



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal number:</b>	<b>24-040</b>
<b>Appellants:</b>	Carolyn Stephens and David Swanson
<b>Assessment manager:</b>	Rob Wibrow
<b>Co-respondent (concurrence agency):</b>	Noosa Shire Council
<b>Site address:</b>	24 Southern Cross Parade, Sunrise Beach Qld 4567 and described as Lot 633 on RP2211429 – the subject site

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### **Appeal**

Appeal under 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* against the refusal of a Development Application for Building Work for Class 10a structures, being a carport combined with storeroom within the road 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 carport/storeroom does not comply and cannot be conditioned to comply with the provisions of the Noosa Plan 2020, Low Density Residential Zone Code PO9 (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 and (f) be consistent with the predominant character of the streetscape.*

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<b>Date and time of hearing:</b>	25 October 2024 at 1.00 pm
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Anthony Roberts - Chair Lindy Osborne Burton - Member
<b>Present:</b>	Carolyn Stephens - Appellant Marcus Brennan - Agent for Appellant Jarrad Postle and Jason Devine - Council representatives

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the Assessment Manager, as directed by the Concurrence Agency to refuse the application.

## Background

1. The subject site is:
  - a. a rectangular lot sloping substantially away from Southern Cross Parade;
  - b. 763m<sup>2</sup> in area containing a single-storey, stepped dwelling house set in well landscaped grounds;
  - c. zoned Low Density Residential under the Noosa Plan 2020.
2. The proposed carport/storeroom is:
  - a. sited over the existing driveway that leads to the previous double garage within the house structure, located 2.0m from the site front boundary and separated by 1.8m from the existing house;
  - b. 6.6m long and 7.8m wide with an area of approx.50m<sup>2</sup>;
  - c. 3.8m in height to the street alignment increasing to 4.9m at the rear of the structure;
  - d. designed to reflect the architecture of the existing dwelling a high-pitched gable roofline;
  - e. incorporates a fully enclosed storeroom structure on the south-western side accessed by a roller door.
3. As the proposed development triggers assessment against the relevant performance criteria of the Noosa Plan 2020 due to the proposed siting within the required 6.0m road boundary setback, the Assessment Manager on 9 April 2024 lodged with the Noosa Shire Council (under Schedule 9, Division 2, Table 3 of the Planning Regulation 2017) a Request for a Concurrence Agency Response for building works involving additions to a dwelling house (carport and roofed deck).
4. On 16 April 2024, Council issued an Information Request stating:

*Issue It has been considered that the proposed carport provides an insufficient road boundary setback and is not consistent with the predominant character of the streetscape. Therefore, Council is unlikely to support the current proposal.*

*Information Required Reconsider the design and location of the proposed carport. It is suggested that Council is looking to maximise the road boundary setback, similar to the existing buildings and structures within the streetscape. Additionally, it is noted that the current design provides for an exceedingly dominant structure within the road boundary setback. If an alternative design which is in line with the information provided is achievable, please submit revised plans for further consideration.*

5. The Information Request also contained commentary on the then proposed roofed alfresco dining area which was subsequently deleted by the Appellants from the proposal under consideration by the Council and subsequently the Tribunal.
6. On 25 June 2024, the Appellants provided a response to Council's Information Request, which increased the proposed street setback from 1.3m to 2.0m.
7. On 11 July 2024, 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:*

- (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;***

*It is Council's view that the amenity of secure covered car-parking previously provided to the users of the subject site was taken away when the existing double garage was converted into a habitable area without the necessary approvals in place. This unapproved building work does not provide Council with any further justification for allowing a carport and storeroom to be located within the front boundary setback.*

- (f) ***be consistent with the predominant character of the streetscape;***

*It has been considered that the location of the proposed carport and storeroom 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. Additionally, the current proposal provides for an exceedingly dominant structure located within the road boundary setback.*

8. The Assessment Manager subsequently issued a Decision Notice on 31 July 2024 refusing the proposed development based exclusively on the Referral Agency Response from Council directing refusal.
9. The hearing for the appeal was held at the subject site on 25 October 2024 at 1.00 pm. The Tribunal had the opportunity to view the positioning of the proposed structure from the subject site, neighbouring properties, and the streetscape more generally.

### **Jurisdiction**

10. 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.

