - c. 'Development Application – Refusal' issued by the Assessment Manager (Veen Lyall-Wilson) dated 22 November 2024.
 - d. Noosa Plan 2020 – Low Density Residential Zone Code.
 - e. The further information provided by the appellant by email to the registry on 21 February 2025.
 - f. The further information provided by Council by email to the registry on 24 February 2025.

Findings of fact

22. The Tribunal makes the following findings of fact:

Impact on amenity to users of the subject site and adjoining premises

- a. The proposed carport will increase the amenity of the users of the subject site by providing added shaded covering for boats, trailers, cars and other vehicles and items accommodated under the carport.
- b. The proposed carport will have little, if any, adverse impacts on the amenity of users of the adjoining site to south (the only adjoining site possibly adversely affected) because of the heavy, dense landscaping, including tall palms planted along the side property boundary of the adjoining property.
- c. The proposed carport will have no adverse impacts on the visual and acoustic privacy and access to sunlight of the subject property.
- d. The proposed carport will have little, if any, adverse impacts on the visual and acoustic privacy and access to sunlight of the adjoining property because of the heavy, dense landscaping, including tall palms planted along the side property boundary of the adjoining property.

The streetscape of concern

- e. The streetscape of concern consists of both sides of Columbus Court, for the full length of that cul de sac.
- f. Generally, Columbus Court has minimal fencing with no structures within the front 6 metre setback. One house on the corner of Columbus Court and Dame Patti Drive has two small sheds and there is the rear of a carport in the setback of the house on the opposite corner of Columbus Court and Dame Patti Drive. They are not much taller than the adjacent fence. There is a mix of high and low set houses

incorporating single and double garages. Many properties are open to the street and there is abundant vegetation screening the front of homes.

The streetscape of concern, north of the Subject Site

- g. On the western side of Columbus Court, the property to the north of the subject site (11 Columbus Court) is a high set house set well back behind a 1.8 metre high solid timber fence. The setback is greater than the dwelling on the subject site and is somewhat less towards the northern property boundary to accommodate the truncation required for the head of the cul de sac. There is substantial dense high landscaping and mature palms and trees on the property boundaries and on the verge adjacent to the front property boundary.
- h. Further north is 13 Columbus Court, a single storey residence with an open, partly enclosed carport in front extending to within approximately 4.5 metres of the front property boundary. There is a short 1.8 metre high masonry wall and up to 2 metre high rock faced wall and high hedge from the southern property boundary to the driveway.
- i. At the top of the cul de sac head is 15 Columbus Court, a high set house set well back beyond 6 metres from the front property boundary, with a very low stone wall and very dense, high landscaping including mature tall trees on this road frontage.
- j. On the eastern side of Columbus Court, the property opposite the subject site at 8 Columbus Court is relatively flat, grassed vacant land, open to the street, with very little other vegetation apart from occasional medium high trees.
- k. Further north, 10 Columbus Court is a double storey, high set house set back at least 6 metres from the street, with an open grassed street frontage, with small shrub beds and a short horizontal colorbond and timber fence to one side.
- l. Number 12 Columbus Court is a partly high set house, set back 6 metres from the street with an open street frontage, no fence, generous screen planting and a number of mature trees.
- m. Number 14 Columbus Court is a high set house set well back diagonally more than 6 metres from Columbus Court, open to the street with a low brick wall to one side.
- n. Number 16 Columbus Court, is a high set house, set well back at least 6 metres at the head of the cul de sac, with an open grass garden, with side boundary mature tree planting and a 1.8 metre high open horizontal slatted aluminium fence and driveway gate.

The streetscape of concern, south of the Subject Site

- o. On the same side as the subject property, on the western side of Columbus Court, to the south of the subject property, is 7 Columbus Court. This is a high set dwelling set back between 6 and 7.5 metres. It has a narrow gap, slatted front fence 1.5 to 1.8 metres high stepping down the slope at the front of this property. There is high, dense landscaping, including tall palms, established along the side property boundary with the subject property running from the front of this dwelling to the front property boundary.

- p. Further south is 5 Columbus Court, a single storey dwelling, set back approximately 6 metres, with open landscaped frontage, with no fence and occasional palm clusters at the front.
- q. Number 3 Columbus Court is a two storey dwelling set well back, with a 2 metre high solid timber front fence. Behind this fence and dense landscaping is a large open pergola, with extensive vines growing over it that is barely visible from the street.
- r. On the western corner lot at Columbus Court and Dame Patti Drive, is a two storey house (14 Dame Patti Drive), the side of which is well set back, with a 2 metre high solid timber fence along the full Columbus Court frontage. There is an open carport running side on to Dame Patti Drive which extends into the side boundary set back to Columbus Court. This carport is barely visible above the 2 metre high solid timber fence along the Columbus Court frontage.
- s. Opposite the subject site, to the south of the vacant block of land opposite, is 6 Columbus Court a single storey dwelling set well back, with open landscaped street frontage with no fence and some dense screen planting including high mature trees and palms.
- t. Further south on the eastern side, is 4 Columbus Court, a single storey dwelling, well set back with no fence and dense screen planting with high mature trees and palms.
- u. At the corner with Dame Patti Drive is 2 Columbus Court/12 Dame Patti Drive, a high set house, well set back at least 6 metres from Columbus Court, with a 1.8 metre solid timber front fence and two small sheds visible above this fence and dense landscaping, with mature trees along the dame Patti frontage.

Reasons for the decision

- 23. The key aspects of concern are:
 - a. The impact on amenity to users of the subject site and adjoining premises, including provision of visual and acoustic privacy and access to sunlight.
 - b. Consistency with the predominant character of the streetscape.
- 24. With respect to the impact on amenity, the Tribunal formed the opinion that the proposed carport would improve the amenity for users of the subject site and would have little, or no, adverse impact on the amenity of the adjoining premises.
- 25. With respect to Noosa Plan 2020 Low Density Residential Zone Code Performance Outcome PO9(f) (buildings and structures are designed and sited to ...be consistent with the predominant character of the streetscape), the Tribunal formed the opinion that the proposed carport would not be consistent with predominant character of the existing streetscape.
- 26. The Tribunal noted the 'Purpose and Overall Intent' of the Noosa Plan 2020 – Low Density Residential Zone Code includes:
 - (c) *The distinct look and feel of existing residential neighbourhoods is retained, and development makes a positive contribution to the streetscape, maintaining the low density and low scale character.*

27. The Tribunal formed the opinion that the proposed carport would not retain the distinct look and feel of the existing neighbourhood and would not make a positive contribution to the streetscape and would not maintain the low density and low scale character of the neighbourhood.
28. The Tribunal noted that limited effective screen planting is possible between the proposed carport and the adjoining property because of the 1000mm side boundary set back.
29. Consequently, any landscape elements that could screen or break the bulk of the proposed carport, or improve the streetscape of the proposed development, when viewed from the south, mainly depends on the dense landscaping on the adjoining property to the south.

Derek Craven Kemp
Development Tribunal Chair
Date: 28 February 2025

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 and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone (07) 1800 804 833

Email: registrar@epw.qld.gov.au