



## Development Tribunal – Decision Notice

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### **Planning Act 2016**

<b>Appeal Number:</b>	<b>22-036</b>
<b>Appellant:</b>	Rick Davidson
<b>Respondent: (Assessment Manager):</b>	Gus Schulz
<b>Co-respondent (Concurrence Agency): (if applicable)</b>	Noosa Shire Council
<b>Site Address:</b>	11 Sovereign Court, Sunshine Beach and described as Lot 751 on RP 805763— 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 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. The decision followed a referral agency response by the Noosa Shire Council directing refusal of the application on the grounds that the proposed carport does not comply and cannot be conditioned to comply with the provisions of the *Noosa Plan 2020 - Low Density Residential Zone Code* PO9 (f) be consistent with the predominant character of the streetscape:

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<b>Date and time of hearing:</b>	Friday, 2 September 2022 at 1.00pm
<b>Place of hearing:</b>	The subject site (at the commencement of the hearing prior to submissions, the parties conducted an inspection of Sovereign Court from where it terminates in a cul de sac head to where it intersects with Columbia Drive)
<b>Tribunal:</b>	Mark Chapple – Chair Phil Cristaldi - Member
<b>Present:</b>	Rick Davidson – Appellant Peggy Leung (Appellant's co-resident at the subject site) Matt Adamson and Brad Geaney representing the Co-Respondent

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## Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(d) of the PA, sets aside the decision of the Assessment Manager to refuse the application 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 for the carport depicted in the drawings attached to the Referral Agency Response of 20 April 2022 and if the Assessment Manager approves the application with the following conditions:

1. That no part of the carport be higher than 2400mm from ground level
2. That the carport be *surf mist* in colour (or similar) with white posts
3. That no less than with three mature Fraser Island apple trees (*Acronychia Imperforate*) be planted on the northern boundary near the carport.

## Background

Sovereign Court is a cul de sac street running generally from west to east intersecting with Columbia Drive to the west and terminating at its eastern end. The subject site is located at the end of Sovereign Court and is generally north of the alignment of Sovereign Court.

Sovereign Court is a neighbourhood of 12 dwellings counting the dwellings at the corner of Sovereign Court and Columbia Drive.

There is a low set dwelling at 11 Sovereign Court and the Appellant wishes to erect a carport in front of the dwelling generally over the area comprising the existing driveway.

The Appellant conducted informal discussions with the Council which resulted in the Appellant being informed that the proposed carport would not be supported by the Council. The Appellant made application to the Council for a Referral Agency Response and on 20 April 2022, the Council issued a Referral Agency Response directing the Assessment Manager to refuse the application for the reasons that –

*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 design and location of proposed carport provides an insufficient road boundary setback. Therefore the design and siting of the proposal provides for a setback that is not consistent with the predominant character of the streetscape.*

*It is the Council's view that the existing predominant character of the streetscape, with reference to the design and location of buildings and structures is represented by buildings and structures have a significantly greater setback than the proposed carport.*

The Appellant made application to Gus Schulz of Core Building Certification Pty Ltd for a Development Permit for Building Works for the carport which was refused on 1 July 2022 as directed in accordance with the Council's Referral Agency Response.

## Material considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal Notice.
2. Decision Notice Refusal – Gus Schulz – Core Building Certification Pty Ltd – 1 July 2022.
3. Referral Agency Response – 20 April 2022 including site plan, front view elevation and side view elevation
4. Justification and supporting information.

## Jurisdiction

Section 229(1) of the PA provides that schedule 1 of the PA, (the Schedule), states the matters that may be appealed to the Tribunal.

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 the Tribunal. However, section 1(2) of the Schedule provides that table 1 only applies to the Tribunal if the matter involves one of a list of matters set out in section 1(2).

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 Building Act (Qld) 1975 other than a matter that must be decided by the Queensland Building and Construction Commission.

In the circumstances, table 1 applies to the Tribunal in this appeal. Accordingly, the Tribunal is satisfied that it has jurisdiction to hear and decide the appeal.

## Decision framework

For this appeal, the onus generally rests with the Appellant to establish that the appeal should be upheld (section 253(2) of PA).

The Tribunal is required to hear and decide the appeal by way of a consideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA): However, the Tribunal may nevertheless, (but need not), consider other evidence presented by a party with the leave of the Tribunal and any information provided under section 246 of the PA.