### **Decision framework**

11. Section 253 of the PA sets out matters relevant to the conduct of this appeal. Subsections (2), (4) and (5) of that section are as follows:
- (2) *Generally, the appellant must establish the appeal should be upheld.*
  - (4) *The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.*
  - (5) *However, the tribunal may, but need not, consider— other evidence presented by a party to the appeal with leave of the tribunal; or any information provided under section 246.*
12. Section 254 of the PA deals with how an appeal such as this may be decided. The first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal and is not relevant here) are as follows:
- (1) *This section applies to an appeal to a tribunal against a decision.*
  - (2) *The tribunal must decide the appeal by-*
    - (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; or*
  - (e) *[not relevant].*
- (3) *However, the tribunal must not make a change, other than a minor change, to a development application.*
13. 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.
14. The Low-Density Residential Zone Code contains alternate provisions to the QDC. As the proposal does not meet the acceptable outcomes set out in Acceptable Outcome AO9.1, which as applied to the subject site requires buildings and structures have a setback of 6.0m from the road frontage, assessment is made against the list of Performance Outcomes stated at PO9 of the Code.

### **Matters in dispute**

15. PO9 of the Code specifically applies to the design and siting of building and structures. PO9(a), which deals with amenity considerations has a focus both on the amenity of the 'users' and 'adjoining premises'. At the hearing, Council conceded that this criterion was no longer contested (due to the separation of the proposed structure from the immediately adjoining neighbour), so only criterion (f) *be consistent with the predominant character of the streetscape* was under consideration by the Tribunal.

### **Material considered**

16. The Tribunal considered the following material:
- a. 'Form 10 – Appeal Notice', grounds for appeal and correspondence/attachments accompanying the appeal lodged with the Tribunals Registrar 26 August 2024;
  - b. The *Planning Act 2016* (PA);
  - c. The Planning Regulation 2017 (PR);
  - d. The Queensland Development Code 2020 (QDC);
  - e. The *Building Act 1975* (BA);
  - f. The Building Regulation 2006 (BR);
  - g. The Noosa Plan 2020 (Noosa Plan);
  - h. Noosa Plan 2020 – Low Density Residential Zone Code (the Code);
  - i. The verbal submissions made by the parties at the hearing and site inspection.

### **Findings of fact**

The Tribunal makes the following findings of fact:

#### One or two structures

17. Noting that the appeal documentation provided to the Tribunal clearly shows the intended use of the proposed structure(s) as 'proposed carport' and 'proposed storage', there is a question as to whether the proposal involves one or two Class 10A structure(s) being a 'Carport', or two abutting Class 10A structures being a carport and a 'Storeroom'. This question was raised with the parties at the hearing with the Appellants preferring the single structure interpretation and Council not expressing a preference.
18. The Tribunal notes that while the Noosa Plan does not provide a definition for carports or storerooms, the QDC provides two relevant definitions, namely; 'Carport' means a class 10a building, other than a garage, providing covered vehicular parking and 'Open

Carport' means a carport with – (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another building or a side or rear allotment boundary; and (b) not less than one third of its perimeter open.

19. Drawing on the abovementioned definitions, the Tribunal found that the proposed development is best described as two abutting structures comprising a 'carport'/'open carport' together with a fully enclosed 'storeroom'. This is principally because the rooflines for the two structures are separate.
20. While the Tribunal acknowledges that the two elements to the proposal are covered equally under the reference to 'structures' in PO9, it considers that to describe them collectively as a carport would be inaccurate, if not deceptive, from a layperson's perspective. A carport by its nature is an open structure. This is reinforced by the Macquarie Dictionary definition for a carport as a 'roofed wall-less shed often projecting from the side of a building, used as a shelter for a motor vehicle'. For this reason, these two elements of the proposal should be considered individually in the context of the application of PO9.

#### PO9(f) streetscape

21. In relation to the grounds for refusal pertinent to the PO9(f) streetscape considerations, the Appellants contend that the proposal is '*consistent with the predominant character of the streetscape*' as:
  - a. There are several different street character aspects including:
    - i. large single and double storey dwellings houses with many incorporating 1.8m to 2.0m solid fences along the frontage;
    - ii. a 20m wide road reserve with 4.0m to 6.0m wide verges, and;
    - iii. a varied building alignment with a number of structures within the required setback located in the nearby vicinity of the site;
  - b. The carport is an open and light-weight structure and matches the built form of the existing house and will contribute to the character of the street;
  - c. The proposal is '*very much compatible with the development, open space and vegetation in the area and is capable of existing in harmony with it*';
  - d. There are some court precedents related to the interpretation of key terms such as 'streetscape', 'predominant' and 'consistent' that favour the Appellants' interpretation of the likely impact of the proposal on the streetscape;
  - e. As well as building and structures, 'streetscape' should be considered to comprise landscape elements, road reserve and verge width and street view lines.
22. In relation to the grounds for refusal pertinent to the PO9(f) streetscape considerations, Council contends that:
  - a. The location of the proposed carport and storeroom within the front boundary setback is not consistent with the predominant character of the streetscape. Council's view is that the predominant character of the streetscape with 'respect to building location' consists of buildings and structures 'providing greater road boundary setback than that of the current proposal';
  - b. Council considers the term 'streetscape', although undefined in the Noosa Plan, to be what can be seen standing in front of the property and looking up and down the street.
  - c. Examples of other properties in the vicinity of the site where buildings and structures are within the required setback are not a valid precedent as they are variously; approved under the previous planning scheme, not Council-approved structures or not within the streetscape considered by Council to be applicable to the subject site;
  - d. The proposal provides for an 'exceedingly dominant structure located within the road boundary setback';

- e. The apparently unapproved previous conversion of the garage into a habitable room does not provide justification for allowing a new carport and storeroom to be located within the front boundary setback.

