



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-003
Appellant:	Casey Languillon
Respondent (Assessment manager):	John Dunn, JDBA Certifiers
Co-respondent (Concurrence agency):	Noosa Shire Council ('Council')
Site address:	1 Cambridge Court, Tewantin Qld 4565, formally described as Lot 18 on RP863250 ('the subject site').

Appeal

Appeal under section 229(2) and schedule 1, sections 1(1)(b) and 1(2)(g), and table 1, item 1(a), of the *Planning Act 2016* ('the PA') against the assessment manager's decision to refuse the appellant's application for a building works development permit for additions and alterations to an existing Class 1a dwelling house, including a new Class 10a carport, on the subject site ('the application').

Date and time of hearing and site inspection:	Tuesday 7 March 2023 at 10:00am
Tribunal:	Neil de Bruyn – Chairperson Suzanne Bosanquet – Member
Present	Casey Languillon – appellant Nicolas Languillon – owner Richard Jones – appellant's representative Brad Geaney – Council representative Jarrad Postle – Council representative

Decision

1. The Development Tribunal ('the tribunal'), in accordance with section 254(2)(d) of the PA, **sets aside** the decision of the assessment manager to refuse the application, and orders the assessment manager to:
 - a) remake the decision within 25 business days of the date of receiving this decision notice, as if the concurrence agency had no requirements; and
 - b) in the event that the assessment manager then decides to approve the application, to include the following condition in the resultant building works development permit:

The design and siting of the approved Class 10a carport is to be in accordance with Suncoast Building Design plans dated 16 November 2022.

Background

2. The subject site is a roughly triangular residential site, formally described as Lot 18 on RP863250, with an area of 646m². The subject site is located at 1 Cambridge Court in Tewantin, within the Noosa Shire Council local government area. The subject site primarily fronts onto Cambridge Court, a short, local access *cul-de-sac*, and onto Tait Street on its western and north-western boundaries. The section of Tait Street adjoining the subject site only contains a very short constructed section of roadway, which terminates within the length of the subject site's frontage to that street.
3. The subject site is included within the Low Density Residential Zone under the Noosa Plan 2020, being the current planning scheme for the subject site ('the planning scheme'). The subject site is also affected by various overlays under the planning scheme, including those relating to acid sulphate soils and bushfire hazard.
4. The subject site contains a substantial dwelling house, which addresses Cambridge Court. The driveway access to the subject site is also from Cambridge Court.
5. The appellant proposes to undertake additions and alterations to the existing dwelling house, including the addition of the new, two-bay Class 10a carport that is the subject of this appeal, to be located within the existing driveway.
6. The application was made to the assessment manager for a building works development permit for the proposed development. There is no evidence before the tribunal as to the date upon which the application was made; however, this omission is not considered to be significant in the circumstances of this appeal.
7. The tribunal infers, from the submitted material, that the plans submitted together with the application were those prepared by Suncoast Building Design and dated 24 June 2022. These plans show the proposed carport to be located to a 1m setback to Cambridge Court, and as having the following maximum dimensions:
 - a) Width: 6.44m
 - b) Length/Depth: 6.2m
 - c) Height: 2.626m
8. The plans also showed other proposed alterations and additions that are not material to the key issues of this appeal.
9. The proposed carport is shown on the plans as being entirely open on both sides, with a flat, lightweight and translucent, pergola-style roof, and as being supported by four posts.
10. Pursuant to section 33 of the Building Act 1975 ('the BA') and section 1.6 of the planning scheme, the Low Density Residential Zone Code ('the code') under the planning scheme specifies alternative siting provisions to those set out in the relevant part of the Queensland Development Code. The code includes Acceptable Outcome 9.1 ('AO9.1'), which requires buildings and structures to have a setback to a road frontage of 6m (subject to exceptions that are not applicable in this case). Clearly, the proposed 1m frontage setback does not achieve AO9.1.
11. For section 54 of the PA, schedule 9, part 3, division 2, table 3 of the Planning Regulation 2017 specifies that a development application for building work that does not meet a quantifiable standard for an alternative provision under section 33 of the BA requires referral to the applicable local government. Accordingly, on a date undisclosed to the tribunal, the application was referred to Council as a concurrence agency for a design and siting assessment and response.

