



Development Tribunal – Decision Notice

Planning Act 2016, section 255

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| Appeal number: | 24-053 |
| Appellant: | Mr Howard Frye |
| Respondent/ Assessment manager: | Rob Wibrow, Building Approvals United Qld |
| Co-respondent/ (Concurrence agency): | Noosa Shire Council |
| Site address: | 10 Headland Drive, Noosaville Qld 4566 and described as Lot 118 on SP106085—the subject site |

Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (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 a carport, on the grounds that the proposal does not meet the Performance Outcome PO9(f) of the *Noosa Plan 2020*, Low Density Residential Zone Code.

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| Date and time of hearing: | 29 November 2024 at 10.00am |
| Place of hearing: | The subject site |
| Tribunal: | Dr Christopher Robertson—Chair Ms Lisa Lambie—Member |
| Present: | Mr Howard Frye —Appellant Mr Marcus Brennan—Appellant's agent Mr Jason Devine—Council representative |

Decision:

The Development Tribunal (Tribunal), in accordance with section s254(2)(d) of the *Planning Act 2016* (PA), sets aside the decision of the assessment manager 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, and, in the event the assessment manager decides to approve the application, to impose the following conditions:

- a) No side of the carport is to be enclosed (aside from those near the fence and the primary dwelling) that are already *in situ*.
- b) The maximum height of the carport is not to exceed 2.6m presenting to the dwelling and 2.4m presenting to the road boundary.
- c) The carport is not to exceed 6.22m in length.
- d) The roof is not to be a gable or hip roof, but a 'flat' or low-pitched roof, falling to the street side, so presenting at its street frontage as a simple roof edge reflecting the line of the top of the fence, to differentiate it from the house and minimise the visibility and distinctiveness of this structure.
- e) The carport is not to extend beyond the existing side walls of the front of the house.
- f) The carport is not to exceed 39.6sqm in size.
- g) The maximum width of the carport is not to exceed 6.277m.
- h) The materials and the colours are to be sympathetic to the house and generally unobtrusive.

Background

1. The subject site is located at 10 Headland Drive, Noosaville, identified as lot 118 on SP106085 and is a rectilinear shaped lot that has approximately 28m frontage to Headland Drive and has an area of 702.06 sqm.
2. This area of Headland Drive primarily runs in a north-east, south-west direction and is approximately 400-500m in length. The subject site is immediately adjacent to a public playground area to the north and has street frontage that is dominated by an approximately 1.85-1.95m high solid front fence. The subject site's front fence is divided into two sections, separated by an electronic gate. The southern section of the fence is immediately adjacent to the boundary line, with newer tree plantings between the fence and footpath, while the upper north section is recessed with advanced growth plantings. A traffic island/calming device, with vegetation, which divides the visual aspects of the street in the locality, is located to the south of the dwelling. The street is a mixture of single and two-storey built forms, namely dwellings, likely erected between the 2000-2010 period. Many of the dwellings in proximity to the subject site in this area have dominant front fences, with high gates and street vegetation of advanced growth, all of which front Headland Drive.
3. On 8 February 2024 the Appellant, through his representative Brennan Planning Pty Ltd, lodged a referral agency application with the Noosa Shire Council for a class 10a structure, being a carport of approximately 6.22m in length and 6.227m in width, having a maximum height of 2.9m towards the dwelling and a height of 2.8m presenting to the road frontage.
4. The application recognised the proposal did not meet the Acceptable Outcome AO9.1 of the Low Density Residential Zone Code, Noosa Plan 2020, however it was argued:

The proposal complies with Performance Outcome PO9 of the Code for the following reasons:

 - a) *the proposal will provide a high level of amenity to users of the subject site and the adjoining premises, including provision of visual and acoustic privacy, access to breezes, protection from noise, odour or artificial lighting in that:*

- i. *the carport is an open and lightweight structure and will not result in visual or acoustic privacy issues for the adjoining dwellings;*
 - ii. *the proposed carport will allow the existing garage to be used for a home-based business (chiropractic services) and improve the livability of the dwelling for the residents;*
 - b) *the carport is a low-rise and low profile non-habitable structure and would not unreasonably obstruct views or cause overlooking opportunities upon the private open space or habitable areas of adjoining premises;*
 - c) *the carport provides adequate separation from the adjoining premises in that it provides a minimum setback of 2.995m from the closest side boundary (west);*
 - d) *the carport will allow sufficient space for landscape buffering to be provided between the buildings, including areas that will support, trees shrubs and ground covers;*
 - e) *the proposal is consistent with the predominant character of the streetscape for the following reasons: (...)*
 - f) *the proposal would not result in any adverse impacts to ecologically important areas.*
5. On 22 February 2024 the Noosa Council, as Concurrence Agency, sent out an information request stating:
- Reconsider the design and location of the proposed carport and if an alternative design can be achieved that is similar to the location of other buildings and structures within the streetscape, submit revised plans for further consideration.*
6. On 2 September 2024 the Council directed the Assessment Manager to refuse the application citing:
- 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 within the front boundary setback is not consistent with the predominant character of the streetscape.*
- It is Council's view that the predominant character of the streetscape with respect to building location consists of buildings and structures providing a greater road boundary setback than that of the current proposal.*
- It should be noted that no response to the Information Request dated 22/02/2024 was received regarding the building work located near Unity Water infrastructure within the easement on the property.*
- (....)
7. The Appellant lodged an application with the Tribunal on 17 October 2024 and the grounds for appeal can be summarized as:

