



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-016
Appellant:	Marius Marginean
Assessment manager:	Aaron Solomon, Evolve Building Approvals
Co-respondent (concurrence agency)	Noosa Shire Council (Council)
Site Address:	1 Hill Street, Sunshine Beach, Qld 4567 and described as Lot 106 on RP 94566 – the subject site

Appeal

Appeal under section 229(1), schedule 1, sections 1(1)(b) and 1(2)(g), and table 1, item 1(a), of the *Planning Act 2016* (the PA) against the assessment manager's decision to refuse the appellant's application for a building works development permit for alterations and extensions to an existing dwelling including a new Class 10a carport. (the application).

Date and time of hearing:	Tuesday, 28 April 2026, at 11.00am
Place of hearing:	The subject site
Tribunal:	Debbie Johnson — Chair Marie-Anne Ammons — Member
Present:	Marius Marginean — Appellant Mihaela Marginean — Appellant Pat Ferris — Appellant's agent Stephen Bryan — Appellant's agent Andrew Gaffney — Council representative Matthew Pinese — Council representative

Decision:

The Development Tribunal (tribunal), in accordance with section 254(2)(a) of the PA confirms the decision of the assessment manager to refuse the application.

Background

1. The subject site is a residential property with an area of 526.29m². Despite the property's address there is minimal frontage to Hill Street. The primary access is from Edwards

Street Strip East, along its southern boundary. The subject site is located within the Noosa Council local government area. The surrounding locality is characterised by a mix of single dwellings and multiple dwelling developments.

2. The allotment is included within the Medium-Density Residential Zone under the Noosa Planning Scheme 2020 (Version Amendment 1, 25 September 2020), being the applicable planning scheme for the subject site (the planning scheme) at the time that this application was made.
3. The subject site contains a substantial two storey dwelling house, addressing Hill Street and accessible from what is effectively a service lane, Edwards Street Strip East. The dwelling house includes a double garage. The existing building setbacks to the road and side boundaries are dimensioned on the submitted building design drawings. Reduced setbacks are indicated to the road boundary, and these vary between 5.0 m and 5.5m. from the front boundary. Similarly, reduced setbacks are indicated along the western boundary for the roofed sauna and elevated pool deck. These are indicated at 898mm and 1352mm respectively.
4. The current appeal arises from the refusal issued by the assessment manager (Decision Notice No. BA260152), following a direction from Council as Referral Agency (File No. ERR25/008), to refuse reduced setbacks from both the front and side boundary lines and exceed the site cover. The proposed works included:
 - (a) A proposed carport with a 700mm setback from the front boundary and extending to the existing garage;
 - (b) A new entry foyer and lift over 2 storeys with a minimum setback of 3790mm to the front boundary and 1646mm to the side boundary;
 - (c) An adjoining hood / awning between the proposed carport and new entry and lift with a setback of 3781mm to the front boundary;
 - (d) New hoods / awnings and a roof over the existing side entry with a setback of 1250mm to the side boundary; and
 - (e) Site cover exceeding 40%.

Works are also proposed for a new driveway and street crossover. These are subject to a separate operational works application and are not part of this appeal consideration.

5. Building works on the subject site are subject to design and siting provisions set out in 6.3.2 Medium Density Residential Zone Code, within the planning scheme (the zone code). The Zone Code prescribes alternative residential design and siting provisions to those provided under the Queensland Development Code (QDC). Section 1.6 of the planning scheme states in part, *The Building Act 1975* (BA) permits planning schemes to: specify alternative boundary clearances and site cover provisions for Class 1 and 10 structures under section 33 of the BA.
6. Acceptable Outcomes (AO) of the zone code include:

Site Cover AO10 that states:

For a dwelling house, site cover does not exceed 40% of the site area.

Alternative provision to the QDC.

Building Setback AO12.1 states:

Buildings and structures meet the following minimum boundary setbacks:

- a. *for frontages — 6 metres*
- b. *for side boundaries—*
 - i. *1.5 metres setback up to 4.5 metres height;*
 - ii. *2 metres setback between 4.5 metres and 7.5 metres height; and*

- iii. 2.5 metres where above 7.5 metres height
- c. for the rear boundary - 6 metres.