12. Council issued an information request dated 27 July 2022. The information requested that is pertinent to this appeal was as reproduced below:

Issue

It has been considered that the proposed carport is not consistent with the predominant character of the streetscape and is unlikely to be supported by Council.

Information Required

1. *Due to the existing location of other buildings and structures within the streetscape, it is suggested that Council may only consider a minor encroachment within the road boundary setback.*

If an alternative design can be achieved which reflects the information provided, submit revised plans for further consideration.

13. A town planner in the employ of the assessment manager issued a response to the information request, by way of an email dated 7 December 2022. The relevant response is reproduced below:

The open/pergola carport structure has been reduced in size and is now proposed to achieve a 2m setback from the street boundary more consistent with other reduced setbacks in the area. Noting the structure is not enclosed on any sides, nor contains a solid roof (more of (sic) decorative piece) it will provide a positive contribution to the streetscape and present an attractive street frontage. Combined (sic) the 2m setback, the existing established vegetation within the frontage of the property will assist in adequately screening to structure further.

14. The tribunal notes that the response to the information request was made over four months after the information request was issued, which is more than the period set out in Section 13.1 of the Development Assessment Rules (Version 1.3).

15. The tribunal infers, from the town planner's response, that amended plans were included in the response submission to Council. The tribunal takes it that the amended plans were those prepared by Suncoast Building Design and dated 16 November 2022. It is noted, from these plans, that the frontage setback of the proposed carport was increased from 1m to 2m, and that the following dimensions of the proposed carport were reduced (as shown below):

- a) Width: 6.19m (reduced from 6.44m)
- b) Length/Depth: 5.0m (reduced from 6.2m)

16. It is also noted, from these plans, that the existing garage is shown as being converted to storage.

17. In a referral agency response dated 21 December 2022, Council directed the assessment manager to refuse that part of the application covering the proposed carport, on the grounds reproduced below:

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

It has been considered that the proposed carport within the road boundary setback 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 far greater road boundary setback than that of the proposal.

18. The assessment manager duly issued a decision notice dated 9 June 2022, apparently refusing the application in its entirety (that is, the refusal appears to include the other alterations/additions that were not directed by Council to be refused). The notice only gives, as reasons for this decision, that “... *the Carport Structure has been REFUSED based on the Referral Agency Response from Noosa Shire Council ...*” No reasons are given for the apparent refusal of the balance of the works proposed in the application.
19. The appellant duly lodged this appeal with the tribunal registrar on 17 January 2023.
20. A site inspection and hearing was held on the subject site on Tuesday 7 March 2023 at 10:00am.

Material considered

21. The following material has been considered by the tribunal in this appeal:

- a) ‘Form 10 – Notice of Appeal’ lodged with the tribunal’s registrar on 17 January 2023, and including a detailed analysis of carports in existence elsewhere in Tewantin.
- b) The assessment manager’s decision notice dated 13 January 2023.
- c) Council’s referral agency response dated 21 December 2022, including Suncoast Building Design plans dated 16 November 2022 marked up in red to reflect the directed part-refusal of the application.
- d) Town planner’s email dated 7 December 2022, in response to Council’s information request.
- e) Updated plans, prepared by Suncoast Building Design and dated 16 November 2022.
- f) Council’s information request dated 27 July 2022.
- g) Completed Noosa Shire Council form “Request for Referral Agency Response.”
- h) Consultant Report prepared by JDBA Certifier, dated 6 July 2022.
- i) Partly completed DA Form 2 (as accepted by the assessment manager pursuant to Section 51(4)(c) of the PA).
- j) Plans prepared by Suncoast Building Design and dated 24 June 2022.
- k) Form 56 “Notice to the local government that a private certifier has been engaged.”
- l) Form 20 “Lodgement of Building Work Documentation.”
- m) The *Planning Act 2016* and the *Planning Regulation 2017*.
- n) The Noosa Plan 2020.

Jurisdiction

22. 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.
23. 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, section 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).

