



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal number:</b>	26-005
<b>Appellant:</b>	Robert Moorfoot
<b>Respondent: (Assessment manager)</b>	Tony English
<b>Co-respondent: (Concurrence agency)</b>	Noosa Shire Council
<b>Site address:</b>	28 Werin Street, Tewantin Qld 4565 and described as Lot 3 on RP75505 – the subject site

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### **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 a 'Development Application' for building works for the construction of a 'carport' (Reference *tcert Building Certification* Decision Notice Approval 250239 (Refusal), Noosa Council RAB 25/0131).

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<b>Date and time of hearing:</b>	Wednesday 18 March 2026 at 1.00 pm.
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Derek Kemp—Chair Catherine Baudet—Member
<b>Present:</b>	Robert Moorfoot—Appellant and property owner Brad Geaney—Noosa Shire Council, Co-respondent

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### **Decision:**

The Development Tribunal, in accordance with section 254(2)(d) of the *Planning Act 2016* sets aside the decision of the Assessment Manager to refuse the Building Development 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 and, if the Assessment Manager approves the application, including the following conditions along with any other conditions the Assessment Manager decides are reasonable and appropriate:

- (A) The carport is to remain open to the street, with no gates, and each side of the carport below the eaves, and the rear of the carport, is to remain open with no cladding.
- (B) The area of the old carport that has been removed is to be landscaped and no building or shed is to be located within the footprint of the old carport (shown on the plans submitted for approval of the new carport - Reference *tcert Building Certification* Decision Notice Approval 250239 (Refusal), Noosa Council RAB 25/0131)

## Background

### The approval sought

1. Approval was sought for proposed building works for an open carport set in front of an existing dwelling and set back 4.48 metres from the front property boundary to Werin Street.

### The subject site

2. The subject site is a narrow, oblong block of 505.29 square metres, with a frontage of 12.6 metres to Werin Street, developed with a modern, double-storey dwelling, set back approximately 13.8 metres from the front property boundary.

### The proposal

3. The proposal is for the construction of an open carport, 6,050mm in width and 6,000mm in depth, 2,400mm in height to the eaves, with a high pitch roof resulting in a height of 2,946mm, built in part on fill giving a maximum height of 3,036mm above natural ground level.
4. The existing, smaller carport, that was set back approximately 6.5 metres from the front property boundary to Werin Street, is shown on the plans submitted for approval and has since been demolished.

### Assessment of the application

5. The Respondent requested the response of referral agency, Noosa Shire, to the proposed building works.
6. On 2 February 2026, the Council directed the Assessment Manager to refuse the proposed building works (Noosa Council Referral Agency Response RAB25/0131).
7. Council's stated reasons for refusal were:

*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 6 metres of the property.*

8. Council noted that:

*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 4.480 metres, 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.*

9. On 11 February 2026, the Respondent issued his Decision Notice to refuse the Development Application Decision Notice – Approval, Reference Number 240309 (Refusal).

10. The Appellant has submitted that work on the proposed carport commenced before the Noosa 2020 Amended Plan commenced on the 26 September 2025, and consequently the carport should be assessed under the previous Noosa 2020 Plan that included a different provision, which did not state that 'Buildings and structures are designed and sited to: (f) contribute to open streetscapes by avoiding buildings and structures within the front 6 metres of the property.

### **Jurisdiction**

11. 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.
12. 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).
13. 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.
14. 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**

15. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
16. 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.
17. 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)).
18. The tribunal must not make a change, other than a minor change, to a development application (section 254(3)).

### **Material considered**

19. The material considered in arriving at this decision was:
  - (a) 'Form 10 – Notice of Appeal' (with the supporting documents and further information contained therein).
  - (b) 'Referral Agency Response Directing Refusal' issued by the Noosa Shire Council, dated 2 February 2026 (RAB24/0115).
  - (c) 'Development Application – Refusal' issued by the Assessment Manager (Tony English) dated 11 February 2026.
  - (d) Noosa Plan 2020 – Low Density Residential Zone Code (as amended that commenced on 26 September 2025)
  - (e) The Queensland Planning Act (2016)
  - (f) The further information provided by the Appellant and Council at the hearing.

## Findings of fact

The tribunal makes the following findings of fact:

### Status of the claim that the proposal should be assessed under the previous plan

20. The Appellant has constructed a concrete hard stand that could form the floor of the proposed carport. This hardstand has spaces left exposed to the ground level where footings for the posts for the carport could be installed. (The Appellant advised at the hearing that this work had been finished at the end of April 2025).
21. The *tcert Building Certification* Decision Notice states the Site Plan and Elevations for the proposed carport (Plan/Document Number C547430) were prepared by Titan Garages on 30 October 2025. The Appellant advised at the hearing that the deposit for the carport was paid to Titan Garages on 21 October 2025.
22. The PA deals with building work or operational work needed to 'keep an approval alive'. This requires the work to have been 'substantially started', usually requiring physical work on the site and 'validation' demonstrated by commitment to the development.
23. The Tribunal finds that no application for approval had been issued for the proposed carport at the time that the amended planning provisions commenced on 26 September 2026.
24. The Tribunal finds that the works commenced before the amended planning provisions commenced on 26 September 2026 did not constitute a 'start' to the proposed carport.
25. Consequently, the Tribunal considered the proposed carport should be assessed against the provisions of the Noosa Plan 2020 that commenced on 26 September 2025.