Building Setback AO12.2 further states:

The front 6M of the property is landscaped open space, provided that uncovered visitor parking, or swimming pools protruding no more than 1m above the ground level, can be as close as 2m from the front boundary.

Alternative provision to the QDC.

7. Section 54 of the PA and schedule 9, part 3, division 2, table 3 of the Planning Regulation 2017 (PR) prescribes that a development application for building work that is subject to alternative design and siting provisions under section 33 of the BA, and does not comply with a quantifiable standard under such provisions (such as AO's of the Zone Code), requires referral to the applicable local government as a concurrence agency.
8. On 19 September 2025, a referral was made to Council pursuant to section 57 of the PA for a design and siting assessment and referral agency response – Council reference ERR25/008.
9. On 9 October 2025, Council issued a further advice, requesting the following information:

(a) *Proposed Carport*

Issue:

The functionality of the proposed carport and the useability of the existing garage is unclear. When a vehicle is parked in the proposed carport, it would obstruct access to the garage.

In accordance with Table 9.4.1.4 – Driveways and Parking Code of the Noosa Plan 2020, a Dwelling House (excluding a secondary dwelling) must provide two covered parking spaces.

The existing driveway layout does not provide adequate manoeuvring space for two vehicles to access the existing garage.

The proposed carport appears to accommodate only a single vehicle, which does not meet the minimum requirement for two covered spaces.

Insufficient detail has been provided regarding the dimensions, grades, and clearances of the existing or proposed vehicle crossover, particularly in relation to nearby infrastructure (e.g. power pole and stormwater outlet).

Information Required:

1. *Submit amended plans that clearly demonstrate compliance with the Driveways and Parking Code by providing two functional and compliant covered parking spaces on site, with appropriate access and manoeuvring areas. Safe and efficient access and vehicle manoeuvring is also required to be demonstrated."*

(b) *Front Setback*

Issue:

The submitted plans indicate a building encroachment into the required 6 metre front boundary setback, as specified in Acceptable Outcome AO12.1 of the Medium Density Residential Zone Code under the Noosa Plan 202.

Information Required:

2. *Provide further justification demonstrating how the proposed reduced front setback satisfies Performance Outcome PO12, including:*
 - a. *Consideration of streetscape character and consistency with surrounding built form;*
 - b. *Impacts on residential amenity, privacy, and access to sunlight;*
 - c. *Safe and efficient access and vehicle manoeuvring.”*

(c) *Operational Works (Driveway)*

Issue:

The submitted Town Planning Report notes that a separate OPW for a vehicle crossover was being submitted to Council. No OPW application has yet been applied for to date.

Information Required:

It is recommended that the required, somewhat retrospective OPW application be submitted to Council to be assessed concurrently with this early referral response.

10. The appellant's agent, Ferris Town Planning, submitted a response to the further advice request. The response is undated and included in part, the following responses to the information required:

Item 1

Updated engineering plans have been provided demonstrating that the site is capable of accommodating two functional, compliant and simultaneously usable covered parking spaces in accordance with Table 9.4.1.4 of the Driveways and Parking Code (Noosa Plan 2020) The swept-path analysis confirms that two vehicles are able to manoeuvre safely and independently, without conflict between ingress and egress movements.

However, the response further states:

It is important to note that the existing garage, although nominally a two-car garage, is physically constrained and does not currently operate as a functional two-vehicle space. The internal dimensions, combined with the garage door width and shape of the existing driveway, prevent two cars from being practically accommodated side by side. When one vehicle (typically a large SUV) is parked inside the garage, the second space becomes inaccessible due to insufficient clearance for manoeuvring or opening of doors. This functional limitation is the underlying reason for the proposed arrangement.

Hence, the appellant's requirement for the additional covered carport external to the garage.

Item 2

Justification for the front setback was in part:

a. *Streetscape character and consistency with surrounding built form-*

The streetscape character should be reviewed with respect to Edwards Street East service lane, which is the actual frontage of the dwelling...

Edwards Street East is a narrow, informal service lane characterised by:

- varied and irregular building setbacks;*
- garages and carports frequently located forward of dwelling facades;*
- substantial vegetation on both private land and within the road reserve;*
- a non-urban, unstructured verge appearance; and*

- a construction standard consistent with an access lane rather than a primary street...

