



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-051
Appellant:	Jonathan Green
Assessment manager:	Brett McCullagh, Northshore Building Approvals
Co-respondent (Concurrence agency):	Noosa Shire Council ('Council')
Site address:	14 Queen Street, Cooran – formally described as Lots 99 and 100 on RP36937 ('the subject site').

Appeal

Appeal under section 229(2) and schedule 1, sections 1(1)(b) and 1(2)(g), and table 1, item 1(a), of the *Planning Act 2016* ('the PA') against the assessment manager's decision to refuse the appellant's application for a building works development permit for alterations to an existing dwelling house, including an existing, unapproved Class 10a carport ('the application').

Date and time of hearing:	Thursday, 21 November 2024, at 11.00am
Place of hearing:	The subject site
Tribunal:	Neil de Bruyn – Chairperson Marie-Anne Ammons – Member
Present	Jonathan Green — Appellant Matthew Taylor — Appellant's agent Jason Devine — Council representative

Decision

1. The Development Tribunal ('the Tribunal'), in accordance with section 254(2)(d) of the *Planning Act 2016* (PA) **sets aside** the decision of the assessment manager to refuse the application, and orders the assessment manager to:
 - a) remake the decision within 25 business days of the date of receipt of this decision notice, as if the concurrence agency had no requirements; and
 - b) In the event that the assessment manager then decides to approve the application, to include the following conditions in the resultant building works development permit:
 - i. Except as modified by condition (ii) below, the approved development is to be in accordance with the Arch and Viz Studio design plans attached to the appellant's response to Council's information request (dated 30 July 2024 and prepared by Planning Insights), being the plans numbered A01 to A11 (all Revision B), A04 (Roof Plan) and A07 (Elevations).

- ii. The carport is to be relocated and set back from the front (road) boundary of Lot 100 on RP36937 such that its outermost projection facing Queen Street matches and does not project forward of the roof line of, the existing dwelling house on that lot.

Background

2. The subject site consists of two adjacent residential lots with a combined area of 2,037m². These are described at Lot 99 and 100 on RP36937 (respectively, 'Lot 99' and 'Lot 100'). It is understood that the two lots are in the same ownership and contain the appellant's dwelling house and associated outbuildings, including the carport that is the primary focus of this appeal. The subject site has direct frontage to Queen Street, forming its southern boundary. The subject site is located within the Noosa Shire Council local government area. The immediate vicinity of the subject site is characterised by low density residential land uses.
3. Based on the material before the tribunal, 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, located on Lot 100 and addressing Queen Street. Adjacent to the south-eastern corner of the house is a single bay carport. Lot 99 contains a substantial shed and swimming pool area.
5. The aforementioned carport is the primary focus of this appeal. At the hearing, the tribunal was advised that the building works for the aforementioned carport were commenced without the required building works development permit, and that the application was made as a consequence of compliance action subsequently undertaken by Council. As will become clear presently, other building works included in the application are not the main focus of this appeal.
6. The carport is as shown on the Arch and Viz Studio design plans referenced in paragraph 1(b)(i) above. Of primary significance to this appeal is that the carport is set back from the frontage to Queen Street by 2.1 metres. The dimensions of the car port are reportedly 4.159 metres (wide) by 5.94 metres (long), with a maximum height of 3.45 metres.
7. Building works on the subject site are subject to the design and siting provisions of the Low-Density Residential Zone Code ('zone code'), identified for section 33 of the *Building Act 1975* and in section 1.6 of the planning scheme as being alternative design and siting provisions to those provided under the Queensland Development Code. Acceptable Outcome ('AO') 9.1 of the zone code provides that, in the case of the subject site, buildings are to be set back 6 metres from a road frontage. Clearly, the proposed setback to Queen Street of 2.1m does not achieve this AO.
8. The carport is also set back by 500mm from the eastern (side) boundary of Lot 100. The tribunal was informed at the hearing, by Council's representative, that the carport is considered to be an open carport for the purposes of AO9.3(a) and AO9.4(a)(i) of the zone code, and for the purposes of Acceptable Solution A2(d) of Part MP1.2 of the Queensland Development Code. As such, Council considers that the side setback of the carport is compliant with the planning scheme and the tribunal was advised that this was not a basis for its decision to direct refusal of the application.
9. For 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 that 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.

