



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-027
Appellant:	Next Call Pty Ltd (ACN 146 996 487)
Assessment manager:	Luke Owen-Jones (EarthCert Building Approvals)
Co-respondent (concurrence agency):	Noosa Shire Council ('Council')
Site address:	f Qld 4567 and described as Lot 358 on RP 220504 – 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 refusal directed by the Referral (Concurrence) Agency, Noosa Council, to the Assessment Manager (Respondent). The Respondent refused the Application stating 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 – PO9(f).

Date and time of hearing:	Wednesday, 25 September 2024 at 11.00am
Place of hearing:	The subject site
Tribunal:	Professor Victor Feros OAM—Chair Karen Haworth—Member Marie-Anne Ammons - Member
Present:	Marcus Taylor—for the Appellant Kaye Taylor—for the Appellant Jarrad Postle—Building Officer, Noosa Shire Council

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 Next Call Pty Ltd to Noosa Council for Referral Agency response to construct a Carport.

2. A single storey House is constructed on the subject site, having an area of 644m² and with direct frontage to Tarina Street, forming its northern boundary. The subject site is located within a low-density residential neighbourhood, predominantly comprising single-storey detached housing.
3. The subject site is included within the Low Density Residential Zone under the Noosa Plan 2020, being the current and applicable Planning Scheme for the subject site ('the planning scheme').
4. The subject site contains a substantial dwelling house addressing Tarina Street, including an attached garage and driveway.
5. At the Hearing, the Tribunal was advised that building works for a new Carport in front of the existing garage were proposed due to the steepness of the site and the requirement to have covered parking spaces for 2 cars ('subject building').
6. Of particular relevance to this Appeal is that the subject Carport is proposed to be set back from Tarina Street by 1.875m and 1.959m.
7. 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. Table 6.3.1.3 of the Low Density Residential Zone Code states that for the purpose of section 10 of the Building Regulation 2006 and section 33 of the Building Act 1975, provisions relating to setbacks in table 6.3.1.3 are alternative provisions to the Queensland Development Code.
8. Consequently, building work on the subject site is subject to the design and siting provisions of the Low Density Residential Zone Code ('zone code'). Acceptable Outcome ('AO') 9.1 of the zone code provides that buildings are set back 6m from a road frontage.
9. The proposed road boundary setback to Tarina Street is, as stated above, between 1.875m and 1.959m. The proposed front boundary setbacks do not achieve the AOs for the Low Density Residential Zone Code.
10. Section 54 of the PA, schedule 9, part 3, division 2, table 3 of the Planning Regulation 2017 ('the PR') specifies that a development application for Building Work that is subject to alternative design and siting provisions under the Building Act 1975, section 33, and which does not comply with a quantifiable standard under such provisions (such as AO9.1 of the zone code), requires referral to the applicable local government as a Concurrence Agency.
11. Accordingly, on 28 February 2024, a referral was made to Council pursuant to section 57 of the PA for a design and siting assessment and referral agency response.
12. Council issued an Information Request dated 5 March 2024, stating as follows:

Issue

It has been considered that the proposed building works 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.

Information Required

1. *It is Council's view that the predominant character of the streetscape consists of building and structures providing a greater road boundary setback than that of the current proposal.*

It is suggested that alternative design options are explored in order to achieve a greater road boundary setback, similar to other buildings and structures within the streetscape. If a greater road boundary setback is not achievable, it may be worth requesting the withdrawal of the referral application, for which a partial refund may be applicable.'

13. On 24 March 2024, the Applicant submitted a response to the Information Request. The response included amended plans. The Response detailed the following grounds for the approval of the referral request:

The prevailing streetscape

The neighbourhood is principally single and double storey homes in established gardens. Double off-street car accommodation predominates the area.

The effect of the carport of the streetscape

15 Tarina is on the low side of the road and the land slopes heavily down from the street. As a consequence the existing home offers a low silhouette to the streetscape.

The carport which is proposed to be sited on the street alignment has been designed in a sympathetic architectural style. A dutch gabled roof helps to lessen the impact of the front elevation of the carport and is in character with the architecture of the home.

A number of other homes in the area have carports or garages or substantial shade sail set ups within the traditional setback. Like 15 Tarina most of these appear to be added to homes where the current set up does not allow dual parking in the home proper.

- *32 Wantima has multiple shade sails for parking*
- *27 Tarina has a carport within the setback.*

Other homes have been constructed from new with car accommodation in a reduced front setback. This may have been a consequence of the often irregular wedge shaped blocks on the curved street.

- *38 Tarina has an original garage in the front setback*

14. On 14 May 2024, at the direction of Council, the Assessment Manager duly issued a Decision Notice refusing the Application.
15. The Appeal was deemed instituted on 27 May 2024 by the Tribunal Registrar.
16. A site inspection and Hearing of the Appeal were held on the subject site on Wednesday 25 September 2024 at 11:00am.

Jurisdiction

17. Section 229(1) of the Planning Act provides that Schedule 1 ("the Schedule") of the Act states the matters that may be appealed to a Tribunal.
18. 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).

19. Section (1)(2)(g) provides that Table 1 applies to a Tribunal if the matter involves a matter under the Planning Act to the extent that the matter relates to the Building Act other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission.
20. Table 1 therefore applies to the Tribunal in this Appeal. This Tribunal is satisfied that it has the jurisdiction to hear and decide this Appeal and has proceeded accordingly.

Material considered

21. The material considered in coming to this decision was:
 - (a) DA Form 2 - Building Works Application lodged with Council, 28 February 2024
 - (b) Information Request (Council) issued to Applicant, letter dated 5 March 2024
 - (c) Response to Information Request submitted to Council (Concurrence Agency), 24 March 2024
 - (d) Issue of Notice from Council (Concurrence Agency) to Assessment Manager to refuse the Application, 4 April 2024
 - (e) Issue of Decision Notice by Assessment Manager to Applicant, 17 April 2024
 - (f) Series of Photographs submitted by Applicant to Council (see (d) above) and photographs further submitted at Hearing of the Appeal
 - (g) Series of Plans and Drawings, dated July 2023
 - (h) Form 10 Appeal Notice, including grounds for Appeal and correspondence accompanying the Appeal, lodged 17 May 2024
 - (i) Noosa Planning Scheme
 - (j) The Planning Act 2016.

Findings of fact

22. The tribunal makes the following findings of fact:
 - (a) The Appellant 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.
 - (b) The Council asserted that the proposal resulted in non-compliance with the Noosa Plan 2020 Low Density Residential Code, namely Performance Outcome PO9(f), namely that it was inconsistent with the predominant character of the streetscape. It was Council's view that the predominant character of the streetscape consisted of buildings and structures providing a greater road boundary setback than that proposed; and additionally, it was considered that the design of the Carport provided for an exceedingly dominant structure located within the prescribed road boundary setbacks.
 - (c) The Tribunal finds that the predominant character of the streetscape, lawfully constructed, comprised buildings and structures with compliant setbacks.
 - (d) The matter of the design of the Carport, considered by Council in its assessment to be an exceedingly dominant structure located within the prescribed road boundary setback, was determined to be a matter subservient to that of the principal consideration of building line encroachment, as a finding of fact, and was not further considered.

- (e) 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 the decision

23. The Tribunal concurs with the Decision of 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.

Professor Victor Feros OAM BA MUS MPIA (Life Fellow) CMILT LGTP (Q)
Development Tribunal Chair
Date: 23 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:

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