



## Development Tribunal – Decision Notice

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### ***Planning Act 2016, section 255***

<b>Appeal number:</b>	<b>24-026</b>
<b>Appellant:</b>	Daniel Erne
<b>Assessment manager:</b>	Robin Wibrow (Building Approvals United Qld)
<b>Co-respondent (concurrence agency) (if applicable):</b>	Noosa Shire Council (Council)
<b>Site address:</b>	97 Goodwin Street, Tewantin Qld 4565 and described as Lot 4 on RP 136529 — the subject site

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### **Appeal**

Appeal under section 229 of the *Planning Act 2016* (PA) the decision of the assessment manager at the direction of the concurrence agency, to refuse a development application for building work for a Class 10a carport, on the grounds it did not comply with and could not be conditioned to comply with Performance Outcome P09(f) of the Noosa Plan 2020.

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<b>Date and time of hearing:</b>	10:00 am on 2 October 2024
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Richard Prout — Chair Jennifer Davie — Member Harry Knowlman — Member
<b>Present:</b>	Daniel Erne — Appellant Marcus Brennan — Brennan Planning Pty Ltd Jarrad Postle — Council representative Jason Devine — Council representative

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### **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 development application for building work for the Class 10a carport.

## Background

1. The subject site is a 505.85 m<sup>2</sup> allotment located at 97 Goodwin Street, Tewantin and is zoned Low Density Residential under the Noosa Plan 2020. The allotment is a truncated corner allotment which is regular in shape, with an 18.135 m frontage to George Street and 28.375 m frontage to Goodwin Street.
2. In October 2023, the Appellant contacted the Noosa Council (Council) regarding a proposal to construct a two (2) bay Class 10a carport in front of the existing double garage with a front road boundary setback of 140 mm from the Goodwin Street road frontage.
3. The proposed carport did not comply with the Acceptable Outcome A09.1 of the Low Density Residential Zone Code of the Noosa Plan 2020 which states:

*Buildings and structures have a setback 6 metres from the road frontage, provided that setback to one frontage may be reduced to 4.5 metres where the lot:*

- (a) has frontage to more than one road; and*
- (b) is less than 600m<sup>2</sup> in area; or*
- (c) is less than 15 metres in width.*

4. On 2 November 2023, the property owners engaged planning consultants Brennan Planning who subsequently lodged a 'request for a referral agency response for building work' with Noosa Shire Council (Council) on 22 January 2024 against the Performance Outcomes P09 (Setbacks) of the Low-Density Residential Zone Code of the Noosa Plan 2020.

5. Council issued a Referral Agency Response on 15 March 2024 directing refusal of the proposed carport providing the following reasons for the direction to refuse, namely:

*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 location of the proposed carport 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 greater road boundary setback than that of the current proposal.*

6. In April 2024, the Appellants lodged a development application for building work with a private certifier (Robin Wibrow of Building Approvals United Qld) for the proposed Class 10a carport.
7. On 24 April 2024, the Respondent, Robin Wibrow, issued a decision notice under section 63 of the *Planning Act 2016* refusing the development application for building work for the proposed Class 10a carport as directed by the Council.
8. On 26 April 2024, the Appellants lodged a Form 10 (Notice of Appeal/Application for Declaration) with the Tribunals Registrar.

## Jurisdiction

9. The Appellants lodged the appeal with the Tribunal under section 229 of the PA, against the decision of the Respondent/Assessment Manager to refuse a Class 10a carport.

10. Section 229(1) of the PA identifies that schedule 1 states the matters that may be appealed to the Tribunal.
11. Section 1(1) of schedule 1 provides that table 1 of schedule 1 of the PA states the matters that may be appealed to the court or the Tribunal subject to (in the case of the Tribunal) the pre-conditions stated in section 1(2) of schedule 1.
12. Section 1(a) of table 1 applies to this appeal, which is against the refusal of a development application.
13. In assessing the issue of jurisdiction, the Tribunal considered whether any of the preconditions (in schedule 1, section 1(2) of the PA) for the application of table 1 for a Tribunal are satisfied.
14. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the *Building Act 1975* 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.
15. The Noosa Plan 2020 states that for the purpose of section 33 of the *Building Act 1975*, the nominated provisions in table 6.3.1.3 of the Low Density Residential Zone Code of the Noosa Plan 2020 are alternative provisions to the QDC.
16. The building work proposed by the development application was required to be assessed under table 6.3.1.3 of the Low Density Residential Zone Code.
17. In these circumstances, the precondition in section 1(2)(g) of schedule 1 of the PA for the application of table 1 for the Tribunal is satisfied.

