



Development Tribunal – Decision Notice

Planning Act 2016, section 255

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| Appeal number: | 22-018 |
| Appellants: | Phillip and Joanne Cunliffe |
| Respondent (Assessment Manager): | Stuart Andrews BSB Brisbane, Building Certifiers and Regulatory Consultants |
| Co-Respondent (Concurrence Agency): | Noosa Shire Council |
| Site Address: | 25 Elanora Terrace, Noosa Heads Q 4567, Lot 7 on RP 227484 – the subject site |

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 for a Carport. The decision followed a referral agency response (Noosa Shire Council) directing refusal of the Application. Council stated that the proposed carport does not comply with and cannot be conditioned to comply with the provisions of the Noosa Plan 2020, Low Density Residential Zone Code, PO9(f) – requirements to be consistent with the predominant character of the streetscape.

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| Date and time of hearing: | 11:30am, 02 August 2022 |
| Place of hearing: | The subject site |
| Tribunal: | Professor Victor Feros OAM – Chairman Dayv Carter – Member |
| Present: | Phillip Cunliffe – Appellant Stuart Andrews - Respondent Bradley Geaney – Co-Respondent Matthew Adamson – Co-Respondent |

Decision

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the Assessment Manager dated 6 May 2022, notifying the Applicant of the decision to refuse the Application.

Background

1. An application was lodged by BSB Brisbane, Building Certifiers and Regulatory Consultants to Noosa Shire Council on 23 February 2022 for Referral Agency Response to construct a Carport.
2. The proposed carport was setback 3.106m to 3.211m from Elanora Terrace.
3. The proposed width of the carport was 5.940m, to accommodate two (2) vehicles under cover.
4. The depth of the carport was 5.300m.
5. The Concurrence Agency (Co-Respondent) directed refusal of the Application on 13 April 2022 due to non-compliance with Performance Outcome PO9(f) Low Density Residential Zone Code, Noosa Plan 2020.
6. By letter dated 6 May 2022, the Respondent notified the Applicants that the Application was refused, received by the Applicant, 12 May 2022.
7. An appeal to the Development Tribunals – the subject Appeal – was duly instituted on 19 May 2022.

Material considered

8. The material considered in arriving at this decision comprises:
 - a) Form 10 Appeal Notice, including grounds for appeal and correspondence accompanying the appeal, lodged 19 May 2022
 - b) Proposed Building Works Plans for proposed Carport prepared by Soul Space Building Design, issued 5 August 2021
 - c) Application for Building Works by Phillip and Joanne Cunliffe to BSB Brisbane, Building Certifiers and Regulatory Consultants for proposed carport, 23 February 2022
 - d) Information Request – Referral Agency (Noosa Shire Council), letter dated 4 March 2022
 - e) Response to Information Request lodged 21 March 2022
 - f) Referral Agency Response, letter dated 13 April 2022
 - g) Assessment Manager Decision Notice, Notice date 6 May 2022, received 12 May 2022.
 - h) Noosa Plan 2022, including Low Density Residential Zone Code
 - i) Google street view images and
 - j) The Planning Act 2016, the Planning Regulation 2017 and the Development Application Rules

Findings of fact

9. The Appellant explained the reasons for the Application, principally that a double carport was required to enable undercover parking for two vehicles, namely a standard size sedan and a large dual cab work utility with roof racks.
10. The Co-Respondent (Council) asserted that the proposed carport was inconsistent with the predominant character of the streetscape, that the predominant character of the streetscape consisted of buildings and structures providing compliant setbacks or greater boundary setbacks than that of the proposed (subject) carport; and that, further, non-compliant setbacks in the streetscape were likely unlawfully constructed, which would be the subject of further investigation.
11. The Registrar, Development Tribunals, by letter dated 4 August 2022, in accordance with a request from the presiding Appeal Chairman, invited the Appellants to consider plan amendments, including, but not necessarily limited to a tandem carpark adjoining the western boundary of the subject site (adjoining a public walkway). The Registrar further advised that, if amended plans were not provided, the Tribunal would decide the matter based on the information already before it.
12. The Appellant, by response dated 16 August 2022, declined to make plan amendments as invited.
13. By further letter from the Registrar to the Appellant, dated 4 October 2022, the Appellant was offered a further opportunity to submit plan amendments, which was also subsequently declined.

Reasons for the decision

14. The proposed carport provides an insufficient road boundary setback and is not consistent with the prominent character of the streetscape.
15. The front apron of the residential lot is exposed within a localized viewshed within the insufficiently-set-back proposed carport and would be rendered more prominent than otherwise, and therefore inconsistent with the requirement PO9(f) of the Low Density Residential Code, that *“buildings and structures are designed and sited to (...) (f) be consistent with the predominant character of the streetscape”*
16. That there is, or that there may be, other inconsistency(s) within the immediate viewshed caused by the incidence of other—likely unlawful—carport placements within the required setback, is not relevant, and of no assistance in the assessment of the subject proposal.

Professor Victor Feros OAM

Development Tribunal Chairman
Date: 2 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.

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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