The Tribunal is required to decide the 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)).

Section 33 of the *Building Act (QLD) 1975* (alternative provisions to the 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.

The *Noosa Plan 2020 Low Density Residential Zone Code*, Table 6.3.1.3, contains alternative 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 site, requires buildings and structures to have a setback of six metres from the road frontage, the assessment is made against the list of performance outcomes stated in PO9 of the Code. For this appeal it is PO9(f) *be consistent with the predominant character of the streetscape* which must be considered. In the circumstances,

the Tribunal must decide if the proposed carport is designed and sited to be consistent with the predominant character of the streetscape.

### **Submissions of the parties**

The Council submitted to the Tribunal that as the appeal was about alternative siting provisions and the consideration under PO9(f) is the siting and design of the proposed carport, the relevant component of streetscape to be considered was the siting of existing buildings and structures.

The Council contended that when determining the relevant streetscape, only those dwellings in Columbia Drive visible from near the eastern end of Sovereign Court should be considered.

The Council contended that carports within the 6-metre setback, like the one proposed, was not consistent with the predominant character of the streetscape.

The Appellant contended that there was no predominant character to the streetscape with the streetscape containing a mixture of architectural forms, fencing and walls and landscaping. The Appellant's position was that numbers 12 to 18 Columbia Drive should be considered as part of the streetscape and that nearby sister cul de sacs also formed the character of the streetscape.

The Appellant referred the Tribunal to 12 Sovereign Court which featured a shade sail over the driveway in front of a double garage, 16 Columbia Drive which featured a carport with a substantial roof close to the road alignment and a solid fence, 20 Columbia Drive which featured a shade sail close to the road boundary alignment and 11 Columbia Drive which featured a carport, the roof of which gave the appearance of some height and a solid fence and gate.

The contention of the Appellant was that –

- the design of the carport would minimise its visual impact noting that the furthest projection of the carport would be no closer than 7.4 metres from the road pavement itself.
- The carport would have a low slim profile being no higher than 2.8 metres with a skillion roof.
- The carport roof would be surf mist in colour with white posts which would be consistent with the colour of the house.
- The north boundary line would be landscaped with three to five mature Fraser Island apple trees (*Acronychia Imperforate*).

The Appellant informed the Tribunal that the western orientation of the existing garage at the subject site made that space very hot during summer and that the proposed carport would improve passive cooling of the dwelling.

### **Findings of fact**

The Tribunal makes the following findings of fact:

- a) The relevant streetscape to be considered for the purposes of PO9(f) in this appeal are the dwellings in Sovereign Court and numbers 14 to 16 Columbia Drive.
- b) The streetscape is generally made up of low-set masonry style buildings, a prominent feature of which is double car accommodation.
- c) There is a shade sail erected at 12 Sovereign Court within the six-metre setback from the road alignment.
- d) There is a shade sail erected at 20 Columbia Drive within the six-metre setback from the front boundary alignment.

- e) There is a carport erected at 16 Columbia Drive within the six-metre setback from the front boundary alignment.
- f) There is a carport erected at 5 Sovereign Court on or very close to the western side boundary but more than six metres from the road alignment with a roof height higher than the eave height of the dwelling.

## Reasons for the decision

The Tribunal notes the Council's intention demonstrated through the focus on design and siting of building structures in PO9 of the Code that garages, and carports do not dominate streetscape.

While carports within the six-metre setback from the road frontage may not predominate in the streetscape, there are examples of those that do and elsewhere in the streetscape the accommodation of vehicles is a consistent theme in the streetscape.

The proposed carport is lightweight in design with a roof lower than the dwelling house behind, open on all sides and to be erected over an existing hard stand area. In the circumstances, the Tribunal finds that when the design features are considered in combination with the proposed siting, the proposed carport is consistent with the predominant character of the streetscape.

The Tribunal considers the Appellant has satisfied the onus to demonstrate the appeal should be upheld and the Tribunal has decided to set aside the decision of the Assessment Manager and order the Assessment Manager to remake the decision by the date and in the manner outlined above.

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**Mark Chapple**  
**Development Tribunal Chair**  
**Date:** 1 November 2022

## 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.

## Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals  
Department of Energy and Public Works  
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Brisbane QLD 4001

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