



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-045
Appellants:	Katie & Chad Waycott
Respondent/ Assessment manager:	Stewart Magill of Pure Building Approvals
Co-respondent/ Concurrence agency:	Noosa Shire Council
Site address:	17 Agrippa Crescent, Tewantin Qld 4565 and described as Lot 49 on RP139233 - the subject site

Appeal

Appeal made under section 229(1)(a)(i) and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the Respondent's decision to refuse an application for a development permit for building work, given by a decision notice dated 26 August 2024, as directed by Noosa Shire Council (**Co-respondent**) as the referral agency.

Date and time of hearing:	10am 27 November 2024
Place of hearing:	The subject site
Tribunal:	Henk Mulder– Chair Andrew Veres – Member
Present:	Katie and Chad Waycott – Appellants Stewart Magill of Pure Building Approvals - Respondent Andrew Gaffney - Noosa Council representative Georgina Schramm - Noosa Council representative

Decision:

The Development Tribunal, in accordance with section 254(2)(a) of the Act, **confirms** the decision of the assessment manager to refuse the development application for a development permit for building work for the construction of an open carport.

Background

1. The subject site is located in a street where a predominant circumstance is a setback of 6.0 metres to building structures, with a combination of grassed and landscaped front yards which are partially fenced using timber or rendered masonry.
2. The street is in two parts separated by a bend near the centre, and the sites near to and along the

same side of the street as the subject site generally have a slope uphill in the setback. There are also occasional sites in the street and in the area with double driveways and skillion carport roofs built near to the street boundary.

3. The subject site contains a single storey residence with an established driveway at the northern side boundary to a garage set back 6.7 metres.
4. The development application seeks to establish a carport roof for an existing excavation within the front boundary setback that has a concrete slab floor or hardstand of approximately 6.2 metres long and 7.0 metres wide at the front of the property by the southern boundary, to accommodate two vehicles.
5. The subject site has a natural ground line that establishes a level at the street boundary approximately 1.25 metres below the floor level of the dwelling.
6. The area between the street and the residence has been filled in for a flat, raised platform or patio between the existing excavated car parking area at the southern boundary, and the original ramped driveway at the northern boundary. This has meant retaining walls approximately 1.5 metres high at the front of site and 2.0 metres high near the sides of the carport, at the time of the site hearing, with a staircase along the street boundary to the landscaped patio area near the level of the internal floor level, 6.7 metres from the street boundary.
7. A sliding gate across the front boundary retaining wall serves to secure access to the existing ramped driveway at the north.
8. The appellant owners have undertaken a significant extent of building work to the property at the sides and the rear over the last four years. The existing residence has been added to with additional roofed area, to establish a site cover of around 54%, excluding the proposed carport roof.
9. An application for Additions and Alterations was undertaken in 2020 for which no building structure or hardstand was proposed within the front boundary setback, and with the Referral Agency Response Letter (RAB20-L) conditions requiring any reduction to setbacks of building works to be approved prior to commencement.
10. Council advised in the current Concurrence Referral Agency - Planning Report (PR) dated 22 March 2024 that Council had received a complaint in April 2021 for unapproved works and as a result, a stop work order was issued to the builder through the building certifier.
11. On 6 October 2023, the appellants supplied information via their agent - CadCon Surveying and Town Planning (CCSTP) - to Noosa Shire Council (Council) which was considered a development application for the proposed carport, by the appellants.
12. Council treated the information as an application for a referral agency response and provided a letter on 9 November 2023 described as Further Advice - Development Application, detailing the issues of Site Cover, Soft Landscaping, Setback and the Garage and Carport Width as requiring further consideration, and seeking amended plans addressing these issues.
13. The appellants, again via their agent - CCSTP - provided written responses to each issue on 13 February 2024, with drawings setting out amended Landscaping plans.
14. Council provided a Referral Agency Response - Refusal (RAR-R) on 22 March 2024. In accordance with section 30 of the Development Assessment Rules, the appellants made representation to Council via CCSTP about matters in the response, described in the Response Email in the Tribunal Appeal lodgement documents
15. Subsequently, the appellants elected to appeal to the Planning and Environment (P&E) Court on 22 April 2024.

