



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-007
Appellant:	Rodney Thomas Kearney
Respondent: (Assessment manager)	Cian Corcoran (Project B.A.)
Co-respondent: (Concurrence agency)	Noosa Shire Council
Site address:	9 Gannet Street, Peregrine Beach Qld 4573, described as Lot 132 on P 9317—the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal, at the direction of the concurrence agency, of an application to construct a carport (Reference Project B.A. Decision Notice, Reference Number 20262574, Noosa Council Referral Agency Response, RAB25/0156).

Date and time of hearing:	Tuesday 24 March 2026 at 11.00 am.
Place of hearing:	The subject site
Tribunal:	Victor Feros OAM BA MUS MPIA (Life Fellow) CMILT (Q)—Chair Lisa Lambie B Arch FRAIA Registered Architect—Member
Present:	Rodney Kearney (Property owner) Brian Hearn (Support person to the property owner) Luke Neller (Project B.A., representative of the Respondent Cian Corcoran) Chris Mogg (Noosa Shire Council), Co-respondent Brad Geaney (Nosa Shire Council), Co-respondent

Decision:

The Development Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the Assessment Manager to refuse the Application for Development Permit – carrying out building works (assessable under the Building Act 1975) for a carport. (Reference Project B.A. Decision Notice, Reference Number 20262574, Noosa Council Referral Agency Response RAB25/0156).

Background

The approval sought

1. Approval was sought for an open double carport attached to the front of an existing dwelling.

The subject site

2. The subject site, described as Lot 132 on P9317, is a nearly rectangular corner block of 508 square metres, with a frontage of approximately 17 metres to Gannet Street on the east and 24.965 metres to Tern Street on the south. The lot is truncated at the road intersection.
3. This portion of Tern Street ends in a cul-de-sac.
4. The level site is developed with a modern, two-storey dwelling, set back approximately 6.0m from the Tern Street property boundary. The house faces Tern Street.
5. There is an existing single garage attached to the west side of the dwelling and aligned with the approximately 6m dwelling setback. The driveway is accessed from Tern Street.
6. The subject site is included in the Low Density Residential Zone of the Noosa Plan 2020.

The proposal

7. The proposal is for the construction of an open double carport with a total 6435 mm in width and 6000 mm in depth.
8. The carport is proposed to be located immediately in front of the existing single garage and to be attached to the front wall of the existing garage and dwelling.
9. The roof of the proposed carport is to be located 100mm in from the front property boundary on Tern Street, and 270mm in from the western side boundary, with the western edge of the roof aligning with the existing garage wall.
10. The new carport floor slab is to be lowered to match the adjacent front garden level, necessitating some excavation of the road reserve for the new driveway crossover. The carport will be approximately 3,033mm high from this new level at the front boundary.

Assessment of the application

11. Section 33 of the *Building Act 1975* 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 Queensland Development Code for boundary clearance and site cover. Table 6.3.1.3 of the Noosa Plan 2020 Low Density Residential Zone Code states that for the purpose of Section 10 of the *Building Regulation 2006* and Section 33 of the *Building Act 1975* provisions relating to setbacks in Table 6.3.1.3 are alternative provisions to the QDC.
12. Consequently, building work on the subject site is subject to the design and siting provisions of the Low Density Residential Zone Code. Acceptable Outcome AO9.1 of the zone code provides that

Buildings and structures have a setback of 6 metres from the road frontage, provided that setback to one frontage may be reduced to 4.5 metres where the lot

- a) *has frontage to more than one road; and*
- b) *is less than 600m² in area; or*
- c) *is less than 15 metres in width.*

13. Section 54 of the PA, schedule 9, part 3, division 2, table 3 of the *Planning Regulation 2017* 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 which 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.
14. Accordingly, on 9 December 2025 a Request for a Referral Agency Response Building Works was lodged by Coastal Patios Pty Ltd (The Applicant), on behalf of the Appellant, with Noosa Shire Council. The application, dated 1 December 2025, was supported by a town planning report by Better Design Planning Consultancy, Assessment Manager for the application, and drawings prepared by Coastal Patios.
15. On 13 January 2026 Noosa Shire Council issued an Information Request to the Applicant. The information requested is set out below:

Issue

It has been considered that the proposed carport doesn't contribute to open streetscapes by avoiding buildings and structures within the front 6 metres of the property. Council is unlike (sic) to support the proposed carport in this location.

Information Required

1. *Please reconsider the location of the proposed carport and if an alternative more compliant location can be achieved, submit revised plans for further consideration. It is suggested to remove the proposed carport and extend the existing tandem carport on the side boundary to maximum 9m.*
16. The Applicant did not submit revised plans.
17. Concurrently, on behalf of the appellant, Evita Enterprises Pty Ltd, trading as Coastal Patios, engaged Project B.A seeking a Preliminary Approval for Building Works.
18. On 6 February 2026, the Referral Agency, Noosa Shire Council, advised the Applicant that

Council directs the Assessment Manager to refuse the application (Noosa Council Referral Agency Response RAB25/0156).