10. Accordingly, on 9 April 2024, a referral was made to Council for a design and siting assessment and referral agency response.
11. As the carport does not achieve the 6 metre frontage setback required by AO9.1, the assessment of the application was to be against the requirements of Performance Outcome ('PO') 9 of the zone code. This PO provides as follows:

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.*

12. Council issued an information request dated 30 April 2024, stating as follows:

Issue

It has been considered that the carport provides an insufficient road boundary setback and is not consistent with the predominant character of the streetscape.

Information Required

1. *In line with previous advice provided, it is suggested that alternative design options are explored to achieve a greater road boundary setback. Given the predominant character of the streetscape with regard to building location, it is suggested that Council may only consider a minor encroachment within the road boundary setback in this instance.*

Issue

It has been considered that further information is required in order to accurately assess the referral agency application.

Information Required

2. *Please submit revised plans that accurately identify the height of the deck and balustrading and pool house within the rear boundary setback. The revised plans will need to include building heights from both natural and finished ground level.*

It is noted that Council is unlikely to support any building work within the rear boundary setback. Figure 6.3.1.4 of the Low Density Residential Zone Code should be considered before submitting revised plans of the building work.

13. On 30 July 2024, the appellant's town planning consultant, Planning Insights, submitted a response to the information request. The response included amended plans (being the plans referenced in paragraphs 1(b)(i) and 6 above). The tribunal was advised by

Council at the hearing that the amended plans fully satisfied Item 2 of the information request and hence that the works involving a pool deck and pool house are not a focus of this appeal.

14. In relation to Item 1 of the information request, the appellant's response essentially argues that the carport does not impact adversely upon the character of the streetscape, for the following reasons:

- *the carport is a lightweight structure which is not bulky and does not overcrowd the front yard and consequently, allows for full views of the dwelling house on Lot 100 (ie. The carport comprises approximately 21% of the front boundary width) and neighbouring dwelling houses to be retained from the street;*
- *the carport is not a dominant feature in the streetscape as the defining features of Queen Street are the wide footpaths, trees, non-intrusive fencing and timber, low rise structures;*
- *materials and roof form of the carport are complementary (the roof for the carport was specifically chosen to complement the roof shape of not only the dwelling house on Lot 100 but the broader style of housing in Queen Street);*
- *views along Queen Street and to the distance (either travelling by car or on foot) are not blocked by the carport;*
- *views of trees along the footpath are not obstructed; and*
- *sightlines for vehicles travelling along Queen Street are not compromised.*

15. The appellant's response goes on to:

- a) assert that frontage setbacks within Queen Street are not consistent and therefore that the carport setback cannot be considered to be disruptive to a prevailing, or consistent, setback line;
- b) refer to examples at 16 and 20 Queen Street of other buildings located within the 6m front setback; and to
- c) assert that there are no suitable, alternative locations for the carport within Lot 100.

16. Council issued a referral agency response dated 11 September 2024, directing refusal of the application. The ground for this decision was stated to be essentially that the carport fails to achieve PO9(f) of the zone code, which provides that buildings are designed and sited to be consistent with the predominant character of the streetscape. The grounds for directing refusal go on to state that:

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.