16. On 25 June 2024, Council conveyed their view that the appeal had been improperly commenced with the material provided by the appellants constituting only a referral agency response, based on the information supplied on 6 October 2023, with no appeal rights to the P&E Court for a referral agency response in the absence of a decision regarding a development application.
17. The appellants subsequently made application with the respondent for a building development approval on 26 August 2024, including the RAR-R of 22 March 2023, from which the respondent confirmed the building development application was refused as directed by Council as the referral agency.
18. The appellants subsequently lodged an appeal with the Development Tribunal on 10 September 2024.

Jurisdiction

19. The Tribunal has jurisdiction for this appeal under PA 2016, section 229, schedule 1, sections 1(1) and 1(2)(g) and table 1, item 1(a).

Decision framework

20. The appellants as the recipient of the decision notice must establish that the appeal should be upheld, pursuant to section 253(2) of the PA.
21. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the respondent who decided to give the decision notice, the subject of this appeal, under section 253(4) of the PA.
22. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when conducting a tribunal proceeding .
23. Under section 253 the Tribunal may, but need not, consider other evidence presented by a party to the appeal with leave of the tribunal or information requested by the registrar under section 246 of the PA
24. The Tribunal is required to decide the appeal in one of the following relevant ways set out in section 254(2) of the PA:
 - (a) confirming the decision; or
 - (b) changing the decision; or
 - (c) replacing the decision with another decision; or
 - (d) setting the decision aside and ordering the person who made the decision to remake the decision by a stated time.

Material considered

The material considered in arriving at this decision comprises:

25. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 12th September 2024 including:
 - (a) Pure Building Approvals (PBA) Decision Notice - Refusal (PBA-R) dated 26 August 2024
 - (b) DA Form 2 – Building work details dated 26 August 2024
 - (c) Form 20—Lodgement of building work documentation
 - (d) Letter from McCullough Robertson Lawyers acting for Council dated 25 June 2024

- (e) Affidavit (Affidavit) for P&E Court Appeal D58/24 from the Appellants affirmed 10 June 2024
- (f) Notice of Appeal P&E Court filed 22/04/2024
- (g) Noosa Council Referral Agency Response - Refusal (RAR-R) dated 22 March 2024
- (h) Application for Carport Report (ACR) to Council from CCSTP dated October 2023
- (i) Visual Impact Statement (VIS) from Leslie Curtis of Interplan VA dated 24 September 2023
- (j) Neighbour Letter of support at impacted southern boundary dated 25 September 2023
- (k) Noosa Council Further Advice - Development Application dated 9 November 2023
- (l) Response to Council from CCSTP described as 'Information Request for Referral Agency Planning - Additions to Dwelling House (Site Cover & Setback)', dated 13 February 2024
- (m) Letter of support from aged care family support and co-resident dated 22 January 2024
- (n) Landscape documentation (LD) from Element Design submitted at behest of Council in response to Further Advice notification, dated January 2024
- (o) Email (Response Email) to the Appellant from CCSTP as summary of conversation between CCSTP and Council regarding matters pertaining to the RAR-R.
- (p) Documentation including plans, elevations, sections and details for the work proposed prepared by Invilla Designs, dated 14 October 2022.
- (q) Landscape documentation in colour from Element Design dated January 2024
- (r) Individual owner's consent for making a development application dated 10 September 2024

26. Planning Act 2016 (PA).

27. Planning Regulation 2017 (PR).

28. Building Act 1975 (BA).

29. Noosa Plan 2020 (NP)

30. Queensland Development Code Part MP1.2 (QDC).

31. Development Assessment Rules (DAR) Under the Planning Act 2016, section 68 Version 2.0

32. The verbal submissions made by the parties at the hearing and during the site inspection as referred to in the body of the decision.

