



Development Tribunal – Decision Notice

Planning Act 2016 section 255

Appeal Number: 22-034

Appellant: Glenn O'Brien

**Respondent
(Assessment Manager):** Tim Coates

**Co-respondent
(Concurrence Agency):** Noosa Shire Council

Site Address: 3 Lewis Street, Tewantin Qld 4565 and described as Lot 44 on RP137604 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the Planning Act 2016 ("the PA") against the decision of the Assessment Manager, as directed by the Concurrence Agency, for refusal of a Development Permit for Building Works for a Class 10a structure, being the addition of a lift panel door to an existing carport on a residential site. The decision followed a referral agency response by the Noosa Shire Council directing refusal of the application on the grounds that the proposed addition of the lift panel door does not comply with and cannot be conditioned to comply with the provisions of the Noosa Plan 2020 - Low Density Residential Zone Code PO9(f) be consistent with the predominant character of the streetscape:

Date and time of hearing: Wednesday, 24 August 2022 at 10.00am

Place of hearing: The subject site

Tribunal: Mark Chapple—Chair
Richard Hurl—Member

Present: Glen O'Brien—Appellant
Marcus Brennan, Planner, Brennan Planning Pty Ltd—Appellant's agent
Matt Adamson/Brad Geaney—representatives of the Co-respondent Council

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the Planning Act 2016, sets aside the decision of the Assessment Manager to refuse the application and orders the Assessment Manager to re-make the decision within 25 business days of the date of this Decision Notice, as if the Concurrence Agency had no requirements.

Background

1. The subject site of this appeal is:
 - a. located on the western side of Lewis Street approximately halfway between where Lewis Street meets Ridge Street to the north and ends to the south.
 - b. the land around Lewis Street slopes gradually from higher ground toward the west to lower ground towards the east.
 - c. development in Lewis Street comprises developed dwelling houses and landscaped lands.
 - d. there is a carport at 3 Lewis Street located in the south-eastern corner of the land which drawings accompanying the Appeal show as located 2,295mm from the front boundary.
 - e. the existing carport was erected with approval which did not include a panel lift door. A panel lift door has been installed to the front of the carport without a building permit.
 - f. the proposal is that the lift panel door installed to the carport be given a Development Permit for building works.
 - g. zoned Low Density Residential under the Noosa Plan 2020.
2. The Appellant made application to Tim Coates of Foundation Building Approvals for a Development Permit for building works with respect to the panel lift door on the carport. The carport is located less than six metres from the front boundary and as a result triggered assessment against the relevant performance criteria of *Noosa Plan 2020*. A request for a Referral Agency Response was given to the Co-respondent Noosa Shire Council.
3. On 12 April 2020, the Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for the reasons stated as follows:

‘The application is refused as 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:

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

It has been considered that the proposed panel lift door addition to the carport within the prescribed road boundary setback is not consistent with the predominant character of the streetscape. Therefore, the proposed addition will adversely impact on the character of the streetscape should the panel lift door in the front boundary setback be considered.

Furthermore, the enclosure of the carport within the prescribed boundary setback has the potential to set precedents within the street for enclosed class 10(a) structures to be constructed at a reduced boundary setback.’

Material Considered

4. The material considered in arriving at this decision comprises:
 - (1) 'Form 10 – Appeal Notice' and grounds for appeal in Appendix A.
 - (2) Development Application Decision Notice No. 22-0080, Tim Coates, 10 June 2022.
 - (3) Form 18 – Notice to the Owner (where the owner is not the client) that a private building certifier has been engaged.
 - (4) Referral Agency Response – Noosa Shire Council, 12 April 2022.
 - (5) Drawing - Mandy's Design and Drafting – Proposed Carport – 3 Lewis Street, Tewantin. Issue No. G02020E, sheet 1 of 7
 - (6) Drawing - Mandy's Design and Drafting – Proposed Carport, 3 Lewis Street, Tewantin. Issue No. G02020-E, Sheet 2 of 7.
 - (7) Drawing- Mandy's Design and Drafting – Proposed carport – 3 Lewis Street, Tewantin, sheet 6 of 7.
 - (8) Request for Referral Agency Response.
 - (9) Submission in support of Request for Referral Agency Response from Brennan Planning, 17 March 2022.

