



## Development Tribunal – Decision Notice

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### Planning Act 2016

<b>Appeal Number:</b>	<b>22-014</b>
<b>Appellant:</b>	Lauren and Miguel Zahoran
<b>Assessment Manager:</b>	Luke Owen-Jones EarthCert Building Approvals Pty Ltd
<b>Concurrence Agency:</b>	Noosa Shire Council
<b>Site Address:</b>	10 Pine Street Pomona and described as Lot 23 on RP 35101 – the subject site

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### Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the Planning Act 2016 against the refusal of a Development Application for approval of Building Work (Dwelling House) for a Class 10a structure, being a porch within the front boundary setback, 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 porch does not comply 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.*

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<b>Date and time of hearing:</b>	9 August 2022 at 10-00 a.m.
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Anthony Roberts – Chair Catherine Baudet – Member
<b>Present:</b>	Lauren and Miguel Zahoran – Appellants Luke Owen-Jones – Building Certifier Andrew Webb – Architect Brad Geaney and Matt Adamson – Council representatives

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the Planning Act 2016 replaces the decision of the Assessment Manager on 25 May 2022 with another decision, namely to approve the siting of the proposed front porch on the subject land as shown on Drawings No. A310; A350; A500; A901 prepared by wd Architects and dated 13 August 2021.

### Background

1. The subject site is:
  - rear sloping, irregular in shape and comprises an area of 3075m<sup>2</sup>;
  - located midway along Pine Street - a wide tree-lined street with grassed verge;
  - zoned Low Density Residential under the Noosa Plan 2020.

2. The site contains a traditional 'Queenslander' and an adjacent double carport both located 3.4 metres from the front property boundary.
3. The proposed front porch:
  - has a (concrete floor) length of 5.0m and a width of 1.8m;
  - has a roofline setback of 3.4m from the front property boundary to its outermost projection;
  - presents a height of 2.7m to the street frontage;
  - is a 'fly over' roof-pitched design with the roof pitch matching the existing roofline.
4. As the proposed porch triggers assessment against the relevant performance criteria of the Noosa Plan 2020 due to the proposed siting within the 6m front setback, EarthCert Building Approvals Pty Ltd lodged a Request for a Referral Agency Response (under Schedule 9, Division 2, Table 3 of the Planning Regulation 2017) for building work relating to a porch within the front setback with the Noosa Shire Council. On 24 November 2021, 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 covered entry porch provides an insufficient road boundary setback and is not consistent to [sic] the predominant character of the streetscape. It is Council's view that the existing predominant character of the streetscape identifies that building and structures are setback consistently at 6.0 metres from the road boundary.

To provide further elaboration, the increase in width and height of the entry porch at a further reduction to the existing road boundary setback, adversely impacts the consistent character of the streetscape."

5. Accordingly, the Assessment Manager issued a Decision Notice - Refusal dated 25 May 2022. The Appellants subsequently appealed this decision by lodging with the Registrar a Form 10 – Notice of Appeal on 2 June 2022.
6. The hearing for the appeal was held at the subject site on 9 August 2022 at 10.00 a.m. The Tribunal had the opportunity to view the positioning of the proposed structure from the subject site, neighbouring properties, and the streetscape more generally.

### **Material Considered**

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence/attachments as lodged with the Tribunals Registrar on 2 June 2022;
2. The Planning Act 2016 (PA);
3. The Planning Regulation 2017 (PR);
4. The Building Act 1975 (BA);
5. The Building Regulation 2006 (BR);
6. The Queensland Development Code (QDC) Part MP 1.2;
7. The Noosa Plan 2020 (Noosa Plan);
8. Noosa Plan 2020 – Low Density Residential Zone Code (the Code);

9. The verbal submissions made by the parties at the hearing and during the site inspection;
10. The post-hearing submission made by the Appellants dated 10 August 2022;
11. The post-hearing submission made by Council dated 15 August 2022.

