



## Development Tribunal – Decision Notice

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### Planning Act 2016, section 255

<b>Appeal Number:</b>	<b>21-007</b>
<b>Appellant:</b>	Petrina Jobson
<b>Respondent (Assessment Manager):</b>	James Dunstan of Professional Certification Group
<b>Co-Respondent (Concurrence Agency):</b>	Noosa Shire Council
<b>Site Address:</b>	37 The Quarterdeck, Noosa Heads Q 4567 – the subject site

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### Appeal

Appeal under section 229 and schedule 1, section 1, table 1, item 1(a) of the *Planning Act 2016* (PA) against the refusal of a Development Application for approval of Building Work being for a class 10a structure – Carport. The decision followed a referral agency response by the Noosa Council, directing refusal of the Application. Council stated that the carport does not comply and cannot be conditioned to comply with the provisions of the Noosa Plan 2006, Low Density Residential Zone Code 9.3.1, PO9 (f) *Building and structures are designed to be consistent with the predominant character of the streetscape; and that "Furthermore the integration of the existing carport with the existing pergola within the prescribed boundary setbacks adversely impacts the amenity and consistent character of the streetscape"*.

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<b>Date and time of Hearing:</b>	2:00pm, 18 May 2021
<b>Place of Hearing:</b>	The subject site
<b>Tribunal:</b>	Victor Feros OAM – Chairman Debbie Johnson – Member
<b>Present:</b>	Petrina Jobson – Appellant Peter Armitage, PV Building Design – for Appellant James Dunstan, Professional Certification Group – Assessment Manager Matthew Adamson, Bradley Geaney – Co-Respondent

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### Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(c) of the *Planning Act 2016* (PA) replaces the decision of the Assessment Manager dated 9 February 2021 with another decision, namely to approve the siting of and the design of the proposed *open carport* on the subject land as shown generally on PV Building Design Drawings – 37 The Quarterdeck Noosa Heads – Preliminary C – Proposed Carport – Sheets 1 and 2, submitted to the A/Registrar, Development Tribunal, 25 May 2021, subject to the following:

- (a) that the front boundary setback of the carport be not less than 3.0m;
- (b) that the length of the carport be not more than 8.0m at the southern end and not more than 5.0m at the northern end;
- (c) that the existing pergola and roofing at the entrance to the house be removed; and

- (d) that the roof between the front feature rock wall and the front elevation of the house be removed; and
- (e) any additional conditions attached to the building approval by the building certifier to address the requirements of the *Building Act 1975*.

## Background

1. The subject site, described as Lot 43 on RP88934, situated at 37 The Quarterdeck, Noosa Heads is rectangular in shape, having an area of 506m<sup>2</sup>, with frontage to The Quarterdeck of 15.088m.
2. The level site is developed as a single-level detached house, containing an enclosed garage incorporated into the house design, but which garage has been repurposed. The proposed on-site unenclosed carport accommodation is sought in lieu.
3. The Quarterdeck is a U-shaped residential access street.
4. An Application for Carport purposes was lodged by Peter Armitage, PV Group P/L Building Designer, on behalf of the owner-resident, Petrina Jobson with the Professional Certification Group (James Dunstan – Assessment Manager), with Noosa Council as Referral Agency (Council Reference RAB 20/0168)
5. Noosa Council, by decision made 23 November 2020 directed the Assessment Manager to refuse the Application on the grounds that 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 (f) be consistent with the predominant character of the streetscape;*

*It has been considered that the design of the Carport provides for a location and building form that is not consistent with the predominant character of the street. Furthermore the integration of the proposed carport with the existing pergola within the prescribed boundary setbacks adversely impacts the amenity and consistent character of the streetscape.”*

6. The Application was duly refused and an Appeal to the Development Tribunal was instituted on 9 February 2021.

## Jurisdiction

7. This Appeal has been made under section 229 of the PA, as a matter that may be appealed to a Tribunal.
8. Schedule 1 of PA, 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, other than a matter under the Act that may or must be decided by the Queensland Building and Construction Commission”.
9. The Tribunal has determined 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 the section 33 of the *Building Act 1975*, which allows alternative provisions to QDC boundary clearance and site cover provisions for particular buildings.
10. The 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 or all or part of the Development Application.

11. The refusal directed by Council and the refusal made by the Assessment Manager have enlivened the jurisdiction of the Tribunal.

### **Decision framework**

12. Section 246 of the PA provides as follows:

The registrar may, at any time, ask a person to give the registrar any information that the Registrar reasonably requires for the proceedings.

The person must give the information to the registrar within 10 business days after the registrar asks for the information.

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.

13. Section 254 of the PA deals with how an Appeal such as this may be decided and the first three subsections of that section (omitting section 254(2)(e), as it relates to a deemed refusal (not relevant here) and 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.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. Proposed building works plans prepared by PV Design identified as Proposed Carport – Issue Preliminary B Sheets 1, 2 and 3 issued 19 July 2020.
2. Referral Agency Response dated 23 November 2020 directing refusal.
3. Professional Certification Group (Assessment Manager) Decision Notice refusing the Application (Reference number 00073029) dated 9 February 2021.
4. Form 10 – Appeal Notice, grounds for Appeal and correspondence accompanying the Appeal lodged with the Tribunals Registrar on 9 February 2021.