#### Location of the proposed carport/storeroom

- 23. The first element of the Council's reasons for refusal relates to the location of the proposed carport/storeroom within the front boundary setback not being consistent with the predominant character of the streetscape.
- 24. Based upon the site inspection conducted at the hearing, the Tribunal finds that Southern Cross Parade presents as a varied streetscape comprising mixed architectural styles and landscape elements with a somewhat curving alignment and undulating grade presenting changing view lines.
- 25. With respect to the pattern of built form in the streetscape (which is the particular focus of PO9), high (1.8m to 2.0m) solid rendered/masonry walls (often with solid high gates) are the visually dominant feature - when viewed from the immediate front of the site. Further, there are several instances where buildings and structures already intrude into the required 6.0m setback (notably nos. 21, 25, 29 and 31 Southern Cross Parade – each of which exhibit structures with a 2.0m setback or built to boundary).
- 26. With respect to these examples Council contends that any unapproved structure or approved structures that pre-date the requirements of the current Noosa Plan should be disregarded for the purposes of consideration of the subject site. While the Tribunal acknowledges Council's position on this point, it considers that from a layperson's perspective, the presence of these structures (approved or otherwise) does in reality form an integral component of the established streetscape. Further, the Tribunal notes that no evidence of proactive compliance and enforcement action on allegedly unlawful development, intended to remove such structures from the streetscape, was presented by Council. The Tribunal also considers that the relevant provisions of the previous Noosa Plan are substantially the same as the current plan.
- 27. Given this, the prevailing pattern of buildings and structures (including fences) in the streetscape which frame the subject site (and which exist within the broader neighbourhood), does not exhibit a pattern of buildings and structures 'providing greater road boundary setback than that of the current proposal'.

#### 'Exceedingly dominant structure'

- 28. The second element of Council's reasons for refusal concerns the proposal providing for 'an exceedingly dominant structure located within the road boundary setback'. At the hearing, Council representatives indicated that these concerns relate mainly to the width and height of the combined structures.
- 29. Having regard to the combined width of the proposed structure at 7.8m in tandem with the proposed height at 3.8m at the street façade, the Tribunal concurs with Council that the proposal presents a bulk that would be perceived as dominant in the streetscape. This impact is mainly attributable to inclusion of the enclosed storeroom component of the proposal rather than the open carport component.
- 30. In this light, the Tribunal considers that the proposal could have been conditioned by Council to comply with PO9 through the deletion of the storeroom. The Tribunal therefore disagrees with Council's decision reasoning that the proposed development 'cannot be conditioned to comply with' PO9.

31. The Tribunal did consider issuing a decision that approves the proposal subject to deletion of the storeroom component. However, having regard to section 254(3) of the PA (cited above) which states that 'the tribunal must not make a change, other than a minor change, to a development application', the Tribunal is inhibited from doing so, as it considers such a change to exceed the threshold of 'minor'.

#### **Reasons for the decision**

32. In this appeal, the Tribunal considers the Appellants have not satisfied the onus to demonstrate the appeal should be upheld. Therefore, the Tribunal has determined to confirm the decision of the Assessment Manager, as directed by the Concurrence Agency, to refuse the application for the reasons identified below.
33. Although the location of the proposed carport component of the development - at a minimum of 2.0m from the front alignment - would not likely be inconsistent with the character of the streetscape (as exhibited by the existing pattern of buildings and structures), the inclusion of the storeroom component does represent a level of bulk that is likely to be perceived as dominant in the streetscape.
34. Having regard to section 254(3) of the PA, the Tribunal is inhibited from issuing a decision that approves the proposal subject to deletion of the storeroom component as it considers such a change to exceed the threshold of 'minor'.
35. The proposed carport, therefore, does not satisfy criterion (f) of Performance Outcome 9 of the Noosa Plan 2020 – Low Density Residential Zone Code requiring that buildings and structures are designed and sited to be consistent with the predominant character of the streetscape.

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**Anthony Roberts**  
**Development Tribunal Chair**  
**Date: 3 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  
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Brisbane Qld 4001

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