33. The parties' responses to the Tribunal's following initial post-hearing directions issued on 28 November 2024:

Following the hearing yesterday, the Tribunal issues the following directions:

1. *The Appellant to provide a copy of the letter from P & E Law dated 23 December 2023 setting out their review of Site Cover as it applies to the appeal; and*
2. *The Respondent to provide a copy of the detailed assessment undertaken by Council for the site as a part of their Referral Agency Response.*

Could these additional documents please be sent to the Registry, copying in all other parties, by COB Thursday 5 December 2024.

in particular:

(a) provided by the appellants:

- i. Letter from P&E Law (P&EL) describing issues for Site Cover, recommendations for a visual assessment consultant, attaching Development Tribunal decision notices in appeal numbers 21-061 and 21-027
- ii. Concurrence Referral Agency - Planning Report (PR) RAP23 0027 describing issues relevant to Council for the application the subject of this Appeal, dated 22 March 2024 as provided by the Council.
- iii. Noosa Plan 2020 Proposed Amendment No. 2 Fact Sheet 10 (NP-FS10) - Housing Choice
- iv. Letter of Support - neighbour at 19 Agrippa Crescent, dated 27 November 2024

(b) provided by Council:

- i. Submitted Plans (SP2020) of an earlier application to Council by the appellants for Demolition with alterations and additions at the subject site prepared by Invilla Designs and dated 21 July 2020 with a Referral Agency request application from PBA, dated 15 September 2020 all, which had been approved.
- ii. Referral Agency Response Letter (RAB20-L) of Approval with Conditions for 'Alterations & Additions within Boundary Setbacks' of the earlier application, above, to Council by the appellants at the subject site, dated 15 October 2020.

35. The appellants' response to the Tribunal following Second Post-hearing directions issued on 16 December 2024:

Would the Appellant please confirm and provide any copies of any planning, building or operational work approvals for work undertaken within the front boundary setback subsequent to the Referral Agency Response to application RAB20/0181, dated 15/10/2020. A response should be supplied within five working days.

in particular:

- (a) Soils test dated 27 May 2020
- (b) Structural engineering documentation and Form 15 certification dated 16 June 2020
- (c) Town Planning Compliance Certificate (TPCC) dated 23 July 2020 for work at a Detached House at 17 Agrippa Crescent, from CCSTP, establishing compliance assessment benchmarks (Detached House Code) for accepted development for a detached house under the Noosa Plan 2006, including a set of Invilla drawings 01-14 inclusive dated 21 July 2020.
- (d) Request for Concurrence Agency Response from PBA to Council dated 15 September 2020
- (e) Referral Agency Response (RAR-2020) from Council dated 15 October 2020.
- (f) PBA building approval (BA-2020) for Alterations/Additions to Detached Dwelling and Construction of Swimming Pool and Conditions of Approval BA20208549 dated 16 October 2020
- (g) Stamped Planning approval (STPA-2020) by Council of drawings by Invilla numbered 05, 07, 08, 09 and 10, dated 15 October 2020
- (h) Stamped Building approval drawings (SBA-2020) by PBA of drawings by Invilla numbered 01-14 inclusive.

Findings of fact

The Tribunal makes the following findings of fact:

37. The NP identifies the subject site as in the Low Density Residential Zone and applies the Low Density Housing Code.
38. An application for approval of building work described as for the Construction of a Carport was undertaken with the respondent as assessment manager on 26 August 2024 by the appellants, and accepted as a properly made application. A subsequent Owner's Consent form to undertake the application was dated 10 September 2024.
39. The appellants also supplied to the respondent a Referral Agency Response - Refusal (RARR), dated 22 March 2024 from Council, independently obtained by the appellants prior to undertaking any building development application.
40. The direction by Council as concurrence agency to refuse the application was described as a Referral Agency Response for a Dwelling House.
41. The appeal is against a decision directed by the referral agency for details associated with an application for Building Work involving a Dwelling House, and the Building Development application is for a Carport, for which the Low Density Residential zoning of the subject site makes no distinction in regard to the relevant assessment benchmarks.
42. All parties are satisfied the RAR-R was applicable to the building development application, and no additional referral has been sought.
43. The Appellants sought to erect a class 10a carport within the street frontage setback area.
44. Prior to the current application the subject of the appeal, no additional approvals had been granted for work within the front boundary setback after the 2020 approvals for alterations and additions at the rear of the existing residence, as conditioned in the 2020 Concurrence Agency response.
45. The documentation of RAB20-L set out conditions of the approval as follows:

The following conditions must be attached to any development approval:

 - *The building work must have minimum setbacks from the outermost projection to the property boundaries in accordance with the approved stamped plans. Any reduction to setbacks must be approved prior to commencement of any building works.*
 - *The building work subject of this response must be undertaken in accordance with the Council stamped and endorsed plans associated with this referral response.*
46. Engineering documentation forming a part of the building approval from 2020 set out works for a carport hardstand from concrete and a gable roof structure at the location the same as the application the subject of this appeal, with a relevant note on the drawings establishing these carport elements were not a part of the 2020 building development approval.
47. The carport proposed in the current application, the subject of this appeal, includes a shade structure in the form of a gable roof, and a hardstand of concrete with columns, to be located 285mm from the Southern boundary, and 0mm from the street boundary, with a depth of 6.074 metres and an approximate width of 7.0 metres.
48. The structure would have an opening height of 2.4 metres, and a gable roof to a height of approximately 3.4 metres above street level entry.
49. The ridge of the carport roof would establish a height approximately at the level of the

residence fascia board and gutter, being on higher ground as the land rises uphill away from the street boundary.

50. The proposed carport required lodgement of an application for building approval with a building certifier. Being Building Work not Associated with a Material Change of Use, the carport proposal was assessable in relation to the Noosa Plan Building Works Code. As the carport was proposed to be located within the front setback, the application triggered referral to Council as a Concurrence Agency.
51. Council as the co-respondent directed the refusal of the development application outlined in their RAR-R, for the following reasons:

Council as a referral agency directs that the application must be refused for the following reasons:

1. *The proposal does not comply with Overall Outcome 6.3.1.2 (2)(c) of the Low Density Residential Zone Code given the development would not make a positive contribution to the streetscape and would not maintain the low density and low scale character of the zone.*
2. *The proposal does not comply with Acceptable outcome A08.1 and corresponding Performance Outcome PO8 of the Low Density Residential Zone Code as:*
 - a. *The proposal will result in a site cover of the development to 60.7% well over the requirements of the planning scheme.*
 - b. *The proposed bulk within the front setback is incompatible with surrounding development and the particular circumstances of the site.*
 - c. *The proposal does not allow any opportunity for soft landscaping on the site and removes the only area of soft landscaping on the site.*
 - d. *There is no opportunity to screen or soften the appearance of the proposed carport; and*
 - e. *The increased bulk will be visible and prominent to Agrippa Crescent.*
3. *The proposed setback of the carport does not comply with Acceptable outcome A09.1, A09.3, A09.4 and corresponding Performance Outcome P09 of the Low Density Residential Zone Code as:*
 - a. *The proposed structures are not designed and sited consistent with the predominant character of the streetscape and are currently impacting on the streetscape amenity.*
 - b. *The carport, being located in the front setback, reduces the amount of space that is available for trees, shrubs and outdoor living.*
 - c. *The proposed carport diminishes the opportunity to provide adequate separation from adjoining land uses or allow space for landscaping to be provided between buildings.*

52. The appellants submitted information as a part of their appeal to the P&E Court, which, despite an improper appeal commencement on the basis of the lack of a development application, set out specific responses to the non-compliance issues in the RAR-R in the accompanying affidavit. These are summarised as follows, in combination with the information contained in the ACR:

- (a) The dwelling currently cannot provide two covered car parking spaces that comply with the

relevant accepted provisions from the planning scheme, being Table 9.4.1.4 in 9.4.1 Driveways and Parking Code, and as referred to in AO7 of Table 9.3.1.3 in the Low Density Housing Code.