The proposed carport is entirely consistent with this pattern. Forward-sited structures are a defining element of the lane, and the immediately adjoining property at 162 Edwards Street contains a garage/carport within the 6-metre setback, positioned forward of the dwelling.

Impacts on residential amenity, privacy and access to sunlight

The structure is open-sided, modest in scale, and non-habitable. There are no opportunities for overlooking or loss of privacy. Dense landscaping along the lane and between dwellings preserves all visual separation.

The reduced setback does not create any overshadowing or sunlight impacts due to the small height and form of the carport, and the orientation of nearby dwellings. The stair/lift structure is similarly minor in volume and sits well clear of sensitive areas...

b. Safe and efficient access and vehicle manoeuvring

Updated engineering swept-path plans confirm that the site accommodates two fully functional covered parking spaces with safe, simultaneous ingress and egress.

Vehicles can manoeuvre without conflict, and the new carport does not obstruct access to the existing garage...

Item 3

The submitted Town Planning Report notes that a separate OPW for a vehicle crossover was being submitted to Council. No OPW application has yet been applied for to date.

The appellant's representative responded in part stating that:

RPEQ-certified engineering design has now been completed.... The engineering plans confirm that the proposed works are likely to meet the applicable Acceptable Outcomes of the Driveway and Parking Code... thereby implying that the requirement for an operational works permit is negated, as the driveway works wouldn't trigger assessment.

11. On 16 February 2026, Council issued a referral agency response directing refusal of the application. The grounds for this decision in part stated, that the proposed development failed to achieve the Overall Outcome 6.3.2.2(2)(c) of the Medium Density Residential Zone Code and does not comply with the acceptable outcomes for performance outcomes under the zone code. Council further stated that:

- (a) *The proposal does not comply with Acceptable Outcome 10 (AO10) and Performance Outcome 10 (PO10) of the Medium Density Residential Zone Code as the development exceeds 40% site cover, and:*
 - a. *The two-storey extension at the southwestern corner of the house will significantly increase the width and overall building bulk of the house as presented to the street and will result in a visually prominent structure inconsistent with the low scale character of the area.*
 - b. *The proposed carport will remove virtually all the landscaping at the front of the house and project a significant part of the structure close to the front boundary. This will significantly increase the built form of the house as presented to the street.*
- (b) *The proposal does not comply with Acceptable Outcome 12 (AO12.1 and 12.2) and Performance Outcome 12 (PO12) of the Medium Density Residential Zone Code as:*

- a. *Most front landscaping will need to be removed within the property to facilitate the carport encroachment to 0.7m and construction of the retaining wall at the frontage.*
 - b. *The presented building bulk of the house will exceed that of any nearby dwelling and will be strongly inconsistent with the character of the local area.*
- 12. On 10 March 2026, the assessment manager issued a decision notice refusing the application. The decision notice indicates that this decision was made solely because of the Council's referral agency direction.
- 13. On 19 March 2026, the appellant duly lodged a Form 10 Notice of Appeal to the tribunal registrar.
- 14. On 28 April 2026, a site inspection and hearing were held on the subject site.
- 15. On 28 April 2026, following the site inspection and hearing, the tribunal issued the following directions for parties to submit further information and/or further responses to matters raised at the hearing. The two (2) requested submissions included:
 - (a) Further submissions by the appellant / appellant's agent for additional detailed building design drawings; and
 - (b) Further information by Council on approved garage/carport located on the adjoining property.
- 16. On 7 May 2026, Council provided the decision notice report for a siting variation that related to the existing carport at 162 Edwards Street, Sunshine Beach. The 2012 report details a relaxation was granted for siting the carport 3.3m from the road boundary in lieu of the 6m setback. The assessment was made against the Specific Outcomes as set out in Table 14.42 of Noosa Plan 2006.
- 17. On 12 May 2026, the appellant's agent provided an email containing updated building plans detailing the proposed site cover breakdowns. The site cover submissions included:
 - (a) Proposed Ground Level Site Cover comprising carport area 33sq/m + garage house 77sq/m = 110sq/m.
 - (b) Proposed Upper Level Site Cover comprising house area 196sq/m + roofed outdoor living 31.2sq/m + new roof / hood area 8.0msq/m = 235.2sq/m. These plans do not provide the existing roof area over the spa deck that was shown previously on the Roof Plan and the North and Western Elevations.