5. At the commencement of the hearing the Tribunal and the parties as a group inspected Lewis Street between about the point where it met Bridge Street to the north and where Lewis Street terminated to the south.

Jurisdiction:

6. Section 229(1) of the PA provides that Schedule 1 ("the Schedule") of the PA, states the matters that may be appealed to the Tribunal.

7. 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 the Tribunal. However, section 1(2) of the Schedule provides that Table 1 only applies to a Tribunal if the matter involves one of a list of matters set out in section 1(2).

8. 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 ("the BA") other than one that must be decided by the Queensland Building and Construction Commission.

9. Table 1 therefore applies to the Tribunal in this appeal. Accordingly, the Tribunal is satisfied that it has jurisdiction to hear and decide the appeal.

Decision framework:

10. For this appeal, the onus generally rests with the Appellant to establish that the appeal should be upheld (section 253(2) of PA).

11. The Tribunal is required to hear and decide the appeal by way of a consideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA). However, the Tribunal may nevertheless (but need not), consider other evidence presented by a party with the leave of the Tribunal and any information provided under section 246 of the PA.

12. The Tribunal is required to decide the 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)).
13. Section 33 of the BA (alternative provisions to the QDC boundary clearance and site cover provisions for particular buildings) allows a planning scheme to include alternative provisions for single detached Class 1 buildings and Class 10 buildings or structures to the provisions of the QDC for boundary clearance and site cover.
14. The Noosa Plan 2020 Low Density Residential Zone Code, Table 6.3.1.3, contains alternative provisions to the QDC. As the proposal does not meet the acceptable outcomes set out in Acceptable Outcome AO9.1, which as applied to the site, requires buildings and structures to have a setback of six metres from the road frontage, the assessment PO9(f) "be consistent with the predominant character of the streetscape" must be considered.

Submissions of the Parties

15. The Council submitted to the Tribunal that as the matter in issue related to building siting, the sole consideration under PO9(f) was the siting of the carport with the panel lift door and that the consideration of "streetscape" was limited to the siting of existing buildings, not other features. The Council's position was that carports within the six-metre setback was not part of the predominant character of the streetscape.
16. The Appellant submitted that Lewis Street seamlessly transitions into Ridge Street so that they appear as part of the same streetscape.
17. The Appellant submitted that there is no predominant "character" in the streetscape and that there is a variety of dwelling types and other structures with various alignments to the roadway in Lewis Street. In the Appellant's submission, the proposed panel lift door made little visual impact to the existing streetscape and did not cause the carport to be inconsistent with the predominant character of the streetscape in Lewis Street.

Findings of Fact:

18. The Tribunal finds that –
 - a. The relevant streetscape to be considered for the purposes of *PO9* is the western and eastern sides of Lewis Street between where it terminates at the southern end and where it meets Ridge Street to the north.
 - b. Based on the consensus of the parties the carport at 3 Lewis Street excluding the panel lift door, has been built with the appropriate Development Permit for Building Works.
 - c. There is a variation in design of the dwelling houses within the Lewis Street streetscape.
 - d. There is a variation in the distance buildings are set back from the Lewis Street roadway alignment.

Reasons for Decision:

19. The Tribunal considers that the Appellant has satisfied the onus to demonstrate the appeal should be upheld.
20. The Tribunal finds that whether or not the decision would set a precedent is not a relevant consideration.
21. The Tribunal finds that the streetscape in Lewis Street includes structures that reflect a variety of building styles and age.
22. The Tribunal finds that the design of the carport with the addition of the panel lift door including its colour, size and shape reflect building aspects which are represented by other buildings and structures forming the character of the Lewis Street streetscape.
23. The Tribunal finds that the Council in its decision and submissions emphasised the siting of the carport, that is its setback from the Lewis Street alignment but did not place sufficient weight on the design of the carport including the panel lift door. When the design of the carport is considered, the Tribunal finds that the carport with the addition of the panel lift door is consistent with the predominant character of the streetscape.

Mark Chapple

Development Tribunal Chair

Date: 25 October 2022

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.

Enquiries

All correspondence should be addressed to:

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