- (b) The Performance outcome PO7 seeks to ensure:

Sufficient car parking is provided to accommodate the number of vehicles likely to use the site.

- (c) The residence had been approved in SP2020 to be developed as a house with a floor area of 296 m² and containing five bedrooms. It is clearly established there is no consideration for the work to be considered as a secondary dwelling.
- (d) The carport proposed will positively contribute to the streetscape character and maintain the amenity of the site and adjoining premises. This is reinforced by the VIS as provided to Council in the original application submission.
- (e) Whilst the site cover proposed at nominally 60% does exceed the maximum 50% criteria by as much as 20%, the proposal is of a scale compatible with surrounding development and does not present the appearance of bulk.
- (f) The proposed carport is consistent with developments in the area that have reduced setbacks for built structures such as carports and sheds.
- (g) There exists a registered disabled parent at the address, whose requirements for a flat egress at parking cannot be met by the existing driveway level or the original narrow garage.
- (h) Detailed LD plans for Soft Landscaping were provided to Council seeking to demonstrate an extensive solution for desirable streetscape with landscaping, in the available setback.
- (i) The VIS supplied in support of the application, as contained in the ACR, details the extent of high fences at the street boundary, or imposing residential elevations albeit with building structures generally set back 6.0 metres, as well as a skillion roof to a carport within the front boundary setback at the sites of 3, 7, 9, 10, 13, 18, 19, 20, and 21 Agrippa Crescent.
- (j) The VIS describes a varied setback at the street elevation of the Carport, which is articulated by the architectural elements including the fenestration and roof form.
- (k) The VIS considers the hardstand as existing, and states in paragraph 14 that the existing hardstand adjoins and detracts from the frontage.
- (l) The VIS considers that the carport will provide partial screening to the existing dual vehicle car parking hardstand. The VIS considers the development application is fundamentally concerned with an approval to construct a roof and shade structure within the front boundary setback, for an existing hardstand.
- (m) The proposed development is promoted as described in both the P&EL letter of advice and as described in the VIS, by referring directly to matching the Performance outcomes PO8 of the Low Density Residential Zone Code, that is:
- i. The Carport is of a scale that is compatible with surrounding development and the particular circumstances of the site,
 - i. The Carport has a low site impact to maximise the opportunity to retain site characteristics, such as native vegetation and natural land forms.
 - ii. The Carport allows the opportunity to provide soft landscaping between buildings; and

- iii. The Carport does not present an appearance of bulk to adjacent properties, roads or other areas in the vicinity of the site.

- 53. The respondent refused the development application on 26 August 2024 for the following reasons: 'Noosa Council Referral Agency Response - Refusal Dated 22 March 2023'.
- 54. An appeal was undertaken with the Development Tribunal on 10 September 2024.