17. On 14 October 2024, the assessment manager duly issued a decision notice, apparently refusing the application. The decision notice does not include grounds for the refusal and also includes and refers to design plans that do not appear to relate to the application. The decision notice and/or the attached plans:

- a) Identify McIntyre Construction and Renovation as the plan author, as opposed to Arch and Viz Studio;
 - b) include a different Council reference number, RAB 21/0267, as opposed to RAB24/0044; and
 - c) show a different siting design for the carport, with a frontage setback of 1.9m, as opposed to 2.1m, and a side setback of 1m, as opposed to 500mm.
18. The appellant duly lodged this appeal with the tribunal registrar on 23 October 2024.
 19. A site inspection and hearing were held on the subject site on Thursday, 21 November 2024, at 11.00am.
 20. Following the inspection and hearing, the tribunal issued the following directions on 25 November 2024:

Following the site inspection and hearing of the appeal referenced above, and a preliminary review of the appeal material, the tribunal directs the parties to provide the following additional information:

1. *The appellant and the assessment manager (Brett McCullagh of North Shore Building Approvals Pty Ltd) are to provide confirmation as to whether or not the assessment manager's decision to refuse the appellant's building works development permit application, as set out in the decision notice of 14 October 2024, constitutes a valid decision for this appeal, given that:*
 - a) *Annexure B to the decision notice (applicable documents) refers to a document with reference number RAB 21/0267 and with revision number 6/4/22, which (based on a search of Council records) appears to relate to a different, earlier concurrence agency decision by Council to direct refusal of a development over the subject site, and not to the current matter the subject of this appeal.*
 - b) *Annexure B also refers to attached architectural drawings with the reference 'McIntyre Constructions as Stamped.' The design plans attached to the decision notice, which were prepared by McIntyre Construction and Renovation, clearly relate to a different application than that the subject of this appeal, in that the siting of the proposed carport shown on these plans involves different setbacks and dimensions, and the plans are dated 20/3/2022 and stamped with a different Council reference number (RAB 21/0267). The design plans the subject of this appeal are dated 29 July 2024 and carry the Council reference RAB 24/0044.*
2. *Council is to provide the list of local properties and their applicable frontage setbacks that was referred to by the Council representative at the hearing.*
3. *Council is to provide a complete copy of the plumbing and drainage application lodged over the subject site that was referred to by the Council representative at the hearing.*
4. *Council is to provide formal confirmation of the verbal statements made at the hearing, to the effect that it would be supportive of the proposed building works (Class 10a carport) if they were to be relocated such that the frontage setback to the outermost projection of the carport would match that of the roof of the dwelling house on the subject site.*

The above-mentioned material is to be provided by email to the Tribunal Registrar, with copies to the other party to this appeal, by no later than 4pm on Friday, 6 December 2024.

21. On 2 December 2024, the appellant provided a revised decision notice, dated 27 November 2024 and referring to and including the correct design plans for the application.
22. On 5 December 2024, Council provided its response to the tribunal's directions, including the requested material and stating that *'Council would support an application with the proposed carport to be setback at a distance in line with the existing dwelling roof line, as this would create a setback more consistent with other buildings and structures within the streetscape.'*
23. Council's response to Item 2 of the directions identifies a total of 19 properties, extending from No. 4 to No. 30 Queen Street. This analysis indicates that nine of the listed properties involve compliant frontage setbacks, two involve approved frontage setback relaxations to 3.2m and 4m and the remaining eight appear to involve unapproved and non-compliant setbacks, varying from approximately zero metres to approximately 5 metres. Significantly, this analysis indicates that:
 - a) an unapproved carport at No. 16 – cited by the appellant's response to Council's information request – has been removed; and that
 - b) the carport at No. 20, also cited in the appellant's response, involves a front setback of 3.2m and was approved by Council in 1981.
24. Notably, the approved frontage setback reduction for No. 20 was based on the fact that that allotment is particularly narrow, with a reported frontage of only 11.5m. Hence, in that case, no alternative location within the lot would have been available.
25. The appellant has not provided any further comment on the Council's response.

Jurisdiction

26. Section 229(1) of the PA provides that Schedule 1 ('the schedule') of the PA states the matters that may be appealed to a tribunal.
27. 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).
28. Section 1(2)(g) provides that Table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the BA, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
29. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

Decision framework

30. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
31. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA).

