



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-054
Appellant:	Martin Taylor
Respondent/Assessment manager:	Rob Wibrow
Co-respondent/ Concurrence agency:	Noosa Shire Council
Site address:	42 Hay Street, Tewantin Qld 4565 and described as Lot 8 on RP126713 – the subject site

Appeal

Appeal under section 229 and schedule 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the assessment manager's decision at the direction of the referral agency to refuse a development application for construction of additions and alterations to a dwelling house (carport) at the subject site.

Date and time of hearing:	Thursday 14 November 2024 at 11.00 am
Place of hearing:	The subject site
Tribunal:	John O'Dwyer – Chair Catherine Baudet – Member
Present:	Martin Taylor – Appellant Marcus Brennan - Appellant's agent Jason Devine – Council representative

Decision:

The Development Tribunal (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 receiving this decision notice, as if the concurrence agency had no requirements; and
- b) should the application be approved, the approval to be subject to the following plans submitted with the application:

PJ Concepts and designs Drawing 21155-A01 Rev A dated 8 March 2024
Drawing List

PJ Concepts and designs Drawing 21155-A02 Rev A dated 8 March 2024
Standard Notes
PJ Concepts and designs Drawing 21155-A03 Rev A dated 8 March 2024 Site
Plan
PJ Concepts and designs Drawing 21155-A04 Rev A dated 8 March 2024
Carport Floor Plan
PJ Concepts and designs Drawing 21155-A05 Rev A dated 8 March 2024
Elevations
PJ Concepts and designs Drawing 21155-A06 Rev A dated 8 March 2024
Elevations
PJ Concepts and designs Drawing 21155-A07 Rev A dated 8 March 2024
Sections
PJ Concepts and designs Drawing 21155-A08 Rev A dated 8 March 2024
Roof Plan
PJ Concepts and designs Drawing 21155-A09 Rev A dated 8 March 2024
WH&S Report.

Background

1. The development application is for a double carport to be established at the front of the current garage out to within 0.155m of the front boundary of the property, as the residents are using the garage as an artist's studio and storage.
2. On 29 April 2024, the application was referred to Council as a referral agency to assess design and siting issues in relation to non-compliance with AO 9.1 and assessment under PO9 of the Low Density Residential Zone Code.
3. On 13 May 2024, Council made an Information Request proving the Appellant the opportunity to relocate the proposed carport or to withdraw the application.
4. On 12 June 2024, the Appellant responded to the Information Request by requesting Council to respond to the Referral Request.
5. On 28 June, Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for the reasons set out in the Response 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 suggested that the amenity of the users of the subject site is being reduced by removing the existing enclosed, secure car-parking spaces available. Additionally, it is further suggested that the amenity of the users of the subject site would be increased by constructing the proposed studio and storeroom elsewhere on the property and maintaining the existing car-parking spaces.

While the easiest and most cost-effective solution for providing covered carparking on the property is building a carport within the front boundary

setback, it should be noted that this does not form part of the performance criteria in the low density residential zone code. There are alternative options available on the large-scale residential property for covered car-parking to be provided that complies with the performance outcomes and further consideration should be given regarding these design options.

f) be consistent with the predominant character of the streetscape;

It has been considered that the location of the proposed carport within the road boundary setback is not consistent with the predominant character of the streetscape. It is Council's view that the location of existing buildings and structures within the streetscape is considerably greater than that of the current proposal. Furthermore, the proposed carport provides for an exceedingly dominant structure with only a very minor setback from the front property boundary that is consistent with no other structure in the streetscape.

Council's view is that approving the proposed building work within the front boundary setback may set a precedence (sic) within Hay Street for structures of this scale to be built with such a minor setback from the front property boundary. It is clear that the aim of the alternative siting provisions is to provide open space within the front boundary setback and greater separation between the front property boundary and any building work.

6. On 24 September 2024, the Assessment Manager issues a Decision Notice stating the Decision is that the application is refused and provided details of refusal as follows:

The assessment manager was directed to refuse the application by Noosa Shire Council in accordance with their referral agency role. The refusal is solely because of the direction of the referral agency.

7. On 18 October 2024, the Appellant lodged an appeal against the decision to refuse the application, providing grounds of appeal and reasons why the proposed development should be approved.

Jurisdiction

8. This appeal has been made under section 229 of the PA, as a matter that may be appealed to a tribunal.
9. The PA Schedule 1, section 1(2) however states table 1 may apply to a tribunal only if the matter involves one of the circumstances set out in paragraphs (a) to (l) of that section. Paragraph (g) of section 1(2) states: 'a matter under this Act, to the extent the matter relates to the *Building Act 1975*, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission'.
10. The Tribunal is satisfied that the application lodged with the Assessment Manager and the referral of the development application to Council satisfies that requirement being, a development application for approval of building works under section 33 of the *Building Act 1975*, which allows alternative provisions to QDC boundary clearance provisions for particular buildings.
11. That application was subsequently refused by the Assessment Manager, as directed by Council as the referral agency. Table 1 item 1(a) in schedule 1 of the PA states that for a development application an appeal may be made to a tribunal against the refusal of all or part of the development application.

12. For these reasons the Tribunal has determined that it had the jurisdiction to hear the appeal.

Decision framework

13. In this appeal, the Tribunal stated at the hearing that the onus was on the Appellant to establish that the Appeal should be upheld and that the Tribunal would hear and decide the Appeal by reconsidering the evidence before the Assessment Manager and Referral Agency and the material presented at the Appeal hearing and the site inspection.