The hearing

- 55. A hearing occurred on-site on 27 November 2024 with representatives from the Tribunal, the appellants, the respondent and the co-respondent in attendance.
- 56. At the hearing the process for undertaking the building development application was explained, reconciling for all parties the Referral Agency Response application timeline with the building approval refusal. The RAR-R was initially considered by the appellants—incorrectly—to be a decision that could be appealed to the P&E Court, but this was later clarified and their court appeal was withdrawn. The subsequent utilisation of the RAR-R by PBA to confirm the refusal of a Building development application is the basis for this appeal.
- 57. Council representatives at the hearing then addressed the issue of the extent of site cover the carport proposal would establish. Described as at 60.7%, it was well beyond the NP limit of 50%, and whilst more than as calculated by the appellants in their submission, the extent of site cover was acknowledged as significantly greater than as sought in the NP.
- 58. The application for alterations and additions in 2020 was approved with a site cover already in excess of 50%, at approximately 56%
- 59. A part of the site cover as calculated by Council was a roof for a storage shed built on the southern boundary near the front of the dwelling. The appellants had proceeded with the work as a part of the wider building program being undertaken. During a walk around the site the appellants noted that that could be removed as necessary.
- 60. The respondent considered the carport preferable to concrete, where cars are more plentiful than houses in the street, and space is needed to account for the demand for off street parking in the circumstance of a residence that would utilise a number of cars, a typical scenario in Noosa.
- 61. The appellants held the view the concrete pad was approved in the 2020 application process. Discussion followed regarding the use of embedded plastic or equivalent to ensure a grassed appearance to a driveway, though Council noted that would be a part of an application with the Operational Works section of Council.
- 62. Additional carport structures in the street were pointed out by the appellants.
- 63. The potential for shade sails and roof gardens over a flat roof were raised by the Tribunal members and whilst the appellants were not unwilling to develop such ideas, they considered cost for new design and documentation were a constraint. Council generally was unwilling to support such options, on the basis that compliance with the required outcomes of the NP required a landscaped area that was unencumbered with built form larger than accepted structures of the scale of an entry arbor.
- 64. The appellants considered that the existing structures in the street demonstrated Council's level of tolerance of negative visual qualities, whereas the proposal for the carport sought was based on maximising positive streetscape elements in combination with the utility of off street car parking.
- 65. The appellants recognised that a two-storey alteration and addition program in 2020 would have reduced the site cover issue however cost had been a prohibitive factor in that decision-

making exercise.

66. Council noted the sum total of a combined driveway width would be significantly in excess of allowable width.
67. In a walk around the exterior of the residence on site the appellants pointed out a well-developed use of landscaping with sustainable fruit growing and dedicated chicken pens all within some narrow setbacks to the rear and side boundaries.
68. The area within the front boundary setback remaining between the existing driveway at the north and the lower hardstand of the carport parking area at the southern boundary was built up to the level of the residence and distinctly landscaped for an outdoor patio with suitable furniture.
69. It was noted that the neighbour at the southern boundary had a driveway adjacent to this side boundary and that neither property featured landscaping at the common boundary.
70. The appellants relied on the existence of an array of sites at Furness Drive, Muirfield Crescent, and St Andrews Drive, which had gained approval for similar proposals. Council in turn disputed the relevance of these examples on the basis of approval under different versions of the NP, distinct street circumstances, distance from the subject site, and the limited number of examples.
71. In final comments the respondent promoted the proposal as meeting the performance criteria without constituting a bulky structure in the streetscape. The need for suitable off street parking was emphasised by the appellants.
72. Council reiterated its concerns about the scale of site cover with the uses proposed in the front boundary setback and the material conflict with the criteria for landscape and building structure setback in the NP.
73. The appellants re-emphasised that the original house garage was unable to satisfy suitable egress for the multi-generational residents, particularly the needs of elderly parents, because of the sloping ground. Developing new parking as a part of the original driveway at this northern side boundary was less desirable as it was adjacent to the neighbour's bedrooms.

Reasons for the decision

74. The subject site is in the Low Density Residential Zone where the categories of development and assessment for building work regulated under the NP are described at Table 5.7.1, and incorporate the same assessment for Building Work that is not a material change of use for both a Dwelling House and Carport.
75. The Low Density Residential Zone Code, in an alternative provision to the QDC, establishes the criteria for Site Cover, in relation to which the proposal cannot meet the Acceptable Outcomes, and assessment is therefore required against the Performance Outcome PO8 and PO9, below.

Site cover and gross floor area

PO8

Development:

- (a) is of a scale compatible with surrounding development and the particular circumstances of the site;
- (b) has a low site impact to maximise the opportunity to retain site characteristics, such as native vegetation and natural landforms;
- (c) allows the opportunity to provide soft landscaping between buildings;
- (d) does not present an appearance of bulk to adjacent properties, roads or other areas in the vicinity of the site.