32. 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 PA.
33. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal's decision takes the place of the decision appealed against (section 254(4)).
34. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

35. The material considered in arriving at this decision was:
 - a) An email and attachments dated 5 December 2024, submitted by Council in response to the tribunal's directions of 25 November 2024.
 - b) An email and attachment dated 2 December 2024, submitted by Planning Insights to the Registrar on behalf of the appellant in response to the tribunal's directions of 25 November 2024.
 - c) Form 10 Notice of Appeal lodged with the tribunal registrar on 23 October 2024, including a document entitled *Supporting Information and Grounds for Appeal* and including Attachment A – Photographs and Figures – and other attachments referenced below.
 - d) The assessment manager's original Form 6 decision notice dated 14 October 2024 and attached plans.
 - e) The assessment manager's amended Form 6 decision notice dated 27 November 2024 and attached plans.
 - f) Council's referral agency response dated 11 September 2024 and attached plans.;
 - g) Council's information request dated 30 April 2024 and the appellant's response, prepared by Planning Insights and dated 30 July 2024, including the plans referenced in paragraphs 1(b)(i), 6 and 13 above;
 - h) Completed Noosa Council *Request for Referral Agency Response* form and supporting report prepared by Planning Insights dated April 2024, including the initial design plans.
 - i) The *Planning Act 2016* and the *Planning Regulation 2017*.
 - j) The *Building Act 1975*.
 - k) *Noosa Shire Plan 2020*, including the Low Density Residential Zone Code.
 - l) Queensland Development Code Part MP1.2 – *Design and Siting Standard for Single Detached Housing – on Lots 450m² and over*.

Findings of fact

36. The tribunal accepts that the assessment manager's decision notice submitted in response to the tribunal's directions of 25 November 2024 constitutes a valid decision for this appeal.
37. The tribunal finds that a number of allotments in the vicinity of the subject site display frontage setbacks that appear to be less than 6 metres. This finding is based upon the tribunal's own observations on the day of the hearing and site inspection, and upon the

Council's evidence provided in response to the tribunal's directions of 25 November 2024. However, the tribunal finds that the majority of these examples involve significantly greater frontage setbacks than the 2.1m displayed by the subject carport. Only one example of a lesser frontage setback was noted, at No. 24, where the existing dwelling house appears to be sited to a zero frontage setback.

38. The tribunal finds further that, whilst the local streetscape in the vicinity of the subject site involves a variety of frontage setbacks, the carport the subject of this appeal stands out both because of its lesser frontage setback and because of the lack of any soft landscaping to screen its visual impact upon the streetscape. At the inspection, the tribunal noted that the majority (if not all) of the associated lots with frontage setbacks appearing to be less than 6m include significant screening vegetation to soften and/or screen these buildings or structures.
39. Based upon the above-mentioned analysis, the tribunal finds that the siting of the subject carport relative to the frontage of the subject site is clearly inconsistent with the predominant character of the local streetscape, and therefore does not achieve PO9(f) of the zone code.
40. However, the tribunal also finds that the application could have been conditioned to achieve a siting outcome that would be more consistent with the streetscape character and would thus achieve PO9(f). This siting outcome was proposed by Council, at the hearing and takes the form of the relocation of the carport to a frontage setback matching that of the roofline of the existing dwelling house. As mentioned in paragraph 22 above, Council has provided formal confirmation that it would support this amended siting outcome and would consider it to achieve PO9(f) of the zone code.

Reasons for the decision

41. The tribunal, in accordance with section 254(2)(d) of the PA, has decided this appeal as set out in paragraph 1 above.
42. The tribunal's reasons for this decision are that the design and siting of the subject development, as shown on the plans listed under paragraph 1, will either comply with the zone code or, in the case of the existing carport, will comply with that code subject to the conditions listed in paragraph 1.

Neil de Bruyn
Development Tribunal Chair
Date: 18 December 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 and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au