



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number: 23-023

Appellant: Luke and Emma Homewood

**Respondent
(Assessment manager):** Noosa Shire Council

Site address: 4 Woodlark Rise, Sunshine Beach Qld 4567 and described as Lot 293 on RP136796 – 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 of a Development Application for approval of Building Work for Carport. The Respondent refused the Application stating that the proposed carport did not comply with and cannot be conditioned to comply with the provisions of the Noosa Plan 2020, namely the Low Density Residential Zone Code – AO9.1 and PO9, AO19.1 and PO19 (a),(b), the Earthworks Code – PO9; and the Driveways and Parking Code – AO1.1, AO2.1, PO1 and PO2 (a).

Date and time of Hearing: 1:00pm, 17 August 2023

Place of Hearing: The subject site

Tribunal: Professor Victor Feros OAM – Chairman
Elisa Knowlman – Member

Present: Luke and Emma Homewood – Appellants
Nadine Gorton, Jada Lyons - Respondent
Marcus Brennan – Town Planner for Appellant

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 Application.

Background

1. An Application was lodged by Building Approvals United Qld to Noosa Council on 17 August 2022 for Referral Agency response to construct a Carport.
2. The proposed carport was setback 0.475m from Woodlark Rise.
3. The proposed width of the carport was 8.2m, to accommodate two (2) vehicles under cover.

4. The depth of the carport was 7.4m.
5. The Referral Agency, having assumed the role of Assessment Manager, refused the Application on 12 April 2023.
6. An Appeal to the Development Tribunals – the subject Appeal – was duly instituted on 16 May 2023.

Material considered

7. The material considered in coming to this decision includes:
 - (a) Form 10 Appeal Notice, including grounds for Appeal and correspondence accompanying the Appeal, lodged 16 May 2023
 - (b) DA Form 2 - Building Works Application lodged by Building Approvals United Qld (BAUQ) to Noosa Shire Council (NSC) lodged 5 September 2022
 - (c) Action Notice from NSC to BAUQ, dated 20 September 2022
 - (d) Response to Action Notice from BAUQ to NSC, 31 October 2022
 - (e) Confirmation Notice (NSC) issued 7 November 2022
 - (f) Information Request (NSC) issued 21 November 2022
 - (g) Response to Information Request (BAUQ) dated 27 February 2023
 - (h) Development Assessment Delegated Report, 5 April 2023
 - (i) Issue of Decision Notice (NSC), 12 April 2023
 - (j) Series of Photographs **annexed** and identified as **Annexure A – Site Photographs**
 - (k) Series of amended Plans and Drawings, dated 1 November 2023
 - (l) Noosa Planning Scheme
 - (m) The Planning Act 2016

Findings of fact

8. The Appellants explained the reasons for the Application, principally that the present on-site gradients were unsafe and that a double carport was required to enable undercover parking for two vehicles.
9. The Respondent (Council) asserted that the proposal resulted in non-compliance with the Noosa Plan 2020 Low Density Residential Code, namely Acceptable Outcome AO9.1 and Performance Outcome PO9, as the proposal did not comply with the required 6 metre minimum front setback, did not provide adequate distance from adjoining land uses, did not preserve existing vegetation that would help buffer development, did not allow for space and landscaping to be provided between buildings, and was inconsistent with the predominant character of the streetscape; and with reference to Acceptable Outcome AO19.1 and Performance Outcome PO19 (a),(b), the proposal included earthworks that would disrupt the natural landform of the site and with reference to Earthworks Code PO9

as the proposal did not provide justification for the cut proposed or the 2.2m high retaining walls; and that the proposal did not comply with Acceptable Outcomes AO1.1 and AO2.1 and the corresponding Performance Outcomes PO1 and PO2(a) of the Driveways and Parking Code, as the proposal did not indicate driveway compliance with Australian Standards and Council's Standard Drawings.

10. The Tribunal finds that the predominant character of the streetscape is building and structures with largely compliant setbacks.
11. The Registrar, Development Tribunals, by letter dated 12 September 2023, in accordance with a request from the presiding Tribunal Appeal Chairman, invited Appellant consideration of further plan amendments advising that if amended plans were not provided, the Tribunal would decide the matter based on the information already before it.
12. Plan amendments invited to be considered included:
 - (a) *the provision of a direct-entry double carport, with direct approach from 4 Woodlark Rise towards the southern end of the western (street) boundary, so facilitating safer parking and unloading for the residents;*
 - (b) *allowing (with reference to consideration of excavation and retaining structures) also for the construction of a final slab level, so ameliorating visual impacts of the carport (viewed from the street);*
 - (c) *the retention, to the extent that is practicable, of existing on-site and footpath vegetation;*
 - (d) *the incorporation of a revised driveway crossover grade either at the site of the existing crossover or creation of a new crossover further south on the western boundary, to facilitate safety and convenience;*
 - (e) *a lowering of the final slab level (below the current proposal) to assist in minimizing the visual impact of the carport roof from the street;*
 - (f) *in consultation with the Respondent Council, the re-leveelling of the footpath between the subject crossover and the neighbouring driveway to the south, potentially beneficial to improved public safety;*
 - (g) *the current plans do not clearly show relative levels of kerb, boundary, carport slab sufficient to evaluate the extent of required cutting, streetscape effects and the associated retaining walls and the carport structure itself;*
 - (h) *to assist in any assessment of plans, original or as modified, east-west cross sections of the proposed carport on both sides of the driveway are required, at least from the existing house to the kerb, and including levels at front of carport, boundary, and kerb. The cross-sections should show both existing and proposed finished ground lines and all proposed retaining walls.*
13. The Appellants, by response dated 3 November 2023, presented plan amendments as invited.
14. The Registrar, by letter to the Appellants dated 20 November 2023, invited further explanatory commentary in support of plan amendments. By advices in response, dated 24 November 2023, the Tribunal was advised that no further submissions would be made.
15. The amended Plans were submitted to the Respondent on 13 November 2023 for consideration.

16. The Respondent, by letter dated 5 January 2024, submitted a response for the consideration of the Tribunal, reiterating, with further explanation, its previous decision to refuse the Application, notwithstanding the further submitted plan amendments.
17. After further and final consideration, the Tribunal determined to confirm the decision of the Respondent to refuse the Application, the subject of the Appeal.

Reasons for refusal

18. The Tribunal concurs with the Assessment Manager that the proposed carport as submitted with the Application, the subject of the Appeal, does not provide sufficient road boundary clearance and is not consistent with the predominant character of the streetscape; nor is there sufficient justification for the cut proposed nor the height of retaining walls proposed, nor is there demonstrated compliance with relevant driveway standards.
19. Following further consultation between the parties, at the invitation of the Tribunal, Plans were amended and resubmitted to the Respondent for further consideration and response. The Respondent reiterated its previous decision, amendments notwithstanding.
20. The Tribunal, upon such further consideration, has decided that the proposed carport, as submitted and as further amended, is and continues to provide insufficient road boundary clearance, is and remains inconsistent with the predominant character of the streetscape, and there remains insufficient justification for the amended cut proposed and the amended height of the retaining walls proposed.
21. To particularize, the proposed development does not comply with, is contrary to, and inconsistent with the Noosa Plan 2020 Low Density Residential Code, namely AO9.1 and PO9, and PO19(a); the Earthworks Code, namely PO9; and the Driveways and Parking Code, namely, AO1.1, AO2.1 and PO1 and PO2(a).

Professor Victor Feros
Development Tribunal Chairman

Date: 21 February 2024

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

Telephone (07) 1800 804 833

Email: registrar@epw.qld.gov.au