The planning scheme defines Site Cover as follows:

Site cover of development means the portion of the site, expressed as a percentage, that will be covered by a building or structure, measured to its outermost projection, after the development is carried out, other than a building or a structure, or part of a building or structure, that is-

- (a) in a landscaped or open space area, including, for example a gazebo or shade structure; or*
- (b) a basement that is completely below ground level and used for car parking; or*
- (c) the eaves of a building; or*
- (d) a sunshade.*

Jurisdiction

18. 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.
19. Section 1(1)(b) of the schedule provides that the matters stated in Table 1 of the schedule are the matters that may be appealed to a tribunal. However, section 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).
20. 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 BA, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
21. 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

22. Section 253(2) of the PA states, that generally the appellant must establish the appeal should be upheld.
23. Section 253(4) states, that 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.
24. Section 253 (5) states, that the tribunal may, but need not, consider—
 - (a) other evidence presented by a party to the appeal with leave of the tribunal; or
 - (b) any information provided under section 246, being, the registrar may, at any time, ask a person to give the registrar any information that the registrar reasonably requires for the proceedings.
25. Section 254(2) states, that 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;
26. Section 254 (3) states, that the tribunal must not make a change, other than a minor change, to a development application.
27. Section 254(4) of the PA states, that the tribunal's decision takes the place of the decision appealed against.

Material considered

28. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar and receipted on 24 March 2026;
 - (b) The assessment manager's decision notice dated 10 March 2026;
 - (c) Noosa Council early referral agency response dated 16 February 2026;

- (d) Noosa Council further advice dated 9 October 2025;
- (e) Ferris Town Planning (undated) response to further advice undated, containing:
 - a. HR Design Consulting Engineers Job No 25-0542, cover sheet and sheet number C01 and C02, dated 31 October 2025;
- (f) DA Form undated;
- (g) Ferris Town Planning Report – referral agency response request dated 3 September 2025, containing supporting plans numbered 1-9;
- (h) Eagle Surveys detail and level plan dated 30 September 2025;
- (i) Titles Queensland current title search dated 27 February 2026
- (j) The *Planning Act 2016* and the Planning Regulation 2017;
- (k) The *Building Act 1975* and the Building Regulation 2021;
- (l) Noosa Plan 2020 (Version Amendment 1, 25 September 2020) and Noosa Council's interactive mapping;
- (m) Specific Outcomes as set out in Table 14.42 of Noosa Plan 2006.
- (n) Queensland Development Code Part MP1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m² and over;
- (o) The verbal submissions made by the parties at the hearing and during the site inspection;
- (p) Google maps; and
- (q) Nearthmap.

Findings of fact

29. The approved carport at 162 Edwards Street, Sunshine Beach was supported in 2012, through a siting variation allowing built form within the 6 m front setback. A key distinction is that the adjoining property has no existing covered car parking, whereas the subject site already includes a double garage. The assessment criteria for this application related to a previous version of the Noosa Plan (2006). These differences are material when considering the building and planning rationale for each outcome.

30. The calculation of site cover is a key matter. The submissions made on behalf of the appellant appear to misinterpret the requirements of the planning scheme. Under *Schedule 1 – Definitions*, site cover is defined as:

Site cover of development means the portion of the site, expressed as a percentage, that will be covered by a building or structure, measured to its outermost projection, after the development is carried out, other than a building or a structure, or part of a building or structure, that is-

- (a) in a landscaped or open space area, including, for example a gazebo or shade structure; or*
- (b) a basement that is completely below ground level and used for car parking; or*
- (c) the eaves of a building; or*
- (d) a sunshade.*

Applying this definition, the site cover for the proposed development comprises the existing dwelling (including outdoor living areas), the new carport, and the new lift/entry structure. The combined site cover is calculated as:

- 196 m² — existing house including new lift/entry area
- 31.2 m² — outdoor living area
- 33 m² — proposed carport

This results in a total site cover of approximately 49%. All minor projections, including awnings, are expressly excluded from the calculation.