### Findings concerning the open streetscape

26. The proposed carport would be located behind a 1.8 metre high, solid timber fence, with similarly constructed solid timber gates that can be closed across the driveway.
27. The views into the property are restricted by somewhat lower, more open timber paling boundary fences, extending from the front property boundary, at both sides of the property, extending past the existing dwelling that is set back approximately 13.8 metres from the front property boundary.
28. The view of the proposed carport from the north along Werin Street will be further restricted by the neighbour's existing older dwelling at 30 Werin Street, with its higher pitched roof, that is located closer than 6 metres to the front property boundary with structures attached to the front of the dwelling, which brings its visual impact further forward and close to the alignment of the front posts of the proposed carport.
29. The roof of the proposed carport reflects, but is much lower than, the two storey 'A frame' structure of the existing dwelling on the subject site, which is set 3.3 metres further back than the proposed carport. Consequently, the view into the property will be dominated by the existing double storey dwelling with the proposed carport, located in front of the existing dwelling, providing little, if any, reduction to the apparent open space at the front of the property.
30. The setback of the existing dwelling on the subject site is approximately 13.8 metres from the front property boundary, which when combined with the removal of the old carport,

results in a much greater open streetscape than would exist with premises built up to the 6 metre building line.

### Reasons for the decision

31. The key aspects of concern are:
  - (a) whether the proposed carport detracts from an open streetscape.
  - (b) whether the proposed carport provides an exceedingly dominant structure, which doesn't contribute to the open streetscape.
  - (c) whether 'avoiding buildings and structures within the front 6 metres of the property' in Performance Outcome PO9(f) is a strict rule that prevents the proposed carport being approved.
  
32. With respect to the impact of the proposed carport on the open streetscape, the Tribunal formed the opinion that:
  - (a) the proposed carport would not significantly adversely affect the open streetscape.
  - (b) the setback of the existing dwelling on the subject site, combined with the removal of the old carport, results in a more open streetscape than PO9(f) is seeking to achieve.
  
33. With respect to whether the proposed carport provides an exceedingly dominant structure which doesn't contribute to the open streetscape, the Tribunal formed the opinion that:
  - (a) the proposed carport would not be a dominant structure when viewed from the street.
  - (b) the existing fence is the dominant visual element.
  - (c) the proposed open carport recedes into the background and will be lost against the bulk of the existing double storey 'A' framed dwelling behind it.
  - (d) the double storey 'A' framed dwelling behind the proposed carport will remain the dominant structure visible behind the fence when viewed from the street.
  
34. With respect to Noosa Plan 2020 – Low Density Residential Zone Code, Performance Outcome PO9 (Buildings and structures are designed and sited to: .... (f) Contribute to open streetscapes by avoiding buildings and structures within the front 6 metres of the property), the Tribunal formed the opinion that:
  - (a) the 6 metres in the Performance Outcome is not a strict rule that must be adhered to and enforced.
  - (b) 'Performance Outcomes' should be more specific than a 'Purpose Statement' but broader than an 'Acceptable Outcome' and should allow for innovative and alternative design solutions.
  - (c) while the Performance Outcome expresses a strong planning intent regarding the location of structures within the 6m setback, it does not of itself operate as a development prohibition.
  - (d) assessment against the Performance Outcome must still occur having regard to the overall assessment framework and the circumstances of the site.
  
35. The Tribunal noted that:
  - (a) the interpretation of PO9(f) as a 'hard and fast rule' restricting any structures within 6 metres of the property boundary would prohibit any retaining walls, gates or fences, garden trellises, raised flower beds, raised pathways, decks, flag poles or any other structure.
  - (b) Council material accompanying the planning scheme amendment indicated that the intent of the provision was to limit the proliferation of structures (such as bulky fencing) within the low density residential zone, where such development was considered to detract from achieving the intended character and outcomes of the zone.
  - (c) Council material accompanying the planning scheme amendment also indicates that approval of structures within the setback may occur in limited circumstances, based on site specific considerations.

36. The Tribunal further noted:
- (a) the trigger for referral to Council is contained in paragraph (b) in table 3 division 2 schedule 9 of the Planning Regulation 2017, which provides:
    - (b) *under the Building Act, section 33, an alternative provision applies for the building work and, under the provision, the proposed building or structure is not of the quantifiable standard for a relevant qualitative statement under the provision;...*
  - (b) applying to this assessment, the referral to Council as a 'Referral Agency' is only triggered if PO9 is a 'qualitative' statement.
  - (c) the interpretation of PO9(f) as a strict rule is not consistent with PO9(f) being interpreted as a qualitative statement.
37. The Tribunal formed the opinion that:
- (a) the proposed carport would not significantly detract from the existing or likely future open streetscape.
  - (b) the proposed carport would not be a 'dominant structure' when viewed from the street.
  - (c) a condition requiring the carport to retain an 'open' design form, free of gates and cladding below the eaves on all sides, would reduce the visible impact of the carport and that this condition, combined with the removal of the existing carport, will contribute to the perceived open space at the front of the property.
  - (d) a condition requiring the landscaping of the area comprising the footprint of the recently demolished old carport and preventing any shed or other building being erected on that area, would contribute to the creation of a generous open streetscape on the subject site.

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**Derek Craven Kemp**  
**Development Tribunal Chair**

**Date: 7 April 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 (07) 1800 804 833**

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