5. Documents titled "*Appeal Meeting – Jobson Carport*" dated 18 May 2021 submitted by the Appellant to the Acting Registrar, Development Tribunals, 25 May 2021. Documents included attached amended Plans – Issue Preliminary C – Sheets 1, 2 and 3.
6. Emailed correspondence to the Registrar from Council dated 28 June 2021. Comments related to revised building design plans – Issue Preliminary C – Sheets 1, 2 and 3
7. Emailed correspondence by the appellant's agent dated 30 June 2021. Comments related to revised building design plans – Issue Preliminary C - Sheets 1, 2 and 3.
8. Google street view images.
9. Planning and Development Online information for the subject site.
10. The Planning Act 2016 (PA).
11. The Planning Regulation 2017 (PR).
12. The Development Application Rules.
13. The Building Act 1975 (BA).
14. The Building Regulation 2006 (BR).
15. The Queensland Development Code (QDC) Part MP 1.2.
16. The Noosa Plan 2020.

### **Findings of Fact**

17. The Hearing of the Appeal was held at the Appellant's residence, the subject site, on 18 May 2021.
18. The existing garage, incorporated into the original house design and construction, has been repurposed and on-site unenclosed, roofed, carport accommodation is proposed in lieu, sufficient for the parking of two (2) vehicles, within the existing front setback of minimum 6.0m increasing to minimum 10.0m (approximately) at the southern alignment of the house.
19. The existing front setback area is used informally for the outdoor parking of vehicles and is generally clear of landscaping, apart from a landscaped strip along the frontage, excluding the crossover.
20. At the front entry to the house is constructed a roofed pergola.
21. Forward of the garage (see 18 above) is a feature rock wall, with sheeted roof fixed to the front elevation of the house, perhaps originally housing an area for potted and trellis plants in a "*bush house*" setting and later perhaps for the parking of a vehicle.
22. The originally proposed carport setback is minimal (0.874m) and generally does not reflect and is inconsistent with the prevailing setbacks within and proximate to the Quarterdeck streetscape.
23. Upon the further invitation of the Tribunal to submit amended plans, plans were submitted to the Tribunal on 25 May 2021, namely PV Building Drawings – 37 The Quarterdeck Noose Heads – Preliminary C – Proposed Carport – Sheets 1 and 2. These amended plans indicated a 2.470m front setback to the proposed carport structure with a length at the southern boundary of 8.52m decreasing to approximately 6.8m at the northern boundary of the proposed carport. The Carport structure is shown to extend to and within the existing pergola at the house entry.

24. The Tribunal, having regard to section 254(3) "*Deciding Appeals to Tribunal*" of the Planning Act, determines that the change, as a consequence of the plans having been amended, is a "*minor change*" as defined in the Act, as the change does not result in a substantially different development, would not cause the inclusion of a prohibited development or cause referral to a referral agency or an additional referral agency or cause public notification if public notification was not required for the development application.
25. This structural repositioning removes, to a greater extent, the original ground of the Co-Respondents for directing refusal, principally for inconsistency with the predominant character of the streetscape and adverse amenity impacts caused by the integration of the carport with the existing pergola.
26. Notwithstanding, the Tribunal finds that, with reference to matters of adequacy of setbacks and amenity impacts, a minimum 3.0m setback be required; also the removal of the existing pergola, so providing a subtle articulation that would enhance the aesthetics of the street view; and the reinstatement of the rock wall as a landscaped element, with garden space behind, unsheeted.
27. These findings largely reflect and are supported by the Co-Respondent's views, notified to the Tribunal, 28 June 2021 "*that upon review of the revised plans, it has been considered that the carport should be considered to not exceed 8.0m in total length which provides a road boundary setback of 2970mm from the outermost projection ... furthermore, it is suggested that the existing pergola roof adjoining the carpark is conditioned to be removed entirely*".
28. With further and particular reference to Noosa Plan 2020, namely Low Density Residential Zone Code – "*Setback, PO9... Buildings and structures are designed to... (f) be consistent with the predominant character of the streetscape*", the Tribunal finds that there is no inconsistency of any significance.
29. The Tribunal also finds that the provision of a 2-vehicle unenclosed roofed carport structure, as proposed and amended, would be and is consistent with the Noosa Plan 2020 provision, at Table 9.4.1.4, which states that "*a dwelling house should be provided with two covered carparking spaces*".

### **Reasons for the Decision**

30. The Tribunal finds that design of the proposed open carport as amended is in keeping with the existing house, offering enhanced amenity to the residents at the subject site.
31. The Tribunal finds that the amenity of adjoining and nearby houses would not be adversely affected.
32. The Tribunal is satisfied that the proposed development meets all relevant performance criteria stipulated in Noosa Plan 2020, Low Density Residential Code at PO9.
33. The Tribunal finds that removal of the roofed pergola, and the sheeting of the space behind the rock wall at the front of the house and its reinstatement as a landscaped feature would contribute to the enhancement of the aesthetics of the street view.

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Professor Victor Feros OAM

**Development Tribunal Chairman**  
**Date: 14 July 2021**

## **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@hpw.qld.gov.au](mailto:registrar@hpw.qld.gov.au)**