The applicable benchmarks under the Medium Density Residential Zone Code at AO10, are 40% for a dwelling house. The total site cover proposed in this appeal therefore substantially exceeds the acceptable outcome for a dwelling house.

Under the Medium Density Residential Zone Code, PO10 does not provide alternative performance criteria for exceeding the allowable 40% site cover.

31. Where development is to be assessed under the Medium Density Residential Zone Code it should meet the acceptable outcomes at AO12 for the required setbacks. However, compliance may be demonstrated against the performance criteria at PO12 where reduced setbacks are sought.
32. PO12 states:

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;*
- b) not unreasonably obstruct views or cause overlooking of private open space or habitable areas of adjoining premises;*
- c) provide adequate distance from adjoining land uses;*
- d) preserve existing vegetation that will help buffer development;*
- e) allow for space and landscaping to be provided between buildings including adequate area at ground level for landscaping with trees, shrubs, outdoor living and utilities;*
- f) be consistent with the predominant character of the surrounding area; and*
- g) protect the natural character and avoid adverse impacts on ecologically important areas such as national parks, waterways and wetlands.*

The drawings illustrate the following proposed works and associated setbacks:

- (a) The proposed Heka hoods and new roof over the entry door would reduce the existing compliant side boundary setback (minimum 1.5m required) to 1.25m. This setback does not comply with the minimum boundary setback requirements under AO12.1.
- (b) For the new lift / entry structure, the proposed front boundary setback to the lift is 3.79 m, with a 1.646 m side boundary setback. The overall height is approximately 5.8 m. These setbacks do not comply with the minimum boundary setback requirements under AO12.1.
- (c) For the new carport, the proposed front boundary setback is 0.7 m, with a 2 m side boundary setback. The carport height varies between 2.814 m and 3.686 m in response to the site's slope. The front boundary setbacks do not comply with AO12.1.
- (d) Existing residence and landscaped open space — The existing dwelling is set back 4.776 m from the front boundary. The landscaped open space facing Hill Street currently ranges from approximately 0.7 m, tapering to 0 m due to the alignment of the existing concrete driveway and the configuration of the lot.

The proposed plans indicate a consistent 0.7 m landscaped open space strip along the Hill Street frontage, extending partially along the Edwards Street frontage. While this does not meet the minimum landscaped open space requirement under AO12.2, it represents an improvement over the existing condition.

33. The subject site contains a curved and steeply sloping driveway with an approximate gradient of 21.5% located wholly within the property boundary. When viewed from Hill Street, the site is elevated by more than 2 m and is screened by existing shrubs and trees, largely on the road verge, resulting in limited visibility from that frontage. The driveway and primary point of access face the Edwards Street service road, meaning the site is visually apparent only from the Edwards Street approach.

Given the existing topography and vegetation, the proposed carport would be largely obscured from both Hill Street and Edwards Street. The new lift/entry structure would be visible from Edwards Street, although its visual presence would remain limited.

Neither of the proposed building elements aligns with the established residential front setbacks along Hill Street or Edwards Street, with the exception of the adjoining property at 162 Edwards Street, Sunshine Beach, as outlined in paragraph 31 of this decision notice.

Reasons for the decision

34. The tribunal, in accordance with section 254(2)(a) of the PA, has decided this appeal is dismissed and the earlier decision is upheld without amendment.
35. The tribunal makes the following findings of fact:
- (a) The proposed carport and new lift / entry structure extend into the 6m front setback;
 - (b) The proposed new roof and awnings will extend into the side boundary setback
 - (c) The required site cover with the proposed additions exceeds 40%.
36. The tribunal finds that the siting and construction of the proposed carport and new lift/entry structure would be inconsistent with the predominate character of the street. The proposed new roof and awnings within the side boundary setbacks will impact on the existing vegetation that helps to buffer development and will reduce the potential landscaping that can be provided and maintained between homes.

Debbie Johnson
Development Tribunal Chair

Date: 19 June 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
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GPO Box 2457
Brisbane QLD 4001

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