#### Conclusion regarding jurisdiction

18. The Tribunal finds that the Appeal meets the required tests of Schedule 1 (Appeals) of the PA for a matter that may be appealed to a tribunal and as such the Tribunal has the jurisdiction to hear the Appeal.

#### **Decision framework**

19. The Tribunal notes:
  - (a) The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
  - (b) The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA)
  - (c) 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 the PA (pursuant to which the registrar may require information for tribunal proceedings),
  - (d) The tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

#### **Material considered**

20. The material considered in arriving at this decision was:

- (a) Email dated 12 October 2023 from Appellant to Council requesting advice from Council regarding the proposed Class 10a carport.
- (b) Email dated 24 October 2023 from Council officers to the Appellant advising the following:

*An initial review has been undertaken regarding the proposed carport at the above property.*

*It has been considered that the proposed carport provides an insufficient road boundary setback and is not consistent with the predominant character of the streetscape. Therefore, it is unlikely that Council will support the current proposal. 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 current proposal. I can appreciate that you have attempted to design the carport in a way that will have a minimal impact on the streetscape. However, given the proposed setback of 140mm, the carport is still quite difficult for Council to justify and in this instance, Council would be looking to maximise the road boundary setback and may only consider a minor reduction to the prescribed 6.0 metre setback.*

- (c) Form 10 (Notice of Appeal/Application for Declaration), lodged with the Tribunal Registrar on 26 April 2024;
- (d) Decision Notice (Private certifier reference 24-5049) issued by the Assessment Manager Robin Wibrow of Building Approvals United Qld, dated 24 April 2024, refusing the carport as directed by the referral agency (Noosa Shire Council);
- (e) DA Form 2 – Building Work Details, Applicant Daniel Erne;
- (f) Referral Agency Response from Council (Council reference RAB24/0003) dated 15 March 2024, directing the refusal of the Class 10a carport;
- (g) Design plans prepared by Daryl Wood of Drafting Concepts, job number 1771, dated 25 September 2023;
- (h) Application Form – Noosa Council, Request for Referral Agency Response for Building Work, dated 22 January 2023 (this is a typo and should read 22 January 2024);
- (i) Report dated 22 January 2024 (Concurrence Agency Referral under Planning Regulation 2017 for Additions to a Dwelling House (Carport)) from Marcus Brennan of Brennan Planning to Council, in support of the request for referral agency response;
- (j) Information Request from Council dated 8 February 2024 to Appellant, Council reference RAB24/0003;
- (k) Email dated 8 March 2024 from Marcus Brennan responding to the Council Information Request dated 8 February 2024;
- (l) A letter of support from the property owner at 98 Goodwin Street, Tewantin, dated 17 April 2024;
- (m) A letter of support from the property owner at 97 Goodwin Street, Tewantin, dated 19 April 2024;
- (n) Verbal submissions at the hearing from all parties to the appeal (Given leave for their presentation by Tribunal);

- (o) Development Tribunal Decision Notice 23-014 (Given leave by Tribunal);
- (p) Development Tribunal Decision Notice 23-006 (Given leave by Tribunal);
- (q) Development Tribunal Decision Notice 23-020 (Given leave by Tribunal);
- (r) The Noosa Plan 2020;
- (s) The Queensland Development Code MP 1.2;
- (t) The *Planning Act 2016*;
- (u) The *Building Act 1975*;
- (v) The *Building Regulation 2021*.

### **Findings of fact**

21. The tribunal makes the following findings of fact:

- (a) The subject site is a 505.85 m<sup>2</sup> allotment located at 97 Goodwin Street, Tewantin and is zoned Low Density Residential under the Noosa Plan 2020.
- (b) The allotment is a truncated corner allotment, which is regular in shape with an 18.135 m frontage to George Street and 28.375 m frontage to Goodwin Street.
- (c) The allotment is not constrained by any Council infrastructure, Unitywater infrastructure or easements.
- (d) The streetscape in the surrounding area of the subject site consists of residential dwellings, with a mixture of open fronted allotments or 1.8m high front boundary fences/walls with soft landscaping and buildings setback 6m or more from the front road boundary.
- (e) At the site inspection of the subject site the following building and structures were noted:

- i. A Class 1a single storey detached dwelling with a double lockup garage. The dwelling has a front road boundary setback of 4.760 m from the Goodwin Street frontage and 4.741 m setback from the George Street frontage, measured from the outermost projections of the building.

At the inspection it was noted that part of the existing double garage was being converted into a habitable space, in order to increase the living area within the dwelling;

- ii. A Class 10b inground swimming pool located on the northern side of the dwelling and located within 1.5 m of the front road boundary with George Street. As per the Council records the swimming pool was approved by a private building certifier in November 2021;
- iii. A Class 10b front road boundary fence facing George Street which forms part of the required swimming pool barrier and appears to have been built at the same time as the Class 10b swimming pool between November 2021 and June 2022;
- iv. A Class 10b front boundary fence and gate facing Goodwin Street which returns along the side boundary with 95 Goodwin Street. As per the NearMap aerial photography the front boundary fence was built between July 2023 and November 2023.