- (a) The proposal will utilise the existing driveway.
- (b) While the carport was initially nominated in a position that would achieve a compliant road setback, in the context of the subject site's limitations, safe vehicular ingress and egress would be impacted upon
- (c) An absence of definitions within the Noosa 2020 Plan, in particular with words such as *consistent*, *predominant* and *character* of the streetscape, found within Performance Outcome PO9 including sub-paragraph f) of the Low Density Residential Zone. In support of this element of the submission, examples of Queensland planning and environment case law are cited and a description of the varying constructs, with particular reference to existent carports and other structures within the Headland Drive environs, in conjunction with how the proposal will comply, are provided

Jurisdiction

- 8. Section 229(1) of the Act identifies that schedule 1 states the matters that may be appealed to the Tribunal.
- 9. Table 1 of schedule 1 of the Act states the matters that may be appealed to the Planning and Environment Court or the Tribunal subject to (in the case of the Tribunal) the preconditions stated in section 1(2) of schedule 1.
- 10. The Tribunal has jurisdiction to determine this appeal under section 229(1)(a)(i), schedule 1, section 1, table 1, item 1(a), and schedule 1, section 1(2)(g) of the Act.

Decision framework

- 11. The Appellant as the recipient of the decision notice must establish that the appeal should be upheld (under section 253(2) of the PA).
- 12. 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 the subject of this appeal (under section 253(4) of the PA).
- 13. Section 249 of the PA provides the Tribunal with broad powers to inform itself in the way it considers appropriate when hearing a tribunal proceeding and the Tribunal may seek the views of any person.
- 14. 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

- 15. The following material was considered in arriving at this decision:

- (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 17 October 2024
- (b) Noosa Plan 2000.
- (c) *Friend v BCC* [2013] QPEC 77
- (d) 6.3 Residential Zones Category, 6.3.1 Low Density Residential Zone Code *Noosa Plan 2000*.
- (e) Submission by the Appellant's agent dated 6 December 2024.
- (f) *Planning Act 2016* (Qld).
- (g) Correspondence, providing Unitywater response, dated 27 February 2024.
- (h) Communication from the Appellant dated 8 January 2025.

Findings of fact

16. The Tribunal makes the following findings of fact:

- (a) That the project as presented, with regard to the height of the proposed carport, is in conflict with P09 (f), Low Density Residential Zone Code, Noosa Plan 2000.
- (b) The subject site and structures (including the fence and vegetation), as examined on the day of the hearing, with the proposed carport in place, as modified by the conditions, would be consistent with the streetscape character of the street.

Reasons for the decision

- 17. The words and terms employed by Noosa Shire Council and utilised within the Noosa Plan carry their plain English meanings and accepted use and applications within the urban planning and architectural professions.
- 18. While the issue of the validity of the front fence and vegetation was canvassed by the Council at the hearing, it was not provided as part of the grounds for the refusal by the Concurrence Agency. In addition, the matter was not raised by the Concurrence Agency when a further submission in response to a post hearing submission was made by the Appellant's representative. It is noted that support for the carport from the neighbour was also provided in the submission.
- 19. A main dominant structure, fronting Headland Drive from the subject site, is the front fence and this element is not inconsistent with other properties in the locality. While the Council has identified the 'predominant character' of the streetscape is an absence within the front boundary setback of structures, this element has to be considered in the context of visual interaction with other dominant character elements of the streetscape, within the locality and surrounding environs of the subject site. These streetscape elements combine and contribute to the character of the streetscape and include advanced vegetation growth, high fencing and gates, the traffic island, footpaths, roads, lighting and so on. The proposed carport, as conditioned, would not detract from the combined character elements.
- 20. With regard to the concerns of the Appellant regarding safe vehicular ingress and egress, the Tribunal finds that the location of the subject site upon Headland Drive, including the front fence, and other visual traffic obstacles such as the small traffic island to the South and advanced street vegetation growth, combine to varying degrees, to limit safe driver visibility when reversing out of the property.

21. The reduction in the height of the proposed carport as a condition of approval, in conjunction with future vegetation growth in front of the fence, provides an acceptable solution to Performance Outcome PO9(f) of the *Noosa Plan 2020*, Low Density Residential Zone Code.

Dr Christopher Robertson
Development Tribunal Chairperson
Date: 17 January 2025

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 and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au