## **Findings of Fact**

### **Jurisdiction**

7. The Tribunal has jurisdiction to hear the appeal under the PA section 229(1)(a)(i) and Schedule 1, sections 1(1)(b), 1(2)(g) and Table 1, item 1(a) being an appeal by the Appellants against the refusal of the development application by the Assessment Manager on the direction of the Referral Agency.
8. Pursuant to section 253(4) of the PA, the Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the Assessment Manager. 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).
9. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

### **Decision Framework**

10. Section 33 of the BA (Alternative provisions to 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.
11. The 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 AO 9.1, which as applied to the Site requires buildings and structures have a setback of 6m from the road frontage, assessment is made against the list of Performance Outcomes stated at PO9 of the Code.
12. For the purposes of this appeal only PO9 (f) *be consistent with the predominant character of the streetscape* is applicable.
13. The Tribunal makes the following findings of fact:

### **Consistency with predominant character of the streetscape:**

14. In relation to Council's first ground for refusal namely:

“.....the covered entry porch provides an insufficient road boundary setback and is not consistent to the predominant character of the streetscape. It is Council's view that the existing predominant character of the streetscape identifies that building and structure are setback consistently at 6.0 metres from the road boundary.”,

the Appellants contend that the proposal complies with Performance Outcome PO9(f) of the Code for the following reasons:

- The proposed design maintains the existing 3.4m setback and does not further encroach on the existing front setback;
- There is no consistency of existing front setbacks along Pine Street and no houses in the most consistent section of the street (where the subject property is located) have 6.0m setbacks;
- There is no reasonable and practical alternative to the siting of the proposed front porch;

- The proposal has no impact on neighbouring properties;
  - The porch will enhance the use and enjoyment of the house by providing a shaded outdoor area buffered from the westerly summer afternoon sun and an opportunity for interaction with people passing in the street;
  - The refusal of the proposal on these grounds is disproportionately onerous.
15. Council's position is that the existing predominant character of the streetscape *with respect to the design and location of buildings and structures* is represented by buildings and structures situated behind the 6m setback and that the actual location of the front porch in itself means that it fails to comply with Performance Outcome PO9 (f) of the Code.
16. As confirmed by Council's representatives at the hearing, Council acknowledges that several properties in Pine Street, including the subject site, have buildings which encroach on the required setback. Council nevertheless contends that although the proposed front porch is situated within the existing setback of the house, the development will entrench or exacerbate an already undesirable situation in the street.
17. Based upon the plans lodged with the Development Application and the site inspection conducted at the hearing, the Tribunal finds that Pine Street exhibits a 'green leafy' vista with a varied pattern of building setback along the extent of the street. Some sections of the street display extensive setback of prevailing building line while others display a relatively consistent 6m setback.
18. However, of considerable significance is that there are several notable instances where houses already intrude into the 6m setback within Pine Street with the subject site being one. Given that the proposal maintains the existing setback of the original house, which is understood to be nearly one hundred years old, the Tribunal considers that the development would not detract from, or indeed alter, the existing character of the streetscape in terms of the pattern of setback of built form.
19. With respect to the second component of Council's reasons for refusal, namely;
- "..... the increase in width and height of the entry porch at a further reduction to the existing road boundary setback, adversely impacts the consistent character of the streetscape.",
- the Appellants contend that the front porch is designed to be high enough to allow safe egress from the premises in cases of emergencies (in compliance with the Building Code of Australia) and that the width is necessary to make the porch a useable space and to enhance the aesthetics and street appeal of the house.
20. The Tribunal finds that both the height and design of the proposed porch are appropriate to the vernacular of the house and concurs with the Appellants that these features could well improve the aesthetics and appeal of the building as viewed from the street.

### **Reasons for the Decision**

21. In this Appeal, the Tribunal considers the Appellants have satisfied the onus to demonstrate the appeal should be upheld. Therefore, the Tribunal has determined to replace the decision of the Assessment Manager for the reasons identified below.
22. The Tribunal found that Pine Street exhibits a 'green leafy' vista with a varied pattern of building setback along extent of the street and presents a varied 'streetscape' as identified by the pattern of existing building setbacks.
23. Given that the pattern of built form setbacks in Pine Street includes several notable instances where houses already intrude into the 6m setback (with the subject site being one) and that the proposal maintains the existing setback of the original house, the Tribunal considers that the development would not materially affect the pattern of setbacks characterising the existing streetscape. Further,

the Tribunal considers that the design of the proposed front porch may in fact enhance the use and enjoyment as well as the aesthetics/street appeal of the existing house.

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**Anthony Roberts**

**Development Tribunal Chair**

**Date: 19 September 2022**

## **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 Energy 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)**