### Application process

22. On 22 January 2024, Brennan Planning Pty Ltd lodged a Request for Referral Agency Response for a new Class 10a carport with Council on behalf of the Appellants. The referral was required as the proposed building work did not comply with Acceptable Outcome A09.1 (Setbacks) of the Low Density Residential Zone Code of the Noosa Plan 2020, which states:

#### **A09.1**

*Buildings and structures have a setback 6 metres from the road frontage, provided that setback to one frontage may be reduced to 4.5 metres where the lot:*

- (d) has frontage to more than one road; and*
- (e) is less than 600m<sup>2</sup> in area; or*
- (f) is less than 15 metres in width*

The proposed carport was fully located within the prescribed front road boundary setback.

23. Section 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings) of the *Building Act 1975* 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.
24. Table 6.3.1.3 of the Low Density Residential Zone Code states that Acceptable Outcomes A09.1 is an alternative provision to the QDC. As such Acceptable Solution A1(c) (Open carports) of the QDC MP 1.2, is not applicable in this instance.
25. On 8 February 2024 Council issued a request for further information stating the following:

*As a final decision has not yet been made, this Information Request gives you the opportunity to provide additional document for Council's consideration of the proposal. The information request is set out below:*

#### Issue

*It has been considered that the proposed carport provides an insufficient road boundary setback and is not consistent with the predominant character of the streetscape. In line with Council's previous advice to the property owner on 24/10/2023, given the predominant character of the streetscape, it is suggested that is unlikely to support the current proposal.*

#### Information Required

1. *While a number of properties in the surrounding area have been identified to have building work located within the road boundary setback, 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.*
26. On 8 March 2024 Brennan Planning provided the following response to the Council Information Request, namely:

*Our client has reconsidered the design; however, it is not possible to fit a carport on the site without it being located within the front setback due to the location of the existing dwelling. Despite being within the front setback, it is our view that the proposal complies with PO9 of the code and is consistent with the predominant*

*character of the streetscape for the reasons detailed in the cover letter assessment submitted with the application.*

*Please also note that the Development Tribunal recently decided a similar matter involving a carport in the front setback at 71 Goodwin St TEWANTIN (Appeal No. 23-020), being the same streetscape.*

*The Development Tribunal, in accordance with section 254(2)(c) of the Planning Act 2016 replaced the decision of the assessment manager to refuse the development application for building work for a carport within the front boundary setback with a decision to approve the carport as it has been constructed in situ, with conditions. In their reasons for their decision the tribunal found that:*

*“The Tribunal is satisfied that the proposal is consistent with the predominant character of the streetscape, which does contain several structures that have been established within the road boundary setback in Goodwin Street and Gympie Street.*

*This decision has been attached for council’s reference.*

27. On 15 March 2024 Council issued a Referral Agency Response directing the assessment manager to refuse the application for the following reasons:

*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**

*P09 Buildings and structures are designed and sited to;*

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

*It has been considered that the location of the proposed carport 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 greater road boundary setback than that of the current proposal*

28. In April 2024, the Appellants engaged a private certifier Rob Wibrow of Building Approvals United Qld to assess a development application for building work for the proposed Class 10a carport.
29. On 24 April 2024, Rob Wibrow issued a decision notice under section 63 of the PA refusing the proposed Class 10a carport as directed by the Council.
30. On 26 April 2024, the Appellants lodged a Form 10 (Notice of Appeal/Application for Declaration) with the Tribunals Registrar.

**Reasons for the decision**

31. The Tribunal makes its decision for the following reasons:

- a. The Tribunal is of the opinion that the development does not comply and cannot be conditioned to comply with the Performance Outcome P09(f) (Setbacks) of the Noosa Plan 2020, Low Density Residential Zone Code, Table 6.3.1.3 which provides as follows:

*P09 (f) be consistent with the predominant character of the streetscape.*

- b. The Tribunal finds that the streetscape in the surrounding area of the subject site consists of residential buildings, with a mixture of open fronted allotments or

1.8m high front boundary fences/walls with soft landscaping and buildings setback 6m or more from the front road boundary.

- c. Consequently, the Tribunal is of the view that the proposed Class 10a carport with a front road boundary setback of 140 mm would be inconsistent with the predominant character of the streetscape.

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**Richard Prout**

**Development Tribunal Chair**

**Date: 16 October 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 1800 804 833

Email: [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)