Setback**PO9**

Buildings and structures are designed and sited to:

- (a) provide a high level of amenity to users of the subject site and adjoining premises, including provision of visual and acoustic privacy and access to sunlight;
- (b) not unreasonably obstruct views or cause overlooking of private open space or habitable areas of adjoining premises;
- (c) provide adequate distance from adjoining land uses;
- (d) preserve existing vegetation that will help buffer development;
- (e) allow for space and landscaping to be provided between buildings including adequate area at ground level for landscaping with trees, shrubs and outdoor living;
- (f) be consistent with the predominant character of the streetscape; and
- (g) protect the natural character and avoid adverse impacts on ecologically important areas such as national parks, waterways and wetlands.

76. The site cover described in the application represents a significant increase on the allowable maximum of 50%, and is reflected in the extent of building structures and their proximity to all boundaries. The proposal seeks to extend site cover to a total in the order of 60%, inclusive of the new carport structure built within the front boundary setback. This is accentuated with the driveway width proposed to be double that of the criteria described in the NP.
77. With regard to the Site cover sought in PO8, the proposal cannot be seen to comply with PO8(a), (b), or (d).
78. With regard to the setback sought in PO9, the proposal cannot be seen to comply with PO9(f).
79. The building development application is for a significant shade structure at over 7.0 metres at the street boundary, and more than 6.0 metres deep, yet it is also needs to account for the existing concrete hardstand. The application the subject of this appeal is affected by the adjacent walls and stairs to the residence and a separate raised patio area adjacent. There is no evidence before the Tribunal establishing that the concrete hardstand and walling surrounding the carport ever received development approval. The author of the VIS accompanying the application material considers the existing unapproved hardstand a detractor of the frontage, which could be improved with a shade structure or roof to the street.
80. As the proposal does not demonstrate compliance with the Performance Outcome, an assessment against the Overall Outcomes for the Low Density Residential Zone Code can be considered.
81. The proposal is not consistent with the relevant Overall Outcome 6.3.1.2(2)(c), which seeks:
- The distinct look and feel of existing residential neighbourhoods is retained, and development makes a positive contribution to the streetscape, maintaining the low density and low scale character.*
82. The proposal has not been demonstrated to retain the distinct look and feel of the existing residential neighbourhood.
83. The proposal is not without merit in its own right, however it is not of a scale that is compatible with or complementary to the surrounding sites. This is on the basis that it distinctly accentuates the prominence of building structures at the front boundary setback in a highly visible and intense manner not matched by surrounding sites. These sites predominantly comprise a combination of exposed landscaping and conventional fencing with structures generally well set back and a few carports of earlier eras, providing a consistently minimal exposure at the boundary.
84. The impact for the proposal on the site is not low, as it modifies the land fall through wide and deep excavation of up to 7.0 metres and 1.2 metres respectively, whilst reducing available area

for landscaping in manner that is materially concrete or timber, with a large and disproportionate extent of the front boundary setback given to vehicular access and parking.

85. The case for utility for elder accessibility of the proposal is somewhat contradicted by the fact that multiple risers are required to be surmounted at entry, despite the achievement of level vehicle egress, requiring any wheelchair use to be directed to the existing original driveway.
86. There is some acceptable soft landscaping proposed between the carport and the neighbouring site to behind the hardstand, and it is recognised that the neighbouring site has a matching driveway adjacent.
87. The proposal, through the magnitude of its width and breadth and as a part of the agglomeration of built structures for the residence behind, will create the appearance of bulk to neighbours and the area, as it is distinctive for the extent of structure in the front boundary setback.
88. The appellants have not established that the appeal should be upheld.
89. The Tribunal confirms the decision of the assessment manager to refuse the application.

Henk Mulder
Development Tribunal Chair
Date: 16 January 2025

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 and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833

Email: registrar@epw.qld.gov.au