19. Council's stated reason for refusal was:

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) *Contribute to open streetscapes by avoiding buildings and structures within the front 6m of the property.*

It has been considered that the location of the proposed carport within the road boundary setback doesn't contribute to an open streetscape by avoiding buildings and structures within the front 6 metres of the property.

It is in Council's view that the proposed carport road boundary setback of 0.001 metre's (sic), provides an exceedingly dominant structure which doesn't contribute to

the open streetscape by avoiding buildings and structures within the front 6 metres of the property.

20. PO9(f) is an amendment to the Low Density Residential Zone Code implemented in a Major Amendment to Noosa Plan 2020 from 26 September 2025.
21. On 18 February 2026, Cian Corcoran of Project B.A. (the Assessment Manager) issued his Decision Notice to refuse the Development Application (Decision Notice, Reference Number 20262574). It is noted that the decision erroneously refers to the application being for a Development Permit, not a Preliminary Approval for Building Works.
22. On 19 February 2026 the property owner, Rodney Kearney, lodged an appeal with the Registrar for the Development Tribunal.
23. On 24 March 2026 the hearing was conducted on the subject site.

Jurisdiction

24. 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.
25. 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, subsection 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).
26. 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 1975*, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
27. 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

28. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
29. 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); however, 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.
30. 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)).
31. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

Material considered

32. The material considered in arriving at this decision was:

- (a) Set of four drawings prepared by Coastal Patios, dated 25 November 2025, and stamped 'Recommended for Refusal' by Noosa Shire Council.
- (b) 'Request for Referral Agency Response Building Works' lodged by Coastal Patios c/- Better Design Planning Consultancy, dated 01 December 2025.
- (c) 'Information Request – Referral Agency' issued by the Noosa Shire Council, dated 13 January 2026.
- (d) 'Referral Agency Response' directing refusal by the Assessment Manager, issued by the Noosa Shire Council, dated 06 February 2026 (RAB25/0156).
- (e) Decision Notice' advising refusal of the development application, issued by Cian Corcoran of Project B.A. (Assessment Manager) dated 18 February 2026.
- (f) 'Form 10 – Notice of Appeal' lodged 19 February 2026 and including grounds for appeal, town planning report by Better Design Planning Consultancy, 5no. Adjoining Owner's Consent documents.
- (g) Noosa Plan 2020 – Low Density Residential Zone Code
- (h) The *Planning Act 2016*
- (i) The *Planning Regulation 2017*
- (j) The *Building Act 1975*
- (k) The *Building Regulation 2021*
- (l) The Queensland Development Code Part MP1.2
- (m) Verbal submissions made by the parties at the hearing and during the site inspection.
- (n) Google Maps and Streetview.
- (o) Site inspection and street walk conducted outside the hearing.

Findings of fact

33. The Tribunal makes the following findings of fact:

- (a) The streetscape of concern consists of both alignments of Tern Street from the intersection with Gannet Street for the length of the cul-de-sac, noting that the principal vehicular site access proposed for the subject site is via Tern Street. For the avoidance of doubt, building line setbacks in Gannet Street were considered not to be relevant in the matter.
- (b) Generally, the Tern Street cul-de-sac has minimal fencing with all but one property having structures at the compliant 6 metre set back.

- (c) One site opposite the subject site (3 Tern Street) has a small carport set back approximately 2m from the front boundary. According to the Appellant this carport was constructed over 50 years ago. Its impact on the Tern Street streetscape is considered to be minor.
- (d) There is a mix of high and low set houses incorporating single and double garages. Many properties are open to the street and there is abundant vegetation screening the front of homes.
- (e) The proposal would result in non-compliance with the Noosa Plan 2020 Low Density Residential Zone Code, namely that, with reference to Performance Outcome PO9(f) of the Code, it would not contribute to the maintenance of an open streetscape by avoiding structures within the front 6m of the property. In addition, the design of the carport as proposed would result in an exceedingly dominant structure, being only 100mm from the front boundary.
- (f) The matter of the design of the carport, considered by Council in its assessment to be an exceedingly dominant structure located within the prescribed road boundary setback, was determined to be a matter subservient to that of the principal consideration of building line encroachment, as a finding of fact, and was not further considered.

Reasons for the decision

- 34. The Tribunal finds that the predominantly open streetscape character of that section of Tern Street that is formed as a cul-de-sac is generally comprised of buildings and other structures with compliant setbacks.
- 35. After further and final consideration of the matter the Tribunal determined to confirm the Decision of the Respondent to refuse the Application, the subject of the Appeal, concurring that the proposed carport does not provide sufficient road boundary clearance and in consequence would not contribute to an open streetscape.

Victor Feros OAM BA MUS MPIA (Life Fellow) CMILT (Q)
Development Tribunal Chair

Date: 18 May 2026

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@hpw.qld.gov.au