24. 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 BA, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
25. 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

26. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
27. 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.
28. 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)).
29. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Findings

30. The tribunal notes that the assessment manager's apparent decision to refuse the application in its entirety was inconsistent with the Council's referral agency response, and associated direction to refuse only that part of the application that was concerned with the proposed carport.
31. At the outset, the tribunal finds no reason to uphold the assessment manager's apparent decision to refuse those aspects of the application not concerned with the proposed carport.
32. The Council's grounds for directing refusal of the proposed carport were essentially that the proposed frontage setback of 2m to Cambridge Court fails to achieve AO9.1, as mentioned in paragraph 9 above. Development that does not achieve an acceptable outcome, has then to be assessed in terms of whether or not it can achieve the relevant performance outcome ('PO') for the AO (or whether it can be conditioned to meet that PO). In this case, the relevant PO is PO9 of the code, which provides as follows:

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.

33. PO9(f) is highlighted above, as this is the part of PO9 that Council regards as not being met by the proposed carport and its 2m frontage setback to Cambridge Court (refer to Council's stated grounds for directing refusal of the application, in paragraph 15 above). The Council does not make any reference, in its referral agency response, to any of the other parts of PO9, and the tribunal therefore finds that PO9(a) to (e), inclusive, and (g) are not material to this appeal.
34. At the site inspection, the tribunal walked the full length of Cambridge Court, in order to gain a clear understanding of the character of its streetscape. The tribunal finds that the initial part of the street, extending towards the east from the intersection with Tait Street in front of the subject site up to, and including, Nos 5 and 6, is clearly characterised by substantial walls, gates, fences, hedges, and other substantial landscaping elements along the relevant lot frontages on both sides of the street. The tribunal also noted that the large, two storey, highset dwelling at No 5 Cambridge Court has a somewhat bulky, tall and solid, double-bay garage that appeared to the tribunal to be set back approximately 4.5m from the front boundary (that is, less than the 6m provided under AO9.1).
35. The tribunal also noted that, by contrast, the streetscape of Cambridge Court beyond Nos 5 and 6, after the point at which the street curves and traverses in a northerly direction, does appear to feature compliant front setbacks for buildings and structures, and also does not feature substantial boundary treatments and landscaping along the lot frontages. The dwellings here are modest and lowset unlike the other dwellings at the start of Cambridge Court, which are highset, larger homes.
36. Against the above background, the tribunal finds that the lightweight, open-sided carport proposed by the appellant will not be inconsistent with the predominant character of that part of the streetscape within which it is proposed to be located, given the very substantial, and visually bulky structures, landscaping elements and certain buildings already present in that part, and which define the character of that part of the streetscape.
37. During the hearing, Council's representative argued that only buildings and structures are to be considered in determining and assessing the streetscape character, as this appeal relates to a design and siting referral, which is about buildings and structures only, and not about other streetscape elements such as landscaping. After consideration, the tribunal does not accept this argument. Whilst the referral is indeed about a proposed building or structure, the applicable assessment benchmark (an alternative siting provision) requires a consideration of whether, or not, such building or structure is consistent with the predominant streetscape character in general (with no distinction made between buildings, structures and other streetscape elements). In essence, the tribunal finds that the concept of streetscape character is not divisible into particular elements, and must be considered as a whole.

Reasons for the decision

38. The tribunal, in accordance with section 254(2)(d) of the PA, has decided this appeal as set out in paragraph 1 above.
39. The tribunal's reasons for this decision are that:
- a) There is no evidence before the tribunal that provides any basis to uphold the assessment manager's decision to refuse those aspects of the application not concerned with the proposed carport; and
 - b) for the reasons stated in paragraph 34, the lightweight, open-sided carport proposed by the appellant, and as shown in the Suncoast Building Design plans dated 16 November 2022, will not be inconsistent with the predominant character of that part of the streetscape

within which it is proposed to be located, and this aspect of the proposed development is therefore found to achieve PO9(f) of the code.

Neil de Bruyn
Development Tribunal Chair
Date: 29 March 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:

The Registrar of Development Tribunals
Department of Energy and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone: 1800 804 833

Email: registrar@epw.qld.gov.au