Material considered

14. The material considered in arriving at this decision comprises:
 - a) 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 17 October 2024
 - b) The *Planning Act 2016*
 - c) The *Building Act 1975*
 - d) Noosa Plan 2020
 - e) Email dated 14 November providing a copy of Development Tribunal Decision 23-006 identified as having considered the terms Consistent, Predominant and Streetscape in another appeal in relation to the Noosa Plan 2020
 - f) The verbal submissions made by the parties at the hearing and during the site inspection

Findings of fact

15. Hay Street has wide, grassy footpaths on each side, punctuated with concrete driveways. The wide footpath creates a sense of space and openness.
16. There are randomly planted street trees, telegraph poles and lines along the footpaths that break up the streetscape into discrete sections.
17. The subject site and the two premises each side of it and the five to seven properties on the other side of Hay Street comprise a discrete section of streetscape contained by street trees.

Reasons for the decision

18. As the Appellant has the onus to demonstrate the appeal should be upheld, the Tribunal has to consider whether the Appellant has demonstrated compliance with PO9(a) and (f).
19. In relation to paragraph PO9(a), the Appellant advised that the amenity of their current premises will be maintained for the Appellant and his family if the garage can become a studio and storage as that will enable the continued access to breezes and visual and acoustic privacy. The Appellant also claimed that the carport would not impact on the visual or acoustic amenity of the adjoining residents as the carport is set back from the side boundary.
20. Council's reasons for refusal included that the amenity of the Appellant would be improved by relocating the studio to a site elsewhere on the property and keep the garage for its purpose.
21. The Tribunal considers the Appellant's opinion on this issue carries greater weight, in that he is better placed to determine the amenity of the premises for him.
22. In respect of paragraph PO9(f), Council stated the limited frontage setback (0.155m) was not consistent with the predominant character of the streetscape and that the carport

provides for an exceedingly dominant structure that is consistent with no other structure in the streetscape. Council also stated this carport if approved would set a precedent for other structures of this scale to be built with such a small setback from the front boundary.

23. The Appellant referred the Tribunal to Development Tribunal Appeal 23-006 for a garage as that Appeal had addressed the same types of issues related to PO9(f) arising in this Appeal. That decision considered the importance of PO9(f) and made reference to Planning and Environment Court judgements that addressed the key words 'consistent', 'predominant' and 'streetscape' that have been used as the basis for the decision by Council. That Decision cited cases as follows:

As none of the key words in PO9(f) are defined in the Noosa Plan 2020, plain ordinary meanings and case law are relevant:

Consistent

*In The Planning Place Pty Ltd v Brisbane City Council [2018] QPEC 62, at [75], Kefford DCJ held that: 'the term '**consistent**' in a town planning context was considered by Her Honour Judge Bowskill QC (as she then was) in Lake Maroon Pty Ltd v Gladstone Regional Council held: '... there is a **certain elasticity** about the expression 'consistency ... with'. In my view, the requirement of performance outcome PO2 of the Dwelling house (small lot) codes will be satisfied if the bulk and scale of the proposed lot 1 dwelling house is '**compatible with, in the sense of being capable of existing in harmony with**' the built form in the street and local area.'* (emphasis added)

Predominant

Collins dictionary online: If something is predominant, it is more important or noticeable than anything else in a set of people or things.

*In Ko v Brisbane City Council & Anor [2018] QPEC 35, at [79], Williamson DCJ held that: 'It has been recognised that 'predominance' is a term that connotes **flexibility rather than rigidity**. It is not intended to convey exclusivity.'* (emphasis added)

Streetscape

*'In Gelling & Ors v Cairns City Council & Anor [2008] QPEC 38 at [30] Dodds DCJ defined the term 'streetscape' to mean, '**the presentation offered by a street in its context by which I mean the buildings, other development, open space, vegetation, etc which may reasonably be considered as framing it.**' cited with implicit approval in WAW Developments Pty Ltd v Brisbane City Council [2010] QPEC 69 at [17].* (emphasis added).

24. The Tribunal is not bound by the decision in the tribunal Appeal 23-006, however, may be guided by observations of the Planning and Environment Court in considering the key terms in paragraph PO9(f).
25. Hay Street, Tewantin, has a mixture of housing styles which are mostly single storey. Many houses have solid or dominant fences on their front boundaries, and some have gatehouses - some constructed without approval. The fences vary from solid to open, some light coloured and some dark coloured.
26. The streetscape consists of many elements. There are randomly planted street trees, telegraph poles and lines. Many of the residences have large vehicles and boats parked

in the driveway. There is a lot of visual variation in the street. It is clearly undergoing gentrification with improvement on many properties.

27. Hay Street has wide, grassy footpaths on each side, punctuated with concrete driveways in many places. The wide footpath creates a sense of space and openness. However, this openness is divided by clumps of trees or large individual trees that divide Hay Street into a series of discrete streetscapes.
28. The house on the subject site has been renovated and presents as a quality property, as have some of the other properties nearby in the street, while many retain their original character.
29. The Tribunal has determined that the streetscape is varied with trees, solid fences, wide footpaths, telegraph poles and lines and gate houses. Many properties have solid and substantial walls as fences on the front boundary. The immediate streetscape in the vicinity of the site is constrained by the street trees that limit the view. This area includes several new developments with tall solid walls similar to those on the subject site frontage.
30. The Tribunal considers the carport is consistent with the presentation of the existing dwelling on the subject site and is in harmony with the diverse character elements in this limited streetscape.
31. The Tribunal considers that the proposed open carport, mimicking the gable roof on the existing structure, will not impact on the visual continuity and pattern of buildings and landscape elements in the vicinity of 42 Hay Street. It will not dominate the streetscape as it abuts the solid tall fences on the property frontage and on the boundary with the adjoining property and there are the nearby gatehouses that also stand up on the frontages on the other side of Hay Street in the immediate streetscape and will be consistent with the predominant character of the streetscape.

John O'Dwyer
Development Tribunal Chair